MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)
(2) Shri B. Timothy , Addl.Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id		**27AAACY3846K1ZX**
Legal Name of Applicant		**ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED**
Registered Address/Address provided while obtaining user id		394/C, Lamington Chambers, Lamington Road, Mumbai - 400 004.
Details of application		GST-ARA, Application No. 67 Dated 10.08.2018
Concerned officer		DIVISION I, RANGE I, MUMBAI CENTRAL
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing
B	Description (in brief)	Arrangement between Brand Owner (Applicant) and Contract Bottling Unit for manufacture of alcoholic beverages.
Issue/s on which advance ruling required		(v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act respectively"] by **ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the following issue.

Whether in the facts and circumstances of the present case, the Contract Bottling Unit is making a taxable supply to the Applicant (i.e. Brand Owner), or, alternatively, whether the Applicant (i.e. brand owner) is making a taxable supply to the Contract Bottling Unit? Correspondingly, whether in the facts and circumstances of the present case, the Applicant (i.e. Brand Owner) is paying consideration to the Contract Bottling Unit by way of bottling charges, or, alternatively, whether the Contract Bottling Unit is paying consideration to the Applicant by way of brand owner surplus?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS AS PROVIDED IN ANNEXURE 1

The following are the relevant facts in the context of the present ruling sought:

1. Allied Blenders and Distillers Pvt. Ltd. ("ABD" / "Applicant") has its GST registered premises at 394/C, Lamington Chambers, Lamington Road, Mumbai - 400 004. The Applicants are duly registered with the GST department, holding Registration No. 27AAACY3846K1ZX.

2. The Applicant, also known in the industry as a Brand Owner ("BO"), is the holder of various registered brands in relation to Indian Made Foreign Liquor ("IMFL"). As the owner of the said IMFL brands, no one other than the Applicant has the ability to exploit the brands, including by way of sale of IMFL under those brands. At the same time, the State Excise laws mandate that the manufacture and sale of IMFL, as well as the procurement of Extra Neutral Alcohol ("ENA") required for the manufacture of IMFL, can only be undertaken by parties, who have been duly licensed by the State Excise authorities.

3. In order to the meet the requirements under the State Excise laws, the Applicant approaches various Contracting Bottling Units ("CBUS") who hold the requisite licences under the State Excise laws to source the ENA and carry out the manufacture and bottling of the IMFL. The Applicant enters into contractual arrangements with the CBUs, under which the CBUs undertake the manufacture of the IMFL for the Applicant, in return for the payment of bottling charges (and certain agreed upon reimbursements, such as taxes and expenses). To enable the manufacturing of IMFL under the Applicant's brands, the Applicant permits the CBU to affix the labels etc. on the finished products and packaging. Furthermore, in certain States, the sale of alcoholic beverages can only take place through a State-owned corporation; accordingly, the CBUs deliver the goods to the relevant State Corporation or other buyer as per the directions of the Applicant. The sale price for the goods so delivered is typically received by the Applicant from the State Corporation or other buyer.

4. The Applicant enters into the aforesaid contractual arrangements with the CBUs on a strictly non-exclusive basis. In fact, in order to fully exploit its brand, the Applicant simultaneously enters into multiple such arrangements with various CBUs. The Applicant is also at liberty to terminate the arrangement with any CBU. Upon such termination, all the raw materials, packing materials, finished goods, scrap, etc. which are financed by the Applicant are to be handed over to the Applicant, and the CBU is obligated to immediately cease and desist from using the brands of the Applicant associated with the IMFL products which were being manufactured.

5. The terms and conditions of all such arrangements between the Applicant (as the Brand Owner) and the CBU are the same, and for the purposes of this Application, the Applicant draws reference to sample Agreements for Tie-Up Manufacture of IMFL ("Manufacturing Agreement") with various CBUs (S.P.Y. Agro Industries Ltd., Unistil Alcoblends Pvt. Ltd., Devicolam Distilleries Ltd. and Hi-Tech Bottling Pvt. Ltd., United Brothers Distilleries Pvt. Ltd., Chandigarh Distillers & Bottlers Ltd.), which are attached herewith as Exhibit-A. The salient features of the said arrangement are set out below:

- The CBU will typically have a Letter of Intent issued in its favour for setting up a bottling unit at the relevant location.
- **Every CBU is contractually mandated to have adequate capacity to bottle the desired quantity of IMFL, and, have available the necessary facilitation of blending, bottling, and storage facilities, manpower and other infrastructure.**
- **The agreements in question are on a principal-to-principal basis.**
- **The bottling activities are to be undertaken on a non-exclusive basis.**
- **The BO has rights to either directly arrange, or, recommend suppliers for the procurement of all raw materials and packing materials.**
- **The price at which materials are to be procured is fixed by the BO (sample rate approvals are enclosed as Exhibit-B);**
- **All unusable or damaged materials pertaining to the manufacturing operations are to be handed over by the CBU to the BO.**
- **The packing materials (bottles, labels, caps, seals, outer cartons, etc.) are to be procured from sources identified by the BO.**
- **The risk, property and interest in the manufactured product passes from the CBU to the BO** upon delivery of the product to the carrier nominated by the BO.

