

<b>GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.</b>	
-----------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------

ADVANCE RULING NO. GUJ/GAAR/R/16/2021  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/42)

Date: 30.06.2021

Name and address of the applicant	:	M/s. Kanayalal Pahilajrai Balwani (Siddharth Foods) C-2A/8, Plot No 183/1, Phase 1, GIDC Naroda, Ahmedabad-382330.
GSTIN of the applicant	:	24AALPB4368H1ZS
Date of application	:	15.06.2021
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	15.06.2021(Through online hearing)
Present for the applicant	:	Shri Pravin Sahu CA

#### **A. BRIEF FACTS**

The applicant M/s. Kanayalal Pahilajrai Balwani, (Sidharth Foods), GSTIN 24AALPB4368H1ZS (hereinafter referred to as applicant for the sake of brevity), are engaged in the business of manufacturing & distribution of cakes & pastries items. The applicant send cakes & pastries to the distributors to keep them in display to fascinate consumer. The cakes & pastries are of perishable nature and cannot be preserved for longer period and on regular interval all cakes & pastries kept in display have to be compulsorily replaced after expiry of said bakery item. The applicant submits that display assists them to achieve the objectives of continuing to conduct the business of manufacturing and selling cakes & pastries in future also.

2. The applicant submitted that there is no free/sample supply of extra cakes & pastries to distributors. Such extra cakes & pastries are supplied with tax invoice which means that supply of goods is taxable supply. When such extra cakes & pastry expired and return back to the applicant, assessee issues credit note for the same. Hence, there is no free/sample supply of goods by the taxpayer as per section 17(5) (h) of the CGST Act, 2017.

#### **B. Question on which Advance Ruling sought**

3. The applicant has sought the Advance Ruling on the following question:

“Whether or not there is requirement for reversal of input tax credit on goods used as raw material in manufacturing of expired cakes & pastries that were kept in display for use in course or furtherance of business.”

#### **C. Personal Hearing**

4. Personal hearing was accorded to the applicant through Virtual Platform (Video conferencing) on 15.06.2021. The Applicant Shri Kanayal P. Balwani along with CA Shri Praveen Sahu appeared for the hearing and reiterated the contents of the application and further submitted that they throw away the expired Cakes & Pastry.

**D. FINDINGS:**

5. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST Act, 2017 are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

6. We have carefully considered all the submissions made by the applicant in the subject application as well as those made by applicant at the time of personal hearing.

7. The Ruling is sought on whether ITC on inputs consumed in expired Cakes & Pastries is to be reversed or otherwise.

8. The applicants admits that subject cakes & pastries kept in display, to fascinate consumers, are of perishable nature and cannot be preserved for longer period. During personal hearing, the applicant was requested to clarify the mode of disposal of expired cakes and pastries, to which the applicant submitted that they throw away the expired Cakes & Pastry.

9. We hold that Cakes and pastry have limited shelf life and after expiry these bakery items are prohibited from sale. We draw our attention to Section 7 of Prevention of Food and Alteration Act, 1954 prohibiting the sale of expired goods as such are not fit for consumption. Further section 273 Indian Penal Code criminalizes the act of sale of harmful perishable food products. We hold the act of throwing away expired cakes and pastries is akin to destroying the expired food products, for the applicant destroys by throwing them away.

10. We draw attention to the ‘ Non Obstante subsection’ - Section 17(5) of the CGST/SGST Act, 2017 stipulating ‘ Blocked Credit’. Section 17(5)( h) of CGST Act, 2017 reads as follows:-

**"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-.....**

.....

*(h) goods lost, stolen, **destroyed**, written off or disposed of by way of gift or free samples*

This Non-obstante sub section overrides the operation of section 16 and section 18 of CGST Act provisions contrary to this subsection and thereby blocks ITC admissibility contrary to the said sub section. We find that subject goods being destroyed are covered under this non obstante clause (h) of section 17(5) CGST Act.

11. Further, Government Circular No. 72/46/2018-GST dated 26.10.2018 issued vide F. No.CBEC/20/16/ 04/2018-GST has clarified the procedure in respect of

return of time expired drugs or medicines-Reg. Relevant Para's of said Circular are enumerated as follows :

*“3 B (d) Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of clause (h) of sub-section (5) of section 17 of the CGST Act.*

*4. It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, **it may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed above.**”*

12. We hold that subject matter presents a similar scenario as envisaged at para 4 of cited Government Circular dated 26-10-2018.

### **R U L I N G**

In Conspectus of aforementioned findings, we hold that subject matter is covered under section 17(5) (h) of CGST Act and thereby ITC on inputs used in manufacturing expired cakes & pastries is not admissible and required to be reversed.

**(SANJAY SAXENA)**  
**MEMBER (S)**

**(ARUN RICHARD)**  
**(MEMBER (C))**

Place: Ahmedabad  
Date: 30.06.2021.