

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
**GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai – 400010.**

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

**BEFORE THE BENCH OF**

- (1) Smt. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)  
(2) Shri. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAPFK6824P1ZG
Legal Name of Applicant		<b>Kutting Fusion Hospitality LLP</b>
Registered Address/Address provided while obtaining user id		Floor, 165, C Wing, Mittal Tower, Nariman Point, Mumbai, Maharashtra, 400021
Details of application		GST-ARA, Application No. 22 Dated 30.05.2019
Concerned officer		Division –VIII, Commissionerate Mumbai South
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Determination of rate applicable to provision of restaurant service under the provisions of GST law.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act
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”] by M/s. **Kutting Fusion Hospitality LLP**, the applicant, seeking an advance ruling in respect of the following questions.

1. **What would be the rate of tax applicable to the applicant providing restaurant services as per facts of the case mentioned?**

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further, henceforth for the purposes of this Advance Ruling, a reference to “GST Act” would mean CGST Act / MGST Act.

## 2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions of the applicant made vide 30.05.2019 is as under:-

- 2.1. The Cheaters', a restaurant operated by Applicant, is a restaurant located at Unit No.9B, Ground Floor, The ORB, J. W. Marriott Hotel, Next to Intl. Airport, Andheri East, Mumbai-400099 where they are planning to start the business of providing the services of serving food and beverages for consumption.
- 2.2 The planned restaurant shall be a part of a retail arcade which is owned and operated by M/s. Chalet Hotel Limited. This arcade is located at The ORB, JW Marriott Hotel, Next to Intl. Airport, Andheri East, Mumbai - 400099. M/s. Chalet Hotel Limited also operates a hotel under the brand name "JW Marriott" on the same plot as the arcade.
- 2.3. The hotel as well as the arcade are owned and operated by M/s. Chalet Hotel Limited. There is an inter-connectivity to the arcade from the hotel and vice versa via a private passageway between the hotel and the arcade. There is no need to exit the hotel premises to enter the arcade and vice versa as the main entry gate is common for both structures.
- 2.4. There are no facilities for residence or lodging in the arcade. All such services are provided only in the hotel premises which is the adjacent building to the arcade. JW Marriott hotel offers rooms for lodging and boarding which have a declared tariff above Rs.7500 per day.
- 2.5. **The first question raised by the applicant is "What would be the rate of tax applicable to the applicant providing restaurant services as per facts of the case?"**
  - 2.5.1 Applicant has reproduced the relevant portions of amended Section 7 of the CGST Act, 2017 for understanding the applicability of GST on their services -
  - 2.5.2 They have submitted that it is a well-established principle that food or beverages provided for consumption in a restaurant premises are a "supply". They have also submitted that as per Clause 6, Sub-clause (b) of Schedule II the supply of food or drink (other than alcoholic liquor for human consumption), which is supplied whether as a service or otherwise, for cash or other consideration, is a supply of services under GST Laws.
  - 2.5.3 Applicant has further reproduced the relevant entries in Sr. No. 7, Notification No. 11/2017-CT(Rate) dated 28th June, 2017 (as amended from time to time) and have stated that Sr. No. 7(iii) of Notification No. 11/2017-CT(Rate) provides that the GST rate on restaurant service shall be 18% if the restaurant is located in the premises of a hotel or other places offering accommodation services having a declared tariff of Rs. 7500 or more for any unit in such places. As per their interpretation, their restaurant shall be located in the premises of the arcade and not in the premises of the hotel. The arcade does not offer any accommodation or lodging and boarding services in any part of the establishment. Therefore, they believe that Sr. No. 7(iii) does not apply to their case.





2.5.4 They have also stated that Sr. No. 7(1) of the referred notification provides that the GST rate on restaurant service shall be 5% if the restaurant is not located in the premises of a hotel or other places offering accommodation services having a declared tariff of Rs. 7500 or more for any unit in such places. As per applicant's interpretation, this would mean that the rate shall be 5% for restaurants located in any other place other than those mentioned above. They say that since their restaurant is proposed to be operated from the arcade premises which does not offer any accommodation or lodging and boarding services, the GST rate applicable to their services shall be 5%.