- The price at which the CBU is to sell and deliver the manufactured products is as per the directions of the BO (sample rate approvals are attached herewith as Exhibit-C).
- The entities to whom sales of the manufactured products are to be made are also identified by the B O.
- **The BO has the discretion to directly make payments for the raw materials, packing materials, transportation and payment of various taxes/ fees.**
- **The sale price of the goods is received by the BO.**
- **The consideration payable to the CBU is in the nature of bottling charges which are fixed on a per month case basis, and not the sale price of the manufactured products (sample comparison of the per case sale price vis-à-vis the per case bottling charges paid to the CBU are attached herewith as Exhibit-D).**
- The total working capital as required by the CBU for its corresponding manufacturing operations is to be arranged by the BO either directly or through some institutional finance.
- In respect of any wastage which occurs, the disposal of such wastage is to be done only at the rates approved by the BO and all amounts so recovered are to be credited to the BO.
- On termination of any bottling arrangement, all the raw materials, packing materials, finished goods, scrap, etc. which are financed by the BO are to be handed over to the BO.
- Upon termination, the CBU is obligated to immediately cease and desist from using the **trademarks of the BO associated with the products manufactured.**
- The CBU is obligated to create a hypothecation/ lien in favour of the BO for both the **market receivables and the goods (including raw materials, packing materials, finished goods, etc.) in respect of such materials which are either directly paid for by the BO or covered by the working capital financed by the BO (sample copies of signs affixed at the premises of the CBU affirming the hypothecation/ lien in favour of the Applicant are attached herewith as Exhibit-E).**
- **The CBU does not have any lien nor can it create any charge on any of the raw materials, packing materials or products of the BO. If so required by the BO, the CBU is obligated to issue a "no lien certificate" which is to be endorsed to the bankers of the BO (sample copies of the said certificate are attached herewith as Exhibit-F).**
- **Insurance in respect of the manufactured goods are obtained by the Applicant in its own name (sample copies of insurance policy are attached herewith as Exhibit-G);**
- **Any claims arising from the aforesaid insurance on the manufactured goods are also received by the Applicant, and not by the CBUS (sample copy of a claim payment is attached herewith as Exhibit-H);**
- **The entire manufacturing activity by the CBU is carried out under the supervision of the Applicant, and, for this purpose, the Applicant deputes fixed personnel to the premises of the CBU (sample details of personnel deputed to the CBU's manufacturing premises are attached herewith as Exhibit-1);**
- **The agreement mandates that the CBU and the BO are neither agents nor representatives of the other.**
- **The CBU cannot claim any compensation related to the termination of the Manufacturing Agreement.**
- **Any customer disputes/ claims raised in respect of the IMFL manufactured are raised directly on the Applicant, and not on the CBUS (sample copy of customer claim is attached herewith as Exhibit-J).**
- **Any issues in relation to strength or quality of the IMFL manufactured are raised by the State Corporation/ State Excise authorities directly with the Applicant, and not with the CBU (sample copy of notice issued by the State Excise authorities to the Applicant pertaining to the strength of the IMFL manufactured is attached herewith as Exhibit-K).**

6. **As stated hereinabove, under the arrangement between the Applicant and the CBUS, in terms of the clause on Consideration, the CBU is remunerated in the form of bottling charges per case of IMFL manufactured. In this regard, sample invoices/ debit notes raised by the CBUs on the Applicant for the manufacturing and bottling charges are attached herewith as Exhibit L.**

7. **In terms of the flow of funds, the sale price of the IMFL is received directly by the Applicant from the State Corporation or other buyer (in a few cases, they money is received by the CBUs but is immediately auto-transferred to the Applicant vide standing instructions or otherwise). The Applicant then makes payment of the bottling charges and agreed upon reimbursements (such as for taxes) to the CBUs. The Applicant also makes payment directly to the raw material suppliers. The amount left with the Applicant (i.e. Brand Owner) after making all of the**

aforesaid payments is known as the Brand Owner's surplus/ profit. The said flow of payments is also duly reflected in the accounting treatment in the Applicant's books of accounts. A brief description of the said accounting treatment is attached herewith as Exhibit M.

STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s)

I. RELEVANT PROVISIONS OF THE GST LAW

1. The charging provision under the Central Goods and Services Tax Act, 2017 **(CGST Act). viz Section 9, stipulates that a supply of goods and/ or services will be liable to GST. The relevant provisions are reproduced below for ease of reference:**

9. Levy and collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

7. Scope of supply (1) For the purposes of this Act, the expression "supply" includes (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business

2. Definitions In this Act, unless the context otherwise requires, -

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

2. In terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 read with the Annexure thereto, the various services liable to GST include 'Manufacturing services on physical inputs (goods) owned by others' as well as 'Other manufacturing services' (Heading 9988). Under this Heading, the activity of 'job work' (defined as "any treatment or process undertaken by a person on goods belonging to another registered person") is also covered. Further, there is also a residuary entry for 'Other services nowhere else classified' (Heading 9997).

II. PAST CLARIFICATIONS AND RULINGS ON THE ISSUE

3. Under the erstwhile Indirect Tax regime, the manufacture and sale of IMFL was liable to State Excise and VAT. This continues to be the position under GST, as the supply of alcoholic liquor for human consumption has been constitutionally excluded from the purview of the GST.

4. **However, an issue arose under the Service Tax provisions as to whether the CBUs were providing a service to the BOs, or vice versa, so as to attract the levy of Service Tax. In this regard, the Central Board of Indirect Taxes and Customs ("CBIC"/ "Board") had clarified vide two Circulars that under such contract manufacturing arrangements, the CBU is providing manufacturing services to the BO, but no services are being provided by the BO to the CBU. The relevant extracts of the said Circulars are extracted below for ease of reference:**

Circular No. 249/1/2006-C.X.4 dated 27.10.2008

Under such arrangement the BO gets alcoholic beverages manufactured by the licencee / manufacturer, the latter holding the required State Licences for manufacture of the alcoholic beverages. In trade, such licencees / manufacturers are called the Contract Bottling Units or CBUs. The cost of raw materials (and in some cases, even capital goods) and other expenses are either paid by the BO or reimbursed by the BO. Statutory levies (i.e., State Excise Duty) are also reimbursed to the CBU by the BO. The alcoholic beverages are sold by or as per the directions of the BO and profit or loss on account of manufacturing and sale of alcoholic beverages is entirely on account of BO, who thus holds the property, risk and reward of the products. The CBU receives consideration (i.e. job charges) for undertaking the manufacturing activity on job work basis. There is no doubt that under such an arrangement, CBU is a service provider providing services to BO.

