

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 21/ 2018

Dated : 21st August, 2018

Present:

1. Sri. Harish Dharnia,
Joint Commissioner of Central Tax,
Bangalore West Commissionerate,
Bangaluru.
. . . . Member (Central Tax)
2. Dr.RaviPrasad.M.P.
Joint Commissioner of
Commercial Taxes (Vigilance)
Bangaluru
. . . . Member (State Tax)

1.	Name and address of the applicant	M/s Coffee Day Global Limited, #23/2, 6 th Floor, Vittal Mallya Road, Bangaloe – 560 001.
2.	GSTIN or User ID	29AABCA5291P1Z3
3.	Date of filing of Form GST ARA-01	18-01-2018
4.	Represented by	Sri S Vishnumurthy, Chartered Accountant
5.	Jurisdictional Authority – Centre	Bangalore North Commissionerate, North Division-1, 29/2, Basaveshwara Building, Crescent Road, Bengaluru - 560001
6.	Jurisdictional Authority – State	LVO – 020, V V Tower, Shivajinagar, Bangalore – 560 001.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.5,000-00 CGST : Rs.NIL and KGST: Rs.5,000-00 CIN: SBIN18012900060425 dated 11-01-2018

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

M/s Coffee Day Global Limited, 23/2, 6th Floor, Vittal Mallya Road, Bangalore – 560 001, having GSTIN number 29AABCA5291P1Z3, have filed an application, on 18.01.2018, for advance ruling under Section 97 of CGST Act,2017, KGST Act, 2017 & IGST Act, 2017 read with rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01. They also enclosed copy of challan for Rs.5,000/- bearing CIN number SBIN18012900060425 dated 11.01.2018.

2. The Applicant is in the business of running restaurants under the name and style of **Café Coffee Day** where non-alcoholic beverages and food items are served. Notification No.46/2017 dated 14.11.2017 provides that restaurants can pay GST @5% (CGST-2.5% and SGST-2.5%), provided they

do not avail input tax credit of the tax paid on input goods and services. Notification No.11/2017 dated 28.06.2017, at Sl.No.35, provides for levy of GST @18% (CGST-9% & SGST-9%) on supply of unclassified services and the suppliers are entitled to take input tax credit in the circumstances where they pay output tax.

3. The Applicant contends that Notification No.46/2017 dated 14.11.2017 applies in circumstances where the applicant does not avail input tax credit. It does not prevent a restaurateur from paying tax at 18% (CGST – 9% and SGST – 9%) and availing input tax credit. Therefore the said notification is applicable only in circumstances where the supplier does not claim input tax credit and it would not apply in the circumstances if the supplier wants to avail input tax credit. If the restaurateur avail input tax credit, the transaction would get classified under Sl.No.35 of Notification No.11/2017 and chargeable to tax at 18% (CGST – 9% and SGST – 9%). Hence the restaurateur has the option of paying output tax @ 5% without availing input tax credit or paying output tax @ 18% by availing input tax credit. Therefore the applicant filed this instant application seeking advance ruling on the following issue:

“Whether the applicant is entitled to pay GST @ 18% (CGST-9% and SGST-9%) and claim input tax credit?”

PERSONAL HEARING: / PROCEEDINGS HELD ON 30.01.2018.

4. The Applicant submitted power of attorney, issued by Sri. Jayraj C Hubli, Director, M/s Coffee Day Global Ltd., authorizing Sri. S Vishnumurthy, Chartered Accountant to represent the applicant before the Authority for Advance Ruling in connection with the instant application for Advance Ruling.

5. The authorized representative Sri. S Vishnumurthy, Chartered Accountant appeared for personal hearing proceedings and submitted written arguments inter alia stating as under:

5.1 Section 16(1) of the Act confers a right to every registered person paying regular rate of tax to take input tax credit. The said right is conferred by the statute and can not be taken away by a notification. Statutes are framed by the Parliament and notification is issued by the Government. Parliament is superior to Government and therefore, what is given by the Parliament cannot be taken away by the Government.

5.2 Under the Notification, availment of concessional rate of tax @5% is subject to the condition that the input tax credit is not availed. If the condition is not fulfilled, then the concessional rate will not apply. The phrase “*provided that*” signifies that a particular thing must happen before another thing can happen. The applicant intend to rely on the judgment of the Hon’ble Supreme Court in the case of State of Kerala Vs Builders Association of India [(1997)104 STC 134 (SC)]

5.3 Holding the notification under reference as mandatory would render it being violative of Article 14 of the Constitution of India (which guarantees equality before law) and violative of Section 16(1) of CGST Act'2017, which provides for input tax credit.

