

ADVANCE RULING NO. GUJ/GAAR/R/2022/51

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/40)

Date:30/12/2022

Name and address of the applicant	:	M/s. Ridhi Enterprise, Ground Floor – 2, Magnifico, opp. Time Square, Nr Avlon Hotel, S. G Highway, Ahmedabad-380054
GSTIN/ User Id of the applicant	:	24AAXFR1840C1Z8
Date of application	:	25-08-2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a), (b), and (d)
Date of Personal Hearing	:	21-10-2022
Present for the applicant	:	Chintan Vasa (C.A.)

Brief facts:

M/s Riddhi Enterprise (hereinafter referred to as ‘the Applicant’) is in the restaurant business which offers a variety of food items including food and beverages prepared at the restaurant as well readily purchased food and beverage sold over the counter. The applicant standalone restaurants exclusively serving food and beverages and are not hotel accommodation.

1.1 The applicant has submitted that foods items provided by them can broadly be divided as follows:

Sr. No.	Food items	Manner of serving
1.	Prepared food items like soup, salads, Mediterranean dishes, Italian dishes etc.	<ul style="list-style-type: none"> Consumed in the restaurant premises; or Takeaway.
2.	Prepared Beverages	<ul style="list-style-type: none"> Consumed in the restaurant premises; or Takeaway.
3.	Readily available food and beverages which are sold over-the-counter products such as a variety of cheese, chocolates, chips, probiotic tea, cocoa powder, bottled beverages, fresh vegetables and fruits packed in a proper manner, certain MRP-based edible products,	<ul style="list-style-type: none"> Consumed in the restaurant premises; or Takeaway.



	etc. Such food and beverages are not prepared in the restaurant.	
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2. The Applicant submits that they procure the requisite raw materials, services etc. to prepare the food items and beverages in the restaurant’s kitchen. The customers visit the Applicant’s restaurant, order the food/beverage preparation they want and then consume the same at the restaurants. The customers can also choose to take away the food items or beverages of their choice and consume them elsewhere. It is worth noting that the element of service i.e. the customers using the restaurant’s infrastructure to consume the food or beverages is included in the pricing of the prepared food and beverages irrespective of whether the customer chooses to consume the product within the restaurant premises or takes it away for consumption elsewhere.

3. The applicant has submitted that the readily available over-the-counter products the customers may choose to consume them in the restaurant, or they may choose to take away and consume them elsewhere. It is worth noting that the element of service i.e. the customers using the restaurant infrastructure to consume the readily available over-the-counter products is included in the pricing of such products irrespective of whether the customer chooses to consume the product within the restaurant premises or takes it away for consumption elsewhere.

3.1 The infrastructure facility at the restaurant is uniformly offered to all the customers irrespective of whether they choose to consume the food/beverages at the restaurant premise or take it away for consumption elsewhere.

3.2 The storage space/area for items required for preparing food and beverages in the kitchen as well as the readily available food/beverages sold over the counter is common.

3.3 The staff of the restaurant is commonly handling the orders for food and beverages to be prepared in the restaurant kitchen as well as the readily available food/beverages sold over the counter irrespective of whether they are consumed in the restaurant premises or as a takeaway. The display of food/beverage items is also common for service by any of the methods.

3.4 The applicant has submitted that there is a common billing counter, software, and books of account for all the orders. There is no separate billing mechanism for the food and beverages prepared in the restaurant and for the readily available food/beverages sold over the counter.

4. The Applicant has submitted that the food and beverages prepared and supplied to the customer whether consumed in the restaurant or by way of takeaway qualify as



'restaurant services' classifiable under SAC '996331: Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food' leviable to GST @ 5% with no input tax credit ('ITC').

4.1 It is submitted by the applicant that as per Sr. No. 7(ii) of Notification No.11/2017 - Central Tax (Rate) dated June 28, 2017, read with Sr. No. 7(ii) of Notification No.11/2017 – State Tax (Rate) dated June 30, 2017 (hereinafter jointly referred to as 'Services Rate Notification') GST @ 5% is leviable on supply of 'restaurant service' other than at 'specified premises' without ITC of GST on goods and services used in supplying the service.