Circular F. No. 332/17/2009-TRU dated 30.10.2009

4. For the removal of doubts and with a view to avoid disputes on valuation, it is clarified that – (a) Service tax would be payable on the bottling/job charges, distribution costs and other reimbursables.

[ ]

(d) Similarly, the surplus/profit earned by the BO being in the nature of business profit (which falls within the purview of direct taxes), will not be chargeable to service tax.

Copies of the aforesaid Circulars are attached herewith as Exhibit-N.

5. Further, pursuant to a Letter addressed by the Applicant to the jurisdictional Service Tax Department, it was affirmed vide Letter F.No. ST/HQ/PREVIA. 198(2)/2006/5734 dated 14.12.2009 that the surplus/ profit of the BO is not liable to Service Tax, per the previously issued Circulars. A copy of the said letter is attached herewith as Exhibit-O.

6. **In terms of judicial decisions, in the Applicant's own.case, as well as in the case of various other BOs in the industry operating under similar arrangements (as listed below), the Hon'ble CESTAT has held that the CBU is providing services to the BO which are taxable and/or that no service is rendered by the BO to the CBU.**

- *BDA Pvt. Ltd. vs. CCE, Meerut [2015 (40) STR 352 (Tri-Del)] affirmed in Commissioner vs. BDA Pvt. Ltd. [2016 (42) S.T.R. 1143 (S.C.)]*
- *Radico Khaitan Ltd. vs. CST, Delhi (2016 (44) STR 133 (Tri-Del)]*
- *Skol Breweries Ltd. vs. CCE&ST, Aurangabad [2014 (35) STR 570 (Tri-Mum)]*

Copies of the aforesaid rulings are attached herewith as Exhibit-P.

III. INTERPRETATION OF LAW ANDI OR FACTS PER THE APPLICANT

7. **Under the GST, any 'supply' of 'goods' or 'services' is liable to tax. It therefore requires to be examined whether, in terms of the charging and related provisions under the CGST Act, the transactions under the contractual arrangements between the BOs and the CBUs constitute a supply of goods and/or services.**

8. It is well settled that the determination of the taxability of a given transaction is to be carried out on the basis of its true commercial nature (Uol vs. Playworld Electronics Pvt. Ltd [1989 (41) ELT 368 (SC)). At the outset, in the present context, it is to be appreciated that the aforesaid contractual arrangement between the Applicant and the CBUs has evolved as a result of the intersection of; (i) the commercial requirements of the Applicant (i.e. to exploit the brands under its ownership through the manufacture and sale IMFL under those brands); and (ii) the licensing requirements under the State Excise laws (viz. that only a licence holder can source the ENA for such manufacture, carry out the manufacture of the IMFL, and sell the alcoholic beverages). It is for the latter reason that the procurement of the raw materials, manufacture and sale of the IMFL are carried out by the CBUs who holds the necessary licences. However, the entirety of the supervision and control of various aspects (including the designation of the sources of raw materials, payment for the said raw materials, every stage of the process of manufacture, determination price for sale of IMFL and identification of the buyers of the IMFL) rests with the Applicant. Under no circumstances can the CBU source inputs from a vendor who has not been approved by the Applicant, nor manufacture the IMFL contrary to the specifications stipulated by the Applicant, nor sell the manufactured IMFL to a buyer who has not been approved by the Applicant or sell at a price which is lesser or greater than the exact price approved by the Applicant, nor retain any proceeds from the buyer (in excess of the bottling charges and reimbursements) in any manner.

8. Accordingly, the entire basis and rationale for the Applicant entering into a Manufacturing Agreement with the CBUs is to enable the Applicant (as the owner of the brands) to fully commercially exploit his rights in relation to the brands, through the production and distribution of IMFL under those brands. It is for this reason that the Applicant approaches the CBUs and negotiates the terms of the Manufacturing Agreement (and not vice versa), as well as determines the remuneration (in terms of the bottling charge on a per case basis) which it is willing to pay to the CBU. It is also significant that the Applicant enters into the aforesaid contractual arrangements with the CBUs on a strictly non-exclusive basis. In fact, in order to fully exploit its brand, the Applicant simultaneously enters into multiple such arrangements with various CBUs. The Applicant is also at liberty to terminate the arrangement with any CBU. Upon such termination, all the raw materials, packing materials, finished goods, scrap, etc. which are financed by the Applicant are to be handed over to the Applicant, and the CBU **is obligated to immediately cease and desist from using the brands of the Applicant associated with the IMFL products which were being manufactured.**

9. Accordingly, the true commercial nature of the arrangement is one in which the CBU provides manufacturing services to the Applicant, and is remunerated in the form of bottling charges. BOs such as the Applicant are clearly not service providers to the CBU, but are entrepreneurs seeking to exploit the brands under their ownership, viz. through the sale of IMFL bearing their brands. In the course of exploiting the brands, the BOs incur various expenses, including the bottling charges

paid to the CBUs, and the balance amounts retained by them represent their earnings/ profit from the entrepreneurial venture.