5.4 Restaurants inside Five Star hotels will be eligible for input tax credit. This would mean that persons consuming it there would end up paying lower than what they pay in stand alone restaurants, which have to treat the tax paid on inputs & input services as cost of supplies being made.

5.5 Reduction is made by invoking the powers in Section 9, which does not confer any power to reduce the rate of tax.

FINDINGS & DISCUSSION:

6. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. S Vishnumurthy, Chartered Accountant during the personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

7. The Applicant, filed the application dated 18.01.2018 seeking for advance ruling, seeking clarification as to ***“Whether the applicant is entitled to pay GST @ 18% (CGST @ 9% and SGST @ 9%) and claim input tax credit?”***

8. The applicant is engaged in, as already discussed in Para 2, the business of running restaurants where food and non-alcoholic beverages are served.

8.1 The supply of food and beverage services is covered under Heading 9963 and Group 99633 as per Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 read with the Annexure to the said Notification. The said entries of the Annexure are reproduced below for reference:

71	Heading 9963		Accommodation, food and beverage services
72	Group 99631		Accommodation services
73		996311	Room or unit accommodation services provided by Hotels, Inn, Guest House, Club and the like
74		996312	Camp site services
75		996313	Recreational and vacation camp services
76	Group 99632		Other accommodation services
77		996321	Room or unit accommodation services for students in student residences
78		996322	Room or unit accommodation services provided by Hostels, Camps, Paying Guest and the like

79		996329	Other room or unit accommodation services nowhere else classified
80	Group 99633		Food, edible preparations, alcoholic and non-alcoholic beverages serving services
81		996331	Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food
82		996332	Services provided by Hotels, Inn, Guest House, Club and the like including room services, takeaway services and door delivery of food
83		996333	Services provided in canteen and other similar establishments
84		996334	Catering Services in exhibition halls, events, marriage halls and other outdoor/indoor functions
85		996335	Catering services in trains, flights and the like
86		996336	Preparation or supply services of food, edible preparations, alcoholic and non-alcoholic beverages to airlines and other transportation operators
87		996337	Other contract food services
88		996339	Other food, edible preparations, alcoholic and non-alcoholic beverages serving services nowhere else classified

The classification of the services rendered by the applicant is, therefore, clearly defined under Service Code (Tariff) 996331. Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 notifies the rate of central tax in column 4 on the intra-State supply of services of description as specified in column (3) of the Table in the notification, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2).

8.2 The restaurant services provided by the applicant are squarely covered under serial number 7 of the aforesaid Notification.

8.3 The entries at serial number 7 of the aforesaid Notification were amended through Notification No 46/2017 –Central Tax (Rate) dated 14th November, 2017 levying a central tax of 2.5% on restaurant services as provided by the applicant under the condition that credit of input tax charged on goods and services used in supplying the service have not been taken. The entry is reproduced below for ease of reference:

(ii) against serial number 7,-

(a) for item (i) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
“(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, 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, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. Explanation.- “declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.	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)].”;

We also find that in the same Notification the following explanation is provided:

Explanation.- For the removal of doubt, it is hereby clarified that, supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, 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, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent shall attract central tax @ 2.5% without any input tax credit under item (i) above and shall not be levied at the rate as specified under this entry.”;

8.4 The applicant contends that the words ‘provided that’ used in column 5 signify that a particular thing must happen before another thing can happen. It is also contended that the concessional rate of 5 % (2.5% CGST and 2.5% SGST) is subject to the condition that the input tax credit is not availed. If the condition is not fulfilled then the concessional rate will not apply. They further contend that in the event the concessional rate does not apply then their services would be covered under Serial number 35 of Notification 11/2017-Central Tax (Rate) dated 28th June 2017. This would require them to discharge tax at the rate of 18% and also entitle them to avail input tax credit.

8.5 The entry at serial no. 35 of Notification 11/2017-Central Tax (Rate) dated 28th June 2017 is as follows:

35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-
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The various services covered under the scope of Heading 9997 as per the Annexure to Notification 11/2017 are reproduced below for reference.

