

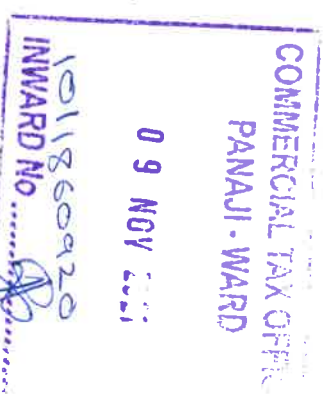
### GOA AUTHORITY FOR ADVANCE RULING

[Constituted under Section 96 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and Services Tax Rules, 2017]

### **BEFORE THE BENCH OF**

Smt. Sarita S. Gaddgil, Additional Commissioner of SGST, Goa.  
Shri. Pradnyasheel Jumle, Joint Commissioner of CGST, Goa.

**Advance Ruling No. GOA/GAAR/02 of 2021-20/2001**



Name of the Applicant	M/s. Espresso Foods Private Limited.
Address	15/1115, Subhash Timblo Bhavan, Ground Floor, Isidorio Baptista Road, Margao, Goa 403601.
GSTIN	30AAGCE2864B1Z7
Date of Application	25.06.2021
Under Section 97(2) of the CGST/SGST Act, 2017 under which question raised	Classification of Goods and/or Services or both. Applicability of a notification issued under the provisions of the Act. Admissibility of input tax credit of tax paid or deemed to have been paid Whether any particular thing done by the applicant with respect to any Goods and/or Services or both amounts to or results in a supply of Goods and/or Services or both, within the meaning of that term.
Date of Hearing	26.08.2021
Persons Present for Hearing	Dr. Saidas R. Khorjuvekar, Director, Shri. Suresh Prabhudessai, Dy. General Manager and Shri. Rajesh Harlarnkar, Manager Accounts.

### PROCEEDINGS

(Under Section 98 of the Goa Goods and Services Tax, Act 2017)

1. The present application has been filed under section 97 of the Goa Goods and Services Tax Act, 2017 and the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the 'SGST Act' and 'CGST Act') by **M/s Espresso Foods Private Limited, 15/1115, Subhash Timblo Bhavan, Ground Floor, Isidorio Baptista Road, Margao, Goa 403601** seeking an Advance Ruling in respect of the following questions:
  - Classification of Goods and/or Services or both.
  - Applicability of a Notification issued under the provisions of the Act.
  - Admissibility of input tax credit of tax paid or deemed to have been paid
  - Whether any particular thing done by the applicant with respect to any



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Goods and/or Services or both amounts to or results in a supply of Goods and/or Services or both, within the meaning of that term.

2. At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act, 2017 and the Goa Goods and Service Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the GST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean Central Goods and Service Tax Act and the Goa Goods and Service Tax Act.

#### **BRIEF FACTS**

#### **A. Applicants Background:**

M/s Espresso Foods Private Limited, have their registered office at 15/1115, Subhash Timblo Bhavan, Ground Floor, Isidoro Baptista Road, Margao, Goa 403601 and hold GSTIN **30AAGCE2864B1Z7**. The Applicant is engaged in processing food items for human consumption. The applicant plans to supply the food items in own Restaurants, Super Markets and Take Away from their premises and also deliver through Zomato and Swiggy at the counter to the ultimate Customer's in respect of which the applicant is seeking through the advance ruling for the purpose of determination of the following question:

#### **CLARIFICATION REQUIRED ON THE BELOW POINTS:**

- a) What will be HSN code and GST rates to be charged on their above-mentioned products, if they sell through own restaurants, Super Market and take away from our premises.
- b) Their products will be delivered to end Customer's through e-commerce platform like Zomato and Swiggy.
- c) Claim of ITC on inputs by the applicant and whether their Customer's can avail input Credit on our supply.
- d) What GST rates will be applicable without availing Input Tax Credit, if they sell through their own restaurant, Super Markets and take away from their premises.

#### **SUBMISSION OF THE TAXPAYER**

The applicant vide their application dated 24/06/2021 has submitted that they are engaged in processing of following food items and plan to supply food items in own restaurant, super market, take away from their premises and delivery through Zomato and Swiggy.

The applicant vide their letter dated 06<sup>th</sup> September, 2021 has contended that the food items for human consumption, supplied by them are covered by HSN code 071090000 and is liable for SGST @ 2.5% and CGST @ 2.5% without ITC. The items supplied by the company are different types of vegetable salads. Further details ingredients used in the 6 different kinds of vegetable salad are submitted with said letter.

The list of food items is as follows:

- |                          |                          |
|--------------------------|--------------------------|
| 1. <u>Caesar Salad</u>   | 4. <u>Power Crunch</u>   |
| 2. <u>Tandoori salad</u> | 5. <u>Cobb Salad</u>     |
| 3. <u>Spartan Salad</u>  | 6. <u>Quinoa Atrriba</u> |

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## PERSONAL HEARING

Dr. Saidas R.Khojivekar, Director, appeared for personal hearing on 26/08/2021 before this authority and reiterated the points deliberated in written submissions made along with application.

## FINDINGS AND DISCUSSIONS

The applicant is operating a business of processing the food items for human consumption, particularly six types of vegetable salads. The food items are supplied through its cash counter, e-commerce platform like Zomato and Swiggy, supplied to store in packed containers and also, they intend to supply it through their own restaurant. The question here is related to classification of the supply, whether the supply by the applicant will fall in the supply of goods or supply of services.

In order to identify classification of the supply mentioned above, we note the following provisions of the Goa GST Act, 2017 and CGST Act, 2017.