10. **Furthermore, from a perusal of the various features of the Manufacturing Agreement as well, it is clear that the true nature of the arrangement is for the manufacture and bottling of alcoholic beverages by the CBUs for and on account of the Applicant. In particular, the following features of the arrangement lead to the conclusion that the CBUs are manufacturing IMFL for the Applicant (in addition to the various other features set out at paragraph 3 of the Statement of Facts at Annexure B):**

- **The total working capital required by the TBU is to be arranged by the BO;**
- **All raw materials, packing materials, etc. can either directly be procured by the BO or can only be procured from sources identified by the BO;**
- **A hypothecation or lien in favour of the BO is to be created in relation to market receivables and the goods (raw materials, packing materials, finished goods, etc.);**
- **Qua scrap, it can only be sold at the rates pre-approved by the BO and any amount realized is to be credited to the BO; On a termination of the agreement, all finished goods, raw materials, packing materials, etc. financed or paid for by the BO are to be handed over to the BO without receiving any charge or consideration for such handover; Most significantly, instead of being paid the sale price (as would have been expected if the goods were owned by the CBU), there is a payment of a bottling charge which in its true nature is a payment towards the bottling services rendered by the CBU; All aspects of the transaction, extending from sourcing to manufacture to distribution are carried out under the close monitoring, supervision and express approval of the Applicant; All the proceeds of the sale are owing to the Applicant, per the arrangement with the CBU, and are either directly received by the Applicant from the buyer of the IMLF, or if received in the first instance in the account of the CBU, auto-transferred to the account of the Applicant.**

11. In essence, the CBU is carrying out the manufacture and bottling of IMFL to meet the requirements of the Applicant (as the Applicant does not hold the requisite licences under the State Excise laws), in return for the consideration of bottling charges along with certain reimbursements as agreed upon. There is evidently a supply of service by the CBU to the Applicant, in return for consideration (i.e. the bottling charges) paid by the Applicant to the IMFL. Concomitantly, there is no supply of service by the Applicant to the CBU which can be brought to tax. The provision of the specifications by the Applicant, as well as permitting the CBUs to affix the Applicant's brand on the products is evidently merely to enable the manufacture of the IMFL per the commercial requirements of the Applicant, which cannot in any manner be treated as a supply of service by the Applicant to the CBUs. Any such position **would result in the absurdity that in every transaction of job work or contracting manufacturing, there would be a supply of service by the party placing an order for the manufacture/ processing of goods, to the party manufacturing processing those goods.**

12. **Moreover, in terms of Section 7 of the CGST Act, the requirements of a supply liable to GST are: (i) goods or services or both; (ii) made for a consideration; (iii) by a person; (iv) in the course or furtherance of business. Even if the provision of the specifications by the Applicant and permitting the CBUs to affix the Applicant's brand on the products can be seen as a supply of service by a person (i.e. the Applicant), in the course of furtherance of the business of manufacture and distribution of IMFL under the Applicant's brand name, there is still a requirement that there must be a consideration payable for the said supply of service. However, under the contractual arrangement between the Applicant and the CBUs, there is no such contemplation of any consideration whatsoever. In fact, all payments are received by the Applicant from the buyers (either directly or via auto-transfer from the CBUs) towards the supply of the IMFL. There are no payments made by the CBUs to the Applicant, only payment by the Applicant to the CBUs in the form of the bottling charges and reimbursements (which are for the manufacturing services). Accordingly, on this basis as well (viz. absence of consideration), there cannot be said to be a supply by the Applicant to the CBUs which is liable to GST.**

13. **The aforesaid position (i.e. that there is no service being rendered by BOs such as the Applicant, to the CBUs), is also well established in terms of the past Circulars and rulings under the erstwhile Service Tax regime, which are referred to hereinabove at paragraphs 6 to 8. It is submitted that there has been no change in the contractual arrangements analysed in the said Circulars and rulings under the erstwhile regime, and the conclusion reached by the Board and the Courts/ Tribunals on the true commercial nature of the said arrangements (viz. that the CBU is rendering a service to the BO, and not vice versa) continues to hold good under the GST. Furthermore, it is also submitted that there has been no material change in the provisions**

between the erstwhile Service Tax regime and the current GST regime which would necessitate a change in the position on issue. In fact, manufacturing services carried out for or on account of another party (whether on the inputs of another or otherwise) continue to be taxable under Heading 9988, and in any event, services nowhere elsewhere classified are also covered under Heading 9997.

Additional submissions on13.12.2018

WRITTEN SUBMISSIONS

1. At the outset, the Applicant would like to thank the Hon'ble AAR for a patient opportunity of hearing on 28.11.2018. Further to the said personal hearing, the Applicant is placing the following Written Submissions on record, summarizing the contentions made during the said hearing

BRIEF BACKGROUND FACTS:

2. M/s. Allied Blender and Distillers Pvt. Ltd. ("Applicant") is the Brand Owner ("BO") of various brands in relation to the manufacture and sale of alcoholic beverages. The Applicant, in order to exploit the brands owned by it, approaches Contract Bottling Units ("CBUs") in various States, in order to obtain services of manufacture, bottling and packing of alcoholic beverages.
3. The Applicant and the CBU then enter into an Agreement, in terms of which the CBU undertakes the manufacture, bottling and packing of the alcoholic beverages, in return for a fixed Bottling Fee paid by the Applicant.
4. The CBU sells the alcoholic beverages (either to a State Corporation or to a private buyer) under the instructions of the Applicant, and at the price fixed by the Applicant. The sale price of the alcoholic beverages is received by the Applicant, out of which the Bottling Fee and other reimbursements are paid to the CBU. The balance amount is retained by the Applicant as its surplus/ profit.