700	Heading 9997		Other services
701	Group 99971		Washing, cleaning and dyeing services
702		999711	Coin-operated laundry services
703		999712	Dry-cleaning services (including fur product cleaning services)
704		999713	Other textile cleaning services
705		999714	Pressing services
706		999715	Dyeing and colouring services
707		999719	Other washing, cleaning and dyeing services nowhere else classified
708	Group 99972		Beauty and physical well-being services
709		999721	Hairdressing and barbers services
710		999722	Cosmetic treatment (including cosmetic or plastic surgery), manicuring and pedicuring services
711		999723	Physical well-being services including health club and fitness centre
712		999729	Other beauty treatment services nowhere else classified
713	Group 99973		Funeral, cremation and undertaking services
714		999731	Cemeteries and cremation services
715		999732	Undertaking services
716	Group 99979		Other miscellaneous services

717		999791	Services involving commercial use or exploitation of any event
718		999792	Agreeing to do an act
719		999793	Agreeing to refrain from doing an act
720		999794	Agreeing to tolerate an act
721		999795	Conduct of religious ceremonies or rituals by persons
722		999799	Other services nowhere else classified

A reading of the above classification of services makes it clear that the applicant contends that his services shall fall under serial number 722 under the category of other services not elsewhere classified.

9. The question put forth by the applicant is “Whether the applicant is entitled to pay GST @ 18% (CGST @ 9% and SGST @ 9%) and claim input tax credit?”. The rate of tax is notified in Notification 11/2017-Central Tax (Rate) dated 28th June 2017. The scheme of the Notification is such that the rate of tax is described in direct conjunction with the classification of the service represented by the Chapter, Section or Heading under which the relevant service falls. Further the explanation given under serial number 4 of the notification reads “Reference to “Chapter”, “Section” or “Heading”, wherever they occur, unless the context otherwise requires, shall mean respectively as “Chapter, “Section” and “Heading” in the annexed scheme of classification of services (Annexure).” Therefore the answer to the question raised by the applicant lies in determining the classification of the services rendered by them.

9.1 The extract of the Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017, as reproduced in para 7.1 above, indicates that food and beverage services fall under Heading 9963, Group 99633 and Service Code (Tariff) 996331. It is thus evident that the services rendered by the applicant are clearly defined under Heading 9963. The tax rate for the services under Heading 9963 is 5% (CSGT 2.5% and SGST 2.5%) in terms of Notification 46/2017-Central Tax (Rate) dated 14th November, 2017. The competing entry claimed by the applicant is Serial Number 35 of Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017. The applicable tax rate is 18% for this entry. The extract of the entry is reproduced in para 7.5 above. This entry is applicable for services which are not specifically described under any other entry in the Annexure. The services provided by the applicant are classifiable under Heading 9963 and such services covered under heading 9963 are squarely covered under serial number 7 of the Notification. As the services provided by the applicant are covered under a specific heading and the Notification carves out a specific rate of tax for that heading, the same shall be applicable to the applicant. Serial number 35 would qualify for invocation only in respect of services that do not find classification elsewhere. Therefore the applicant is covered by serial number 7 and not 35.

9.2 In this regard the applicant has argued that the words ‘provided that’ (refer para 7.3 above) give them an option to not to avail concessional rate of 5% and avail input tax credit. In this context we find the explanation given in Notification 46/2017 (para 7.3 above) relevant. The explanation clearly stipulates that ‘.....**shall attract central tax @ 2.5% without any input tax credit under item (i) above.....**’. The explanation, therefore, makes it

clear that 2.5% tax shall be payable and input tax credit shall not be available. The aforesaid explanation removes any kind of ambiguity on the issue.

9.3 The applicant further contends that Section 16(1) of the Act confers a right to every registered person paying regular rate of tax to take input tax credit. The said right is conferred by the statute and cannot be taken away by a notification. Statutes are framed by the Parliament and notification is issued by the Government. Parliament is superior to Government and therefore, what is given by the Parliament cannot be taken away by the Government.

9.4 The applicant's contention suggests their view that the right to input tax credit is unfettered. However the said Act, in Section 16(1), reads 'Every registered person shall, **subject to the conditions and restrictions as may be prescribed**'. These words indicate that the right to avail input tax credit is not an absolute right and conditions and restrictions may be prescribed for its availment. The contention of the applicant, thus, does not hold good.

10. In view of the foregoing, we pass the following Ruling:

R U L I N G

The Applicant is not entitled to pay the GST @ 18% with input tax credit as the services being offered by the Applicant are classified under a heading attracting GST @ 5%, without input tax credit.

(Harish Dharnia)
Member

(Dr.RaviPrasad.M.P.)
Member

Place : Bengaluru,
Date : 21.08.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Central Tax, Bangalore North Commissionerate, Bengaluru.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Asst. Commissioner, LVO - 20, Bengaluru-01.

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