Section 2 deals with the definition of the term used in the said Act, the relevant definitions are as under: -

**"(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 principle supply:..

**(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;.....

**(74) "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;.....

**(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;.....

**(102) "Service"** 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;....."

For the purpose of Notification No. 11/2017-Central Tax (Rate) the term "Restaurant Service", which is reproduced below.

**"[(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."





Under GST law, supplies which are bundled with two or more supplies of goods or services or combination of goods and services are classified with distinct characteristics as: –

- (i) Composite Supply
- (ii) Mixed Supply

The respective definitions reproduced above state that, composite supply is one where two or more goods or services or both are supplied together, in a natural bundle and in a normal course of business, provided one of which is a principal supply. However, principal supply will be that supply which is predominant over other supplies. This means that the goods and services are bundled due to natural necessities. The Composite supply is taxed at the rate applicable to the principal supply whereas 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 of these items can be supplied separately and is not dependent on any other. In Mixed Supply, the combination of goods and /or services is not bundled due to natural necessities, and they can be supplied individually in the ordinary course of business.

Thus, in the present case, the taxpayer supplies the product over the counter without restaurant. In such a setup the customers can walk-in and purchase individual items without any co-joint service bundled naturally or otherwise. Thus, the supply of individual items effected over the counter are separate supply by itself and are not depend on any other supply of service. Hence, it shall amount to supply of goods. Further the entry 7 (ii) of Notification No. 11/2017-Central Tax (Rate) shall not be applicable as the definition of "Restaurant service" includes supplies by a 'restaurant, eating joint including mess, canteen'. Thus, sale of the above-mentioned food preparations in a packet container sold through a shop/ store or over counter, which not being a restaurant, eating joint including mess, canteen, shall not be taxed under the said entry but would be identified under respective HSN code and taxed as per the Notification No. 01/2017-Central Tax (Rate).

Therefore, based on the information the food items listed above the products can be broadly classified based on ingredient used for preparation, into two categories that is food preparations inclusive of meat and those without meat.

The food preparations viz., Caesar Salad, Tandoori salad and Spartan Salad, contains chicken (meat). Since the primary ingredients is chicken (meat) of said food preparations. Therefore, these products fall under the classification under Chapter 16 - Preparations of Meat or Fish or of Crustaceans, Molluscs or Other Aquatic Vertebrates with HSN code 1602. Hence these items shall be taxes under the entry "Other prepared or preserved meat, meat offal or blood" with applicable tax rate being SGST - 6% and CGST - 6%.

Similarly, for food preparations viz., Power Crunch, Cobb Salad and Quinoa Arriba, the primary ingredients of the preparation being vegetables, the said food products can be classifiable under Chapter 20 – Preparations of Vegetables, Fruits, Nuts or Other Parts of Plants with HSN code 2004. Hence shall be taxed under the entry "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006" with applicable tax rate of SGST - 6% and CGST 6%.

Thus, considering the fact of present case, the services intended to be supplied through the restaurant, which is in the nature of bundled supply comprises of



preparation and sale of food and serving the same and therefore, it constitutes a composite supply. It further satisfied the following conditions of a composite supply;

- (i) Supply of two or more goods or services or both together
- (ii) Goods or services or both are usually provided together in the normal course of business.

Thus, restaurant services get the character or predominant supply over other supplies. Therefore, such supply shall be treated as supply of service where food items are sold through restaurant and rate as mentioned in entry 7 (ii) of Notification No. 11/2017-Central Tax (Rate) as amended from time to time shall be applicable.

With respect to the question of the taxpayer 'whether ITC shall be available to the taxpayer and its customer's?', it is important to note the sub section (2) of Section 97 of the Act, which is reproduced as below.

"(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;**
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether application is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."

From above we note that the question allowed as per Section 97 (2) and mentioned at clause (d) uses the phrase "tax paid" and "have been paid" indicating that the tax has to be paid before the taxpayer approaches the AAR for ruling. As such the question of availability of ITC can be taken into consideration by the AAR only after post transaction/s by the applicant and not on mere speculative basis. Hence no ruling on the question can be given at this point of time.

In view of the foregoing discussion, we rule as follows:

### **RULING**

**ADVANCE RULING UNDER SECTION 98 OF THE CGST/ GGST ACT, 2017.**

The ruling so sought by the applicant is accordingly answered as under: -

1. The HSC of code and rate of Goods and Service tax applicable if the goods are sold from a place other than a restaurant, eating joint including mess & canteen shall be as follows:

Sr. No.	Item	HSN Code	Rate of SGST	Rate of CGST
1	Caesar Salad	1602	6%	6%
2	Tandoori salad	1602	6%	6%
3	Spartan Salad	1602	6%	6%
4	Power Crunch	2001	6%	6%
5	Cobb Salad	2001	6%	6%
6	Quinoa Arriba	2001	6%	6%

*guc*

2. In the instance case, if the goods are sold through the restaurant, eating joint including mess, canteen the SAC code '9963' shall be applicable on all items being supplied being a composite supply and SGST @ 2.5% and CGST @2.5% shall be applicable and that the credit of input tax charged on goods and services used in supplying the service shall not be taken.

*03/11/2021*  
*[Signature]*  
(Pradnyasheel Jumle)  
Member



*[Signature]*  
*03/11*  
(Sarita S. Gadgil)  
Member

Dated: - 03/11/2021  
Place: - Panaji, Goa

To,  
M/s. Espresso Foods Private Limited,  
15/1115, Subhash Timblo Bhavan,  
Ground Floor, Isidorio Baptista Road,  
Margao-Goa 403601

Copy to:

1. The State Tax Officer, Margao Ward, Margao Goa.
2. The Dy. Commissioner of State Tax, Margao Ward, Margao, Goa.
3. The Commissioner of State GST, Panaji, Goa.
4. The Commissioner of Central GST, Panaji, Goa.
5. Office file.
6. Guard file.