ISSUE INVOLVED:

5. In the above background, the issue referred to this Hon'ble AAR is whether the aforementioned surplus/ profit earned by the Applicant as the Brand Owner is liable to GST.

LEGAL SUBMISSIONS:

6. The Applicant submits that there is no supply of service by the Applicant to the CBUs for the following reasons.
   - The true commercial nature of the transaction can be determined by an examination of critical factors, such as who engages whom, who pays whom and who can terminate the agreement. In terms of these factors, it requires to be seen who the service recipient is, and who the service provider is. Accordingly, there may be two types of arrangements between the Brand Owner and the CBU.
     - In the first type of arrangement, the CBU approaches the Brand Owner seeking a licensing of the brand in order to undertake manufacture of alcoholic beverages on its own account. In return, the CBU makes payment to the Brand Owner for the licensing of the brand. In such a case, the Brand Owner is providing brand licensing service to the CBU.
     - In the second type of arrangement, the Brand Owner approaches and engages the CBU to obtain bottling services of alcoholic beverages. The Brand Owner pays a bottling fee to the CBU. Further, the Brand Owner can terminate the services of the CBU at any point. In this case, the CBU is providing service to the Brand Owner, by manufacturing and bottling the alcoholic beverages for the Brand Owner.
   - Under the erstwhile Service Tax regime, these two cases are specifically discussed by *Circular No. 249/1/2006-C.X.4 dated 27.10.2008*. The said Circular clarifies that under the first type of arrangement, the Brand Owner was liable to pay Service Tax on the brand licensing fees. However, under the second type of arrangement (which is the type of arrangement entered into by the present Applicant), it is the CBU who was liable to pay Service Tax on the Bottling Fee. *(Refer Pg. 350 of the Compilation Vol. 2, Para 1 and Para 2]*
   - A further clarification in the form of *Circular F. No. 332/17/2009-TRU dated 30.10.2009* was subsequently issued, which again clarified that Service Tax was payable on the Bottling Fee earned by the CBU, but not on the surplus/ profit retained by the Brand Owner. *(Refer Pg. 352 of the Compilation Vol. 2, Para 2(7) and Para 4(d)/*
   - In the present case, the Applicant as the Brand Owner approaches the CBU to seek out bottling services, and not vice versa. In some cases, the Applicant terminates the CBU and appoints a new CBU. In this regard, sample copies of such Termination Letters issued by the Applicant to certain CBUs were handed over in the course of the hearing on 28.11.2018, and are also enclosed as Annexure-A.
   - In terms of the Agreement between the Applicant and the CBU *(Refer sample Agreement at Pg. 1 of the Compilation Vol. 1)*, the CBU manufactures the Products for the Applicant *(Refer Clause 1a of the*

sample Agreement). In this regard, the definition of the term "Products" refers to the alcoholic beverages to be manufactured by the CBU as required/ specified by the Applicant *(Refer Clause la of the sample Agreement)*. In return, the CBU is paid a Bottling Fee as agreed *(Refer Clause lla of the sample Agreement)*. Even the insurance in the raw materials and the final products is taken by the Applicant and the insurance claims are paid to the Applicant, and not to the CBU.

***[Refer insurance claim payments** at Pg. 235 of the Compilation Vol. 2)*. Accordingly, the risk and reward in the goods is with the Applicant.

- The Applicant has also highlighted various other factors (supported by relevant documentation) which indicate that the nature of the arrangement is one in which the CBU provides services of bottling to the Applicant. ***(Refer Para 5 of Annexure B to the AAR Application)***
- The fact that the manufacture is clearly being carried out by the CBU for the Applicant is also clear from the fact that the product labels bear the brands of the Applicant as well as state that the said brands are registered to the Applicant. Separately, the labels state that the products are manufactured by the CBU in question. In this regard, sample copies of product labels were handed over in the course of the hearing on 28.11.2018, and are also enclosed as Annexure-B.
- The aforesaid agreements in the Applicant's case, therefore, clearly fall under the second type of arrangement, wherein the CBU is providing services to the Applicant, and not vice versa. Accordingly, the CBUs of the Applicant have always charged and paid Service Tax on the Bottling Fees. Currently, the CBUs of the Applicant have been duly charging and paying GST on the Bottling Fees *(Refer sample invoices at Pg. 325 of the Compilation Vol 2)*.
- In the Applicant's own case, the jurisdictional Service Tax Commissioner also confirmed that no Service Tax was payable on the surplus/ profit retained by the Applicant. *[Refer Letter F. No. ST/HQ/PREVIA.198(2)/2006/5734 dated 14.12.2009 at Pg. 354 of the Compilation Vol. 2]*
- Further, in the Applicant's own case, *BDA Pvt. Ltd. vs. CCE, Meerut (2015 (40) STR 352 (Tri-Del)]*, the Hon'ble Customs, Excise and Service Tax Appellate Tribunal had held that the surplus/ profit earned by the Applicant was not liable to Service Tax *(Refer Paras 8-15 of the said Tribunal judgement at Pg. 355 of the Compilation Vol. 2)*. In coming to its conclusion, the Tribunal also relied upon similar judgments in *Radico Khaitan Ltd.* vs. *CST, Delhi [2016 (44) STR 133 (Tri-Del)]* and *Skol Breweries Ltd.* vs. *CCE&ST, Aurangabad [2014 (35) STR 570 (Tri-Mum)] [Refer 364 and 367 of the* ***Compilation** Vol. 2)*. Furthermore, the said Tribunal ruling in the Applicant's own case was also upheld by the Hon'ble Supreme Court in *Commissioner vs. BDA Pvt. Ltd. [2016 (42) S.T.R. J143 (S.C.)] [Refer Pg. 363 of the Compilation Vol. 2)*.