**03. CONTENTION – AS PER THE CONCERNED OFFICER**

**The submissions of the jurisdictional officer made vide letter F. No. CGST/ MSD8R3/ Kutting \_Fusion/Advance Ruling/145/2019/13374 dated 13.11.2019 is as under:-**

- a. The restaurant operated by the applicant is in the same premises as that of the hotel, JW Marriot.
- b. The restaurant is a part and parcel of the JW Marriot Hotel/Hotel premises and cannot be treated as independent of JW Marriot.
- c. The conditions required, to be eligible for lower rate of GST i.e. 5%, are not fulfilled by the applicant.
- d. The applicant has already discharged GST liability @ 18% as is seen from their returns filed for the period July, 2017 to June, 2019. They have also availed ITC and utilized the same against their GST liability.

The jurisdictional officer has finally opined that the said rate of 18% is proper, legal and correct.

**04. HEARING**

Preliminary hearing in the matter was held on 14.11.2019. Sh. R.P. Mody, Authorized Representative, appeared along with Sh. Tanmay Modi, Authorized Representative and requested for admission of their application. Jurisdictional Officer, Ms. Samata Pilankar, Supdt. R-III, Division-VIII, Mumbai South Commissionerate, appeared and made written submissions.

The application was admitted and called for final hearing on 10.12.2019. Sh. R.P. Mody, Authorized Representative, appeared along with Sh. Tanmay Modi, Authorized Representative. The authorized representatives of the applicant orally submitted that the applicant's restaurant was primarily for the clientele of the hotel under the brand name "JW Marriott" being operated on the same plot. He also stated that the owner of the mall 'THE ORB' is looking to service the

customer base from the JW Marriot Hotel. Jurisdictional Officer, Ms. Samata Pilankar, Supdt. Range-III, Division-VIII, Mumbai South Commissionerate, also appeared.

## **05. OBSERVATIONS**

**5.1** We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional officer.

**5.2** We find that 'The Cheaters' restaurant, is situated in a retail arcade, owned and operated by M/s. Chalet Hotel Limited which also owns and operates a hotel under the brand name "JW Marriott" on the same plot. We also find that both, the JW Marriot Hotel and the applicant restaurant are located in the same premises having a common entry gate. We further find that there is an inter-connectivity to the arcade, where the applicant restaurant is situated, from the hotel and vice versa via a private passageway between the hotel and the arcade. There is no need to exit the hotel premises to enter the arcade and vice versa. Finally, we also take into account the oral submissions made by the applicant, during the course of the final hearing held on 12.12.2019, that the applicant's restaurant is primarily meant for the clientele of the hotel under the brand name "JW Marriott" being operated on the same plot. The applicant has stated that the owner of the mall 'THE ORB' is looking to primarily service the customers of JW Marriot Hotel who have booked rooms for lodging and boarding in the rooms which have a tariff of Rs. 7,500/- or more per unit/room per day.

**5.3** We agree with applicant that in the GST era, supplies of food and non-alcoholic beverages provided in a restaurant shall be classified as a supply of services and the provisions of the GST law shall apply to such supplies accordingly.

**5.4** As per Sr. No. 7(iii) of Notification No. 11/2017-CT(Rate) dated 28.06.2017, as amended, *supply of food or drinks in a restaurant for consumption within the restaurant premises or away from the restaurant premises, where the restaurant is located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes with a tariff of seven thousand five hundred rupees and above per unit/room per day or equivalent for any unit/room in the premises, the applicable rate of GST will be 18%.*

**5.5** In view of the above discussions, we have no hesitation in holding that the applicant restaurant is located in the same premises as JW Marriot Hotel having rooms with a tariff of seven thousand five hundred rupees and above, per unit/room per day or equivalent for any unit/room and applicant will be supplying food or drinks for consumption within the JW Marriot Hotel premises. Thus we are of the opinion that in view of the facts of the subject case, the applicant





must discharge its GST liability @ 18% (9% each of CGST and SGST) as per Sr.No. 7(iii) of Notification No. 11/2017-CT(Rate) dated 28.06.2017, as amended.

06. 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- 22/2019-20/B-

03

Mumbai, dt.

15/01/2020

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

**Question 1:-** What would be the rate of tax applicable to the applicant providing restaurant services as per facts of the case mentioned?

**Answer :-** Rate of tax applicable in the subject case is 18% GST (9% each of CGST and SGST).



← sf →  
**P. VINITHA SEKHAR**  
(MEMBER)

← sd →  
**A. A. CHAHURE**  
(MEMBER)

**Copy to:-**

1. The Applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

**CERTIFIED TRUE COPY**

  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

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