

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2023/08
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/31)

Date: 22 /02/2023

Name and address of the applicant	:	M/s. HRPL Restaurants P Ltd., 1201-1204, 1301-1302, Elenza Vertax, 12, 13 Floor, Sindhu Bhavan Road, Bodakdev, Ahmedabad -380 059.
GSTIN of the applicant	:	24AAHCR3681C1ZJ
Date of application	:	29.10.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) (b)
Date of Personal Hearing	:	22.12.2022
Present for the applicant	:	Rutvij Modi (Manager), Divya Soni (Deputy Manager)

Brief facts:

M/s. HRPL Restaurants P Ltd., 1201-1204, 1301-1302, Elenza Vertax, 12, 13 Floor, Sindhu Bhavan Road, Bodakdev, Ahmedabad-380059 [for short –‘applicant’] is registered under GST and their GSTIN is 24AAHCR3681C1ZJ.

2. The applicant runs a chain of restaurants/eating joint namely

- [a] 1944 the HOCCO Kitchen;
- [b] HOCCO eatery; &
- [c] Huber and Holly.

The applicant operates under two business models viz

- [i] company owned restaurants &
- [ii] franchise restaurants.

The applicant has sold his ice cream division to South Korea’s *Lotte Confectionery*.

3. As far as ‘1944 the HOCCO Kitchen’ is concerned, the activities include:

- it’s a premium restaurant;
- these outlets have seating capacity with air conditioning where food or ice cream or both is served as per the desire of the customer;
- the menu includes Punjabi food, Pav bhaji, Snacks, Ice cream, etc;

4. As far as ‘The HOCCO Eatery’ is concerned, the activities include:



- serving delicacies such as channa puri, pav bhaji, rice meals, sandwiches, pizza etc;
- their menu also consists of various desert options viz milk shakes, ice creams, etc.;
- the outlets have two types of arrangements i.e.
 - outlets having sitting arrangement wherein the customers can have dine in experience and also order food online and
 - outlets that do not have proper sitting facility;
- that of the 10 company owned outlets, 8 have seating capacity;
- the outlets without proper seating arrangements, have few odd chairs;
- that there is no differentiation in the items being served at such outlets;
- that the outlets have similar menu irrespective of whether there is proper seating arrangement or otherwise;
- that though ice cream, preparation are sold/served, the sales mix is having significant share of food and beverages as compared to ice cream.

5. As far as 'Huber and Holly' is concerned, the activities include:

- it is a premium category fast food restaurant wherein pizza, pasta, sandwiches, ice cream sundaes, ice cream pastry etc are served;
- the customer can have dine in experience or can also order food online or takeaway;
- the outlets have seating capacity with air conditioning where food/ice cream or both is served as per the desire of the customer.

6. Now, ice creams as is evident are also served at these outlets. These ice creams include MRP products/pre-packaged products as well as non MRP products. They are served/packed there and then.

7. The applicant has further given the following difference between an ice cream parlour and restaurant/eating joint viz:

Sr. No.	Ice Cream parlour	Restaurant / eating joint
1	Ice cream parlours sell already manufactured ice-cream.	Restaurants/eating joint indulge in supply of food or any other article for human consumption or any drink.
2	Ice-cream parlours do not engage in any form of cooking at any stage.	Restaurants/eating joints engage in cooking/preparing, during the course of providing service.
3	Ice-cream parlours are predominantly engaged into selling of ice-cream only.	Restaurants/eating joints supply cooked food, drinks, ice-cream etc..
4	Ice-cream parlours may or may not have seating capacity.	Restaurants will have separate seating facility . Eating joints may or may not have seating facility.

It is further stated by the applicant that none of the outlets have just ice-creams on their menu; that they are serving food as well as ice creams; that the applicant is also registered as a restaurant under the FSSAI regulation. The applicant has further stated that based on the variety of transactions involved, their outlets are nothing but a restaurant/eating joint.

8. It is his further contention that they are liable for GST @ 5% by treating such supply as '*supply of restaurant service*' without availing ITC; that they are not ice cream parlour in terms of circular No. 164/20/2021. The applicant has also relied on the



case of M/s. Deepak & Co [Order no. 2/DAAAR/22-23/2005-2010/21.6.2022] to substantiate their contention.