  No material change has occurred under the GST, which warrants a change from the aforesaid taxing position under the erstwhile Service Tax provisions. Under Section 7 of the CGST Act, 2017, the taxable event continues to be a supply of service by a person, for a consideration, in the course or furtherance of business.
- In response to a specific query from the Hon'ble AAR, it was also submitted that the brand value is reflected in the sale price of the alcoholic beverages, which suffers a levy of State Excise duty and VAT, as the Legislature has chosen not to include alcoholic beverages under GST. Furthermore, there can be a levy of GST only if there is a supply of goods or services for a consideration. In the present case, between the Applicant and the CBU, there is a supply of bottling services by the CBU to the Applicant, on which GST is duly discharged.
- In response to another query raised by the Hon'ble AAR, it was submitted that, without prejudice to the above, even if there is any deputation of personnel by the Applicant to the CBU, the same is without any consideration and therefore cannot be liable to GST, as "consideration" is a *sine qua non* for a taxable supply of service under Section 7 of the CGST Act, 2017.
- Lastly, attention was drawn to the recent ruling of the Karnataka Appellate Authority for Advance Rulings ("AAAR") in the case of M/s. United Breweries Ltd. It was highlighted that in that case, the arrangement was of the first type, viz. where the brand is licensed by the Brand Owner to the CBU. In return, the Brand Owner was receiving a brand fee of Rs. 5 per case plus reimbursed expenses. Accordingly, a consideration was being paid to the Brand Owner for the grant of a representational right in relation to the brand. Consequently, the amounts received by the Brand Owner were not in the nature of profit ***[Refer Para 35, 43 of the Karnataka AAAR** ruling)*. It was also highlighted that the ruling nowhere states that both the Brand Owner and CBU could simultaneously be suppliers of service. Either the Brand Owner can be a supplier of service, or the CBU can be a supplier of service. In that case, it was held by the AAAR, and also accepted by the Brand Owner, that there was no service being provided by the CBU, and no GST was being paid thereon *(Refer Para 28 of the* ***Karnataka AAAR ruling**)*. The present case is the exact opposite, as the CBU is rendering bottling

services to the Applicant, and GST has been duly discharged on the consideration for the services supplied, viz. the Bottling Fee.

PRAYER:

In view of the foregoing, the Applicant prays that this Hon'ble AAR may be pleased to issue a ruling to the effect that, in terms of the agreements entered into by the Applicant with the CBUs, the aforementioned surplus/ profit of the Applicant, is not liable to GST.

03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

BRIEF FACTS OF THE CASE

1. In the alcoholic beverages industry, the Brand Owners ("BO") such as M/s Allied Blenders and Distillers Pvt. Ltd. hold various registered brands in relation to Indian Made Foreign Liquor ("IMFL"). Such BOs alone have the ability to exploit the brands, including by way of manufacture and sale of IMFL under those brands.
2. At the same time, the State Excise laws mandate that the manufacture and sale of IMFL, as well as the procurement of Extra Neutral Alcohol ("ENA") required for the manufacture of IMFL, can only be undertaken by parties who have been duly licensed by the State Excise authorities. While the BOs do not hold the licenses under the State Excise laws, there are various Contracting Bottling Units ("CBUs") who hold the requisite licences under the State Excise laws to source the ENA and carry out the manufacture and bottling of the 'IMFL'.
3. M/s Allied Blenders and Distillers Pvt. Ltd., approaches the CBUs and enter into contractual arrangements under which the CBUs undertake the manufacture of the IMFL for the BOs, in return for the payment of bottling charges (and certain agreed upon reimbursements, such as taxes and expenses). To enable the manufacturing of IMFL under the BO's brands, the BO as part of the arrangement permits the CBU to affix the brand labels etc. on the finished products and packaging.
4. In terms of the sale of the IMFL, in certain States, the sale of alcoholic beverages can only take place through a State-owned corporation; accordingly, the CBUs deliver the goods to the relevant State Corporation or other buyer as per the directions of the BO.
5. As regards the flow of funds, the sale price of the IMFL is received directly by M/s Allied Blenders and Distillers Pvt. Ltd. from the State Corporation or other buyer (in a few cases, the money is received by the CBUs but is immediately auto-transferred *vide* standing instructions or otherwise). The Applicant then makes payment of the bottling charges and agreed upon reimbursements (such as for taxes) to the CBUs. The BO also makes payment directly to the raw material suppliers. The amount left with the BO after making all of the aforesaid payments is known as the BO's surplus/ profit.
6. Under the previous Service Tax regime, the aforesaid arrangement was seen as a rendition of service by the CBUs to the BOs. Simultaneously, no service was being rendered by the BOs to the CBUs, and the surplus / profit was seen as the earnings from the entrepreneurial venture which would not be liable to Service Tax. This view was affirmed by Circulars as well as judicial precedents (referred to herein below).