4.2 Explanation (xxxvi) of paragraph 4 of the Services Rate Notification defines 'Specified premises' to mean *premises providing 'hotel accommodation' services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.*

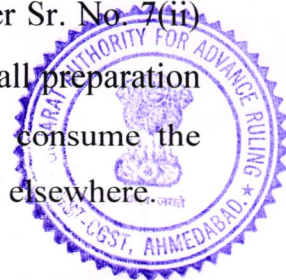
4.3 Explanation (xxxiv) of paragraph 4 of the Services Rate Notification defines 'Hotel accommodation' to mean *supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.*

4.4 Explanation (xxxii) of paragraph 4 of the Services Rate Notification defines 'Restaurant service' to mean *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.*

5. The applicant has submitted that in the given case, the restaurant prepares and serves the food and beverages which are for consumption of the customers at the restaurant itself or on a takeaway basis and thus, the service provided by the Applicant qualifies as 'Restaurant service'.

6. It is submitted that since the restaurant is a standalone restaurant which provides only restaurant services and not hotel accommodation services, it does not qualify as 'specified premises'.

7. The applicant has submitted that considering the above, the food and beverages prepared in the restaurant and supplied by the Applicant to its customer qualify as restaurant services and accordingly liable to GST @ 5% without ITC as per Sr. No. 7(ii) of the Services Rate Notification. GST @ 5% without ITC would apply to all preparation of food and beverages irrespective of whether the customer chooses to consume the preparations within the restaurant premises or takes it away for consumption elsewhere.



8. The Applicant's view is that the readily available food and beverages (not prepared in the restaurant) sold over the counter by the Applicant to its customer, whether consumed in the restaurant or by way of takeaway, qualifies as 'restaurant services' classifiable under SAC '996331: *Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food*' leviable to GST @ 5% with no input tax credit.

8.1 Explanation (xxxii) of paragraph 4 of the Services Rate Notification defines 'Restaurant service' to mean *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.*

8.2 Para 3.3 of Circular No. 164 /20 /2021-GST dated October 6, 2021, has clarified that 'restaurant service' includes services provided by Restaurants, Cafes. The circular has further clarified 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. Below is the relevant extract from the circular:

"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."

8.3 The Applicant has referred relevant point of the Minutes of the 23rd GST Council Meeting held on November 10, 2017 and same is as follows:

*"65.29. Keeping in view the discussion as above, the **Council agreed to apply tax rate of 5% tax without input tax credit on all standalone restaurants** and a rate of tax of 18% with input tax credit on a restaurant in a hotel having room of declared tariff of more than Rs. 7,500 per night. The takeaway food from a restaurant shall have similar tax treatment as that for the restaurant. ..."*

66. For agenda item 9, the Council approved the following:

*vi. **All stand-alone restaurants** irrespective of being air conditioned or otherwise, **shall attract tax at the rate of 5% without input tax credit. Food parcels (or takeaways) from restaurants shall also attract tax at the rate of 5% without input tax credit.*** – Emphasis supplied.

8.4 The applicant has submitted that taking into consideration the above, in the following table the criteria to qualify as restaurant services and whether they are fulfilled in the given case/question is as below:



Sr. No.	Condition	Whether fulfilled?
1.	Whether there is a supply of food or any other article for human consumption or any drink, provided by a restaurant?	Yes. The readily available over-the-counter food and beverages are provided by the restaurant which is for human consumption
2.	Whether such supply is for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied?	Yes. The readily available over-the-counter food or beverages supplied can be consumed at the restaurant or it can be taken away from the restaurant for consumption elsewhere.
3.	Whether the supply in the given case fulfils the clarification provided vide Circular No. 164 /20 /2021-GST dated October 6, 2021.	Yes. The circular clarifies that 'restaurant service' includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. This criterion is fulfilled in the given case/question.
4.	Whether the supply in the given case fulfil the GST Council's objective behind taxing restaurants @ 5%?	Yes. The GST Council has categorically stated that the intention is to levy GST @ 5% on restaurants irrespective of whether the food is consumed in the restaurant or elsewhere and irrespective of whether it is prepared in the premises or merely sold over the counter. The GST Council intends to levy GST @ 5% on any and every kind of food article or beverage supplied by a restaurant irrespective of the manner in which it is supplied or consumed.

8.5 The applicant submits that in light of the discussion made above, it is their view that the readily available food and beverage (not prepared in the restaurant) sold over the counter by the Applicant qualifies as 'restaurant services' classifiable under SAC '996331: Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food' and accordingly leviable to GST @ 5% without ITC.