9. Vide the aforesaid application, the applicant has raised following question for advance ruling *viz*

1. Whether supply of ice cream from any of the outlets of HRPL be considered as supply of 'restaurant services' or not?

2. If the supply is classified as 'restaurant services', what would be the applicable rate of tax thereon in accordance with notification No. 11/2017-CT(Rate) dtd 28.6.2017 [as amended from time to time]?

3. If not the restaurant services, supply of ice cream from any of the outlets of HRPL can be considered as supply of ice cream from ice cream parlour & chargeable to GST @ 18% ?

10. Personal hearing was granted on Dt.22.12.2023 wherein Shri Rutvij Modi (Manager), Divya Soni (Deputy Manager) appeared and reiterated the facts as stated in the application.

Discussion and findings

11. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

12. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

13. The applicant is engaged in the restaurant business and the format of the outlets is mentioned in detail *supra*. The ice cream division has been sold. The present outlets are broadly of the three types, wherein the applicant is supplying food which is prepared and cooked in the restaurant/eatery in addition to supplying the ice creams, which are not prepared/produced by them. The main question to be decided is whether the supply of ice cream from any of the outlets of the applicant, can be considered as supply of 'restaurant services' or not.



14. Before delving on to the aforementioned question, it would be prudent to reproduce the relevant terms as per the notification in vogue for the sake of ease of reference viz.

➤ **Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017**

Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC)

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table :-

4. Explanation.- For the purposes of this notification, -

(i) Goods includes capital goods.

(ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure).

Annexure : Scheme of Classification of Services

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
80	Group 99633		Food, edible preparations, alcoholic and non-alcoholic beverages serving services
81		996331	Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food

➤ **Notification No. 20/2019-C.T. (Rate), dated 30.9.2019**

[amending notification No. 11/2017-C.T. (Rate)]

In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely :-

In the said notification, -

(i) in the Table, -

(a) against serial number 7, for the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, -

(3)	(4)	(5)
(ii) Supply of 'restaurant service' other than at 'specified premises'	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation No. (iv)]



(iii) in paragraph 4 relating to explanation, after clause (xxxii), the following clauses shall be inserted, namely :-

“(xxxii) **‘Restaurant service’** means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

15. CBIC vide circular No. 164/20/2021-GST dated 6.10.2021 in para 3.3 & 3.4 has clarified as follows:

3.3 The explanatory notes to the classification of service state that ‘restaurant service’ includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

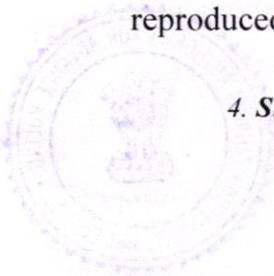
3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under ‘restaurant service’, as defined in notification No. 11/2017-Central Tax (Rate) and attract 5% GST [without ITC].

16. CBIC by relying on explanatory notes has clarified that ‘restaurant service’ includes services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food. It is further stated that service by an entity by way of cooking and supply of food even if it is exclusively by way of take away or door delivery or through or from any restaurant would be covered by restaurant service further going on to add that the service would also cover cloud kitchens/central kitchens within its fold. The above clarification spells out the intention of the legislature, to the effect that service provided by any entity, which is engaged in cooking and supply of food would be covered within the ambit of ‘restaurant service’.

17. It is in this background, that we would like to examine the question raised by the applicant as to whether supply of ice cream from any of the outlets of the applicant would be considered as supply of ‘restaurant services’ or not. We have already dealt with the form of outlets of the applicant in detail. For the sake of brevity, we do not intent to repeat it.

18. We find that the circular No. 164/20/2021-GST dated 6.10.2021, has also further covered the supply of ice cream by ice cream parlours. The relevant extract is reproduced below for ease of reference viz

4. Supply of ice cream by ice cream parlours



4.1 Representations have been received requesting for clarification regarding the supplies provided in an ice cream outlet.

4.2 Ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant. Ice-cream parlours do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlour stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

4.3 Accordingly, as recommended by the Council, it is clarified that where ice cream parlours sell already manufactured ice-cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

19. CBIC vide its circular No. 177/09/2022-TRU, dated 3-8-2022, based on the representation received has further given clarifications as under, viz.

3. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 1-7-2017 to 5-10-2021.

3.1 On the recommendation of the GST Council in its 45th meeting, it was clarified vide Circular No. 164/20/2021-GST, dated 6-10-2021 [2021 (53) G.S.T.L. C15] that ice-cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC.

3.2 Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 6-10-2021.