POSITION ON TAXABILITY UNDER GST:

7. In the aforesaid transactions, it is the CBU who provides services to the M/s Allied Blenders and Distillers Pvt. Ltd. (the BO) in return for the bottling charges (and other reimbursements). It is not the case that the BO is providing brand-related services to the CBU, for the CBU to manufacture and sell the IMFL on its own account. This conclusion is borne out by the following factors:-
   (i) At the outset, it is the BO who approaches the CBU to manufacture the IMFL for it.
   (ii) The IMFL brands belong to the BO and the BO seeks to commercially exploit the same by manufacturing and selling alcoholic beverages under the various brand names. However, the BO does not have the requisite State Excise licences in the various States, and therefore made contracts with the CBUs who will carry out the procurement, manufacture the IMFL and sell the same under the State Excise licences held by them.
   (iii) The BO accordingly enters into non-exclusive arrangements with various such CBUs to maximise the returns on exploiting the brand. The BO can terminate the arrangement at any time. Upon such termination, the CBU is obligated to immediately cease and desist from using the brands of the BO.
   (iv) The CBU is only remunerated to the extent of bottling charges per case of IMFL produced (plus reimbursements for taxes etc.). This bottling charge is only a fraction of the selling price of each case of IMFL. Had it been the case that the CBU was manufacturing and selling the IMFL on its own account, the CBU would have received and retained the entirety of the selling price of the

IMFL, and would have then paid the brand-related fees to the BO. In such a scenario, the contract would have specified a brand-related fee to be paid by the CBU to the BO. Whereas, the contract clearly sets out a bottling fee which the CBU is entitled to receive from the BO. In such cases the title of the Brands and goods is remain with the Brand Owner i.e. M/s Allied Blenders and Distillers Pvt. Ltd.

(v) The total working capital as required by the CBU for its corresponding manufacturing operations is to be arranged by the BO.

(vi) In terms of procurement, the BO has right to either directly arrange, or, recommend suppliers for the procurement of all raw materials and packing materials, and the BO always approves the price at which materials are to be procured by the CBU. The CBU has no discretion on the procurements. The BO may also directly make payment for the raw materials, packing materials etc. to the vendors.

(vii) The entire manufacturing activity by the CBU is carried out under the supervision of the BO, and, for this purpose, the BO deputes fixed personnel to the premises of the CBU.
During the manufacturing, any unusable or damaged materials are to be handed over by the CBU to the BO. In respect of any wastage which occurs, the disposal of such wastage is to be done only at the rates approved by the BO and all such amounts are to be paid to the BO. On termination of any bottling arrangement, all the raw materials, packing materials, finished goods, scrap, etc. which are financed by the BO are to be handed over to the BO.

(viii) Insurance in respect of the manufactured goods is obtained by the BO in its own name.

(ix) In terms of the sale of the IMFL, the BO identifies the persons to whom the IMFL is to be sold and also decides the price at which the IMFL is to be sold. The CBU has no discretion on the distribution of the IMFL. The sale price of the IMFL is also received directly by the BO from the buyer.

8. Accordingly, the true commercial nature of the arrangement is one in which the CBU provides manufacturing services to the BO, and is remunerated in the form of bottling charges.

9. The BO therefore clearly cannot be a service provider to the CBU, but is an entrepreneur seeking to exploit the brands under its ownership, viz. through the sale of IMFL bearing their brands. In the course of exploiting the brands, M/s Allied Blenders and Distillers Pvt. Ltd. (the BO) incurs various expenses, including the bottling charges paid to the CBUs. The balance amounts retained by them represent their earnings / profit from the entrepreneurial venture. These earnings duly suffer Income Tax but cannot be brought to tax under GST, as there is no supply being made by the M/s Allied Blenders and Distillers Pvt. Ltd. (the BO) to the CBUs.

10. This position was also affirmed under the previous Service Tax regime, vide *Circular No. 249/1/2006-CX.4 dated 27.10.2008* and *Circular F. No. 332/17/2009-TRU dated 30.10.2009* issued by the Ministry of Finance. The latter Circular specifically confirmed that *"Service tax would be payable on the bottling/job charges, distribution costs and other reimbursable... the surplus / profit earned by the BO being in the nature of business profit (which falls within the purview of direct taxes), will not be chargeable to service tax"*.

11. The Notification No. 39/2009-Service Tax dated 23.09.2009 under the previous Service Tax regime, exempted the taxable service specified in sub-clause (zzb) of clause 105 of section 65 of the Finance Act, provided by a person (hereinafter called the 'service provider') to any other person (hereinafter called the 'service receiver') during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions, namely:-

a) that no Cenvat credit has been taken under the provisions of the Cenvat Credit Rules, 2004;

b) that there is documentary proof specifically indicating the value of such inputs; and

c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, dispatches of goods as well as financial transactions relating thereto.

12. There has been no material change in the provisions between the erstwhile Service Tax regime and the current GST regime, and the above position should continue to apply.

04. HEARING

The case was scheduled for 11.09.2018 for Preliminary hearing when Sh. Rohan Shah, Advocate along with Ms. Divya Jeswant, Advocate and Sh. Ratan Jain Tax Adviser and Sh. Atit

Dalal, head taxation appeared and made contentions for admission of application as per contentions in their ARA application. Jurisdictional Officer Sh. Ashok S. Gupta Supt., Division I, Mumbai Central appeared and stated that they would be making submissions in due course.

The application was admitted and called for final hearing on 28.11.2018, Sh. Rohan Shah, Advocate along with Ms. Divya Jeswant, Advocate and Sh. Atit Dalal, head taxation appeared argued case on merit . Jurisdictional Officer Sh. Sashikant Bhasgauri Supt., appeared and made written submissions.