9. The applicant has submitted that this view is also supported by the ruling pronounced by the Appellate Authority For Advance Ruling Uttarakhand in the case of **M/s Kundan Mishthan Bhandar [Appellate Authority Advance Ruling Order No. 04/18-19]** wherein the following was held:

"Thus when the goods such sweets, namkeens, cold drinks and other edible items are supplied to customers in the restaurant or as takeaways from the restaurant counter and which are being billed,



under restaurant sales head should fall under 'composite supply' with restaurant service being the principal supply., since supply of food in this case, is naturally bundled with the restaurant service. The taxability of all such goods supplied to or through the restaurant will be governed by the principal service i.e. restaurant service and GST rate with applicable conditions will also be applicable to all such goods also. Input credit will not be allowed in this case.” – Emphasis supplied.

10. Question on which Advance Ruling sought:

I. Whether the food and beverages prepared and supplied by the Applicant to its customers whether consumed in the restaurant or by way of takeaway qualifies as ‘restaurant services’ and is classifiable under SAC ‘996331: *Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food*’ leviable to GST @ 5% with no input tax credit as per Sr. No. 7(ii) of Notification No.11/2017 - Central Tax (Rate) dated June 28, 2017, read with Sr. No. 7(ii) of Notification No.11/2017 – State Tax (Rate) dated June 30, 2017?

II Whether the readily available food and beverages (not prepared in the restaurant) sold over the counter by the Applicant to the customer whether consumed in the restaurant or by way of takeaway qualifies as ‘restaurant services’ classifiable under SAC ‘996331: *Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food*’ leviable to GST @ 5% with no input tax credit as per Sr. No. 7(ii) of Notification No.11/2017 - Central Tax (Rate) dated June 28, 2017, read with Sr. No. 7(ii) of Notification No.11/2017 – State Tax (Rate) dated June 30, 2017?

Personal Hearing:

11. Personal hearing granted on Dt.21-10-2022 was attended by Shri Chintan Vasa CA and he reiterated the submission.

FINDINGS:

12. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorised signatory, during the personal hearing proceedings on 21-10-22 before this authority. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant’s interpretation of law.

13. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in *parimateria* 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.



14. The applicant is engaged in the restaurant business and supplying foods which is prepared and cooked in the restaurant and also supplying the foods purchased from the outside and sold over the counter in the restaurant premises. The main point here is to decide the Tax Rate of GST on both types of supply which are happened from the restaurant.

15. We find that the term “restaurant service” have been defined under Explanation (xxxii) of paragraph 4 of the Notification No. 11/2017-CT (Rate) dated 28-6-2017 and same is reproduced as under :

***'Restaurant service'** to mean 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.*

15.1 The above meaning suggest that ‘restaurant service’ is a supply of goods being food or any other article for human consumption by a restaurant for consumption in or away from premises where such food or any other article for human consumption or drink is supplied. In the foods or any other article for human consumption prepared /cooked in the restaurant kitchen and served such foods to customer either in the restaurant premises or take away or delivery at customer place are covered under the category of ‘restaurant service’.

15.2 The applicant has on his own submitted that they prepare food and other food item in the kitchen situated at restaurant premises and serve to the customers as per their order. The customer as per their choice either consume such items at restaurant or take the same away at their place. The applicant also delivers such prepared food and beverages to the customer at their home. We find that all such activities are covered under restaurant service and this view is bolstered by the clarification issued by CBIC vide Circular No. 164 /20 /2021-GST dated October 6, 2021. The relevant para 3.3 of the circular is reproduced as under:

*“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.**”*

15.3 The CBIC has specifically clarified that the service by an entity, by way of cooking and supply food by way of takeaway or door delivery or through or from any restaurant covered by restaurant service.



15.4 Further, we refer to the agenda item 9 of the Minutes of the 23rd GST Council Meeting held on November 10, 2017 which is as follows:

66. For agenda item 9, the Council approved the following:

vi. All stand-alone restaurants irrespective of being air conditioned or otherwise, shall attract tax at the rate of 5% without input tax credit. Food parcels (or takeaways) from restaurants shall also attract tax at the rate of 5% without input tax credit.”

15.5 The above clarification is amply clear that the intention of the legislature was that service provided by any entity which prepared and cooked food and supplied to the customer be covered under the category of restaurant service.

15.6 We hold that the food and beverages prepared/cooked in the restaurant and supplied by the Applicant to its customers either consumed in the restaurant or by way of takeaway qualifies as ‘restaurant services. The restaurant service is classifiable under SAC ‘996331: Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food’.