3.3 It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 6-10-2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6-10-2021, the ice cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

20. A conjoint reading of the aforementioned notification, clarification issued vide the circulars, leads us to a conclusion, that readily available food items [**not prepared, cooked in the restaurant**] sold over the counter by the applicant through their outlets to the customer whether consumed in the outlets/restaurant or by way of takeaway, does not qualify as 'restaurant services' and is a supply of goods.

21. In view of the foregoing, we hold that the outlets of the applicant selling already manufactured ice-cream, do not engage in any form of cooking. As already discussed above, restaurant service involves the aspect of cooking/preparing during the course of providing service. Hence, as recommended by the Council, supply of ice-cream [not prepared, cooked] by the outlets of the applicant, stands on a different footing than restaurant service. Further, their activity entails supply of ice cream as goods [a manufactured item] and not as a service, even if certain ingredients of service are present.



Thus we hold that ice cream sold by the outlets of the applicant are already manufactured ice-cream; that it is not their case that the ice cream were manufactured/cooked/prepared by them; that the applicant is on record that their ice cream division was sold way back in the year 2017 & therefore we hold that ice cream sold by the applicant's outlet would not fall within the ambit of 'restaurant service' and is supply of goods and hence would attract GST at the rate of 18%.

22. The applicant has relied upon Schedule II [entry no. 6] to put forth the averment that supply of ice cream is a composite supply and shall be treated as a supply of services. Entry No. 6, Schedule II to the CGST Act, 2017, is reproduced below for ease of reference viz

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely :—

(a) works contract as defined in clause (119) of section 2; and

(b) **supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.**

23. Before delving on to this averment, we would like to reproduce the relevant definition/sections of the CGST Act, 2017, for ease of understanding viz

Section 2. Definitions. — *In this Act, unless the context otherwise requires, —*

(30) **"composite supply"** means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration. - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

(90) **"principal supply"** means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

Section 8. Tax liability on composite and mixed supplies. —

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

24. Now, when an ice cream is ordered as a desert along with ^{cooked or} prepared food at their outlets, the question that arises is whether it would be treated as supply of goods or supply of services. Under GST, a composite supply would mean a



supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. Here, *principal supply* means supply of goods or service which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. Likewise, a mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

25. GST Flyer on '*Composite Supply & Mixed Supply*' states that the test of whether a service is bundled or not in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business
- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –
 - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected

26. Supply of ice cream, as a desert by the outlets of the applicant along with cooked or prepared food is therefore, naturally bundled and supplied in conjunction with



the principal supply i.e. cooked/prepared food, in the ordinary course of business. Thus, we hold that the supply of ice cream along with cooked or prepared food, falls within the ambit of restaurant service.

27. The applicant has relied upon the ruling by Delhi Appellate Authority for Advance Ruling [Order No. 2/DAAAR/2022-23/2005-2010 dtd 23.5.2022]. However, on going through the ruling we observe that M/s. Deepak and Company, the applicant was engaged in supply of food through food plaza on railway platform, on board Rajdhani trains and mail and express trains. We further observe that the ruling was based on a clarification issued by CBIC vide F. No. 354/2/2018-TRU which was specifically in terms of a clarification sought by Railways. Facts being different, the ruling is not applicable to the present facts of the applicant.

28. In the light of the foregoing, we rule as under:

RULING

1. The supply of ice cream from the outlets of the applicant cannot be considered as supply of 'restaurant services'. The readily available ice creams [not prepared in their outlets] sold over the counter is supply of goods. However, an ice cream when ordered and supplied along with cooked or prepared food, through their outlets would assume the character of composite supply, wherein the prepared food being the principal supply and hence qualifies as 'restaurant services'.
2. The supply of ice cream from the outlets of the applicant is not classified as 'restaurant services'. However, the composite supply, *supra*, classifiable under 'restaurant service' would be leviable to GST @ 5% with no input tax credit as per Sr. No. 7(ii) of notification No. 11/2017-CT (Rate) dtd 28.6.2017 as amended vide notification No. 20/2019-CT (Rate) dated 30.9.2019.
3. The supply of only ice cream [not prepared in their outlets and which is readily available] from any of the outlets of applicants is held to be akin to supply of ice cream from ice cream parlour, leviable to GST @ 18%.

(MILIND KAVATKAR)
MEMBER (S)

(AMIT KUMAR MISHRA)
MEMBER (C)



Place: Ahmedabad

Date: 22 /02/2023