05. **OBSERVATIONS**

We have gone through the facts of the case, documents on records and submissions made by both, the department and the applicant. The questions put before us is as under:-

Whether in the facts and circumstances of the present case, the Contract Bottling Unit is making a taxable supply to the Applicant (i.e. Brand Owner), or, alternatively, whether the Applicant (i.e. brand owner) is making a taxable supply to the Contract Bottling Unit? Correspondingly, whether in the facts and circumstances of the present case, the Applicant (i.e. Brand Owner) is paying consideration to the Contract Bottling Unit by way of bottling charges, or, alternatively, whether the Contract Bottling Unit is paying consideration to the Applicant by way of brand owner surplus?

From the above we find that the question raised by the applicant can be divided into 4 parts as under:-

1. Whether in the facts and circumstances of the present case, the Contract Bottling Unit is making a taxable supply to the Applicant?
2. Whether in the facts and circumstances of the present case, the Applicant (i.e. brand owner) is making a taxable supply to the Contract Bottling Unit?
3. Whether in the facts and circumstances of the present case, the Applicant (i.e. Brand Owner) is paying consideration to the Contract Bottling Unit by way of bottling charges?
4. Whether the Contract Bottling Unit is paying consideration to the Applicant by way of brand owner surplus?

We find from the above that questions numbers 1 and 4 are asked by the applicant but pertains to the CBU. As per Section 95 (a) of the CGST Act, 2017 *"advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both* ***being undertaken or proposed to be undertaken by the applicant.***

In respect of question nos. 1 and 4, we find that the supply of services or goods or both, if any is not undertaken by the applicant and therefore the said questions cannot be answered by this Authority.

We also find that question no. 3 does not fall under any of the clauses of sub-section (2) of section 97 of the CGST Act, 2017. Hence the only question that is being taken up in this ruling is question no 2 above which falls under Section 97 (2) of the CGST Act, 2017. The question is reproduced again as under:-

Whether in the facts and circumstances of the present case, the Applicant (i.e. brand owner) is making a taxable supply to the Contract Bottling Unit?

We find, from the submissions made, that the Applicant, holding various registered brands in relation to Indian Made Foreign Liquor ("IMFL") has approached and contracted with various Contracting Bottling Units ("CBUS") who hold the requisite licences under the State Excise laws to undertake the manufacture of the IMFL for the Applicant, in return for the payment of bottling charges (and certain agreed upon reimbursements, such as taxes and expenses). The CBUs after manufacturing the IMFL, deliver the said goods to buyers as per the applicant's directions and the sale price for the said goods is received by the Applicant. All the raw materials, packing materials, finished goods, scrap, etc. used by the CBUs are paid for, by the Applicant.

From a perusal of the sample agreements submitted by the applicant, we find that the said agreements are on a principal-to-principal basis, the price at which raw materials are to be procured is fixed by the applicant, the risk, property and interest in the manufactured product passes from the CBU to the applicant upon delivery of the product to the carrier nominated by the applicant, the selling price is as per the directions of the applicant, the sale price of the goods is received by the applicant, the applicant pays consideration to the CBU in the nature of bottling charges which are fixed on a per month case basis, and not the sale price of the manufactured products, the manufacturing activity by the CBU is carried out under the supervision of the Applicant, etc. The amount left with the Applicant after making all of the aforesaid payments is their profit.

The applicant has very rightly stated that the true commercial nature of the arrangement in the subject case is one in which the CBU provides manufacturing services to the Applicant, and is remunerated in the form of bottling charges and the applicant is not a service provider to the CBUs. In terms of Section 7 of the CGST Act, one of the requirements of a supply liable to GST is that there should be some consideration received by the applicant if it is to be considered that they are supplying goods/services. We find that in the instant case the applicant is not receiving any consideration for allowing the CBU to use their brand/logo etc on the IMFL. In fact the entire process can be seen as the applicant is contracting with the CBUs to get the IMFL manufactured in under their brand name. There is no service rendered by the applicant in this case.

It is very clear from the terms of the agreement that there is neither any supply of goods nor services flowing from the applicant. The applicant actually gets the products manufactured by the CBUs. Hence as per GST laws there is no supply of goods or services or both by the applicant as per **Definition of 'supply' under** section 7 of the GST Act, 2017, which reads as follows: -- **'supply'** includes

(a) all forms of **supply** of goods and/or **services** such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made **for** a consideration by a person **in** the course or furtherance of business.

(b) ----------

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 67/2018-19/B- 155 **Mumbai, dt.** 15.12.2018

For reasons as discussed in the body of the order, the questions are answered thus –

Question :- *Whether in the facts and circumstances of the present case, the Contract Bottling Unit is making a taxable supply to the Applicant (i.e. Brand Owner), or, alternatively, whether the Applicant (i.e. brand owner) is making a taxable supply to the Contract Bottling Unit? Correspondingly, whether in the facts and circumstances of the present case, the Applicant (i.e. Brand Owner) is paying consideration to the Contract Bottling Unit by way of bottling charges, or, alternatively, whether the Contract Bottling Unit is paying consideration to the Applicant by way of brand owner surplus?*

Answer :- *In view of the discussions made above, the question "Whether the applicant (brand owner) is making a taxable supply to the Contract Bottling Unit" is answered in the negative. The remaining questions, as discussed above, are not answered being out of the purview of this Authority.*

ADVANCE RULING AUTHORITY MEMBER MAHARASHTRA STATE, MUMBAI

PLACE:- Mumbai
DATE:- 15.12.2018

sd/-
B. V. BORHADE
(MEMBER)

sd/-
B TIMOTHY
(MEMBER)

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Copy to:-
1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax. Churchgate Mumbai
5. Joint commissioner of State tax , Mahavikas for Website

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.