15.7 We have hold that restaurant service is classifiable under SAC 996331, now to decide the tax rate of GST on restaurant service, we refer to relevant Sr. No. 7 of Notification No. 11/217-CT (Rate) dated 28-6-2017 as amended and reproduced as under:

Sl. No.	Heading 9963 (Accommodation, food and beverages service)	(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)]
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15.8 Thus, restaurant service is leviable tax rate of GST @ 5% (2.5% CGST +2.5% SGST) with no input tax credit as per Sr. No. 7(ii) of Notification No.11/2017 - Central Tax (Rate) dated June 28, 2017, read with Sr. No. 7(ii) of Notification No.11/2017 – State Tax (Rate) dated June 30, 2017.

16. The applicant is also purchasing the food items from market and supply from the same premises over the counter. These food items are not prepared/cooked in the restaurant but purchased from the local market and directly supply to the customer in same premises. The customer may consume these food items at the restaurant or take away at their place.

16.1 The applicant has argued that the readily available food items not cooked/prepared in the restaurant premises sold over the counter from the restaurant also cover under



‘restaurant service’ and accordingly attract tax rate of GST. We in the above paras have already discussed that the supply of cooked foods and other food items in the restaurant are cover under ‘restaurant service’. The supply of already cooked/prepared food items purchased from local market does not cover under ‘restaurant service’ instead of this is a supply of goods.

16.2 We hold that the readily available food items (not prepared/cooked in the restaurant) sold over the counter by the Applicant to the customer whether consumed in the restaurant or by way of takeaway does not qualify as ‘restaurant services’ instead of falls under supply of goods which is liable to applicable rate of GST Tax.

17. We find that the applicant has placed reliance on Paras related to the discussions and findings of the Order No. 4/2018-19 dated 27-2-2019 of Appellate Authority of Advance Ruling, Uttarakhand pronounced in the case of M/s Kundan Mishthan Bhandar. The applicant has mis-interpreted the view expressed in the said Para. On reading the said para it can be understood that Honorable Members of the Appellate Authority have placed their opinion with regard to the prepared/cooked sweet, snacks and dessert in the restaurant kitchen and supplied with food falls under the category of Composite supply and restaurant service is the Principal supply exclusively for such type of supply. Whereas the Appellate Authority of Advance Ruling has pronounced ruling in respect of sweets, namkeens, cold drinks and other edible items not cooked/prepared in the restaurant but purchased readily eatable from outside and supply over the counter is treated as supply of goods with applicable GST rates of the item being sold over the counter. The Appellate Authority has held that,

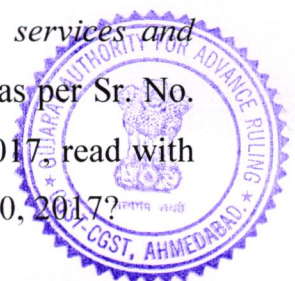
Sale of sweets, namkeens, cold drinks and other edible items from sweetshop counter will be treated as supply of goods with applicable GST rates of the items being sold and input credit will be allowed on such supply

17.1 Thus the said Ruling is squarely applicable in the instant case as the facts and circumstances are similar of the present application.

18. In light of the foregoing, we rule as under -

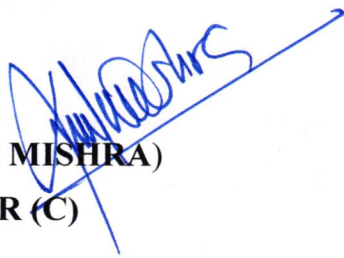
RULING

1. The food and beverages prepared and supplied by the Applicant to its customers whether consumed in the restaurant or by way of takeaway qualifies as ‘restaurant services’ and is classifiable under SAC ‘996331: Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food’ leviable to GST @ 5% with no input tax credit as per Sr. No. 7(ii) of Notification No.11/2017 - Central Tax (Rate) dated June 28, 2017, read with Sr. No. 7(ii) of Notification No.11/2017 – State Tax (Rate) dated June 30, 2017?



- 2 The readily available food and beverages (not prepared in the restaurant) sold over the counter by the Applicant is supply of goods which is liable to applicable rate of GST Tax and does not qualify as 'restaurant services'.


(MILIND KAVATKAR)
MEMBER (S)


(AMIT KUMAR MISHRA)
MEMBER (C)



Place: Ahmedabad

Date: 30.12.2022