



**RAJASTHAN
AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE,
NEAR RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2022-23/19

Umesh Kumar Garg Joint Commissioner	:	Member (Central Tax)
M. S. Kavia Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Vyom Food Craft Private Limited Ground Floor and First Floor, 11 A-B, Shri Mahavir Swami GrahNirmanSahkariSamiti Limited, Sharma Colony, NandPuri, Swej Farm, Sodala, Jaipur, Rajasthan, 302019
GSTIN of the applicant	:	08AADCV4441Q1ZS
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised.	:	(a) Classification of any goods or services or both; (d) Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	06.09.2022
Present for the applicant	:	CA, Shuchi Sethi.
Date of Ruling	:	11.11.2022

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The applicant M/s Vyom Food Craft Private Limited Ground Floor and First Floor, 11 A-B, Shri Mahavir Swami GrahNirmanSahkariSamiti Limited, Sharma Colony, NandPuri, Swej Farm, Sodala, Jaipur, Rajasthan, 302019 (hereinafter the Applicant) being a registered person (GSTIN is 08AADCV4441Q1ZS) as per the declaration given by him in Form (ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority.

Further, The issue raised by M/s Vyom Food Craft Private Limited Ground Floor and First Floor, 11 A-B, Shri Mahavir Swami GrahNirmanSahkariSamiti Limited, Sharma Colony, NandPuri, Swej Farm, Sodala, Jaipur, Rajasthan, 302019 (hereinafter the Applicant) is as under: -

- (a) Classification of any goods or services or both; and
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid

A. SUBMISSION OF THE APPLICANT:(in brief)

M/s Vyom Food craft Private Limited (hereinafter referred to as “applicant”) is a chain of restaurant which offers various food items including cooked food, beverages and bakery items.

The major food items offered by the applicant in their menu are as follows:

S.N o.	Item Name
1.	Sandwiches / Burgers / Wraps / Continental Food
2.	Salads / Indian Food
3.	Milk Based Shakes / Beverages
4.	Non Milk Based Beverages
5.	Brownies
6.	Cakes / Pastries
9.	Bread/Pizza base/ Bun / Pav
7.	Cookies / Rusk
8.	Fox nut / Nachos

The applicant has a dedicated central kitchen for the preparation of food items and there are various eating joints under the brand name of applicant from where the food preparations are offered to the customers. The consumers only have access to such eating joints.

A substantial part of cooking process of majority food items are carried out at the central kitchen and the eating joints receive the pre-cooked or semi –cooked preparations from the kitchen in different forms, containers or packaging having a shelf life as applicable for the food item. The preparations may be sent to the outlets in packed form to be offered to the customers as such or to be further processed for offering the food items or dishes at the choice and desire of consumers. For example, the central kitchen procures the raw materials like flour, spices etc., at the central kitchen to be used for cooking of multiple items. The central kitchen gets the preparations ready in different forms, some of the examples are:

The central kitchen prepares some items like gravies etc. which are sent to the outlets for further cooking, mixing and preparing dishes to be offered to the consumers.

The central kitchen prepares some items like burger buns, bread loaf which are sent to the outlets and the outlets would use them to assemble/garnish the food items to offer dishes as per the choice of consumers.

The central kitchen prepares some food items like cakes on which the cooking process are carried out at the central kitchen and they are sent to the outlets for display and offering to consumers. The cakes may be further worked upon to prepare and display pastries at the outlets.

That the eating joints also have kitchen areas developed according to the requirements for offerings in the menu of the outlets. There are some outlets which offer an elaborate menu in the restaurant and they have a dedicated and fully equipped kitchen area wherein all facilities for cooking are available. The entity also has smaller outlets with a brief menu of limited food items out of the elaborate one and the kitchen area of such outlets is equipped accordingly with required apparatus.

That the kitchen area of the eating joint is also used for further cooking, assembling and garnishing process on the pre-cooked/frozen food received from the dedicated workshop to make it ready for offering to the customers. For instance, the eating joints receive pre-cooked preparations like the gravies, semi cooked sandwiches, and frozen food

etc. from the workshop and the dishes like pasta, sandwiches, burgers etc. are fully prepared at the kitchen area of eating joint. Fresh food is also cooked for the consumer at the kitchen of eating joint, whenever required and the kitchens have all the equipment and facilities required for cooking.

That the premises of the eating joints are air conditioned and well-designed with all the modern amenities for a good ambience including seating arrangement with modern furniture including chairs, tables and sofas, cutlery and other requisites at the tables, decorated walls and lighting, music and other infrastructure facilities for the comfort and enjoyment of customers. The premises have a kitchen area as described above and shelves and equipment for display of food items. The eating joints have staff designated for various roles where some manpower is exclusively assigned the role of preparation of food in kitchen area, some have been assigned an exclusive role of taking orders and serving, some are responsible for cleaning the tables and premises and some are responsible for overall management of the eating.

The eating joint is equipped to offer its services through following methods:

Dine In: Applicant is providing Casual Dining facility to its customers. Dine In is the category where customers visit the eating joint, have an access to look around the displayed food items available and the complete menu and choose to sit and consume it within the restaurant premises. Under this category, customers use the restaurant infrastructure for the consumption of food.

Take Away: Under this method, customers can visit the eating joint, avail of the infrastructure facilities, look around for the entire display of food items and complete menu available and opts to get the food packed for consume later at desired location as per their own convenience.

Delivery (Own or through Food Delivery Apps): Under this category, the customers are provided with a facility to place their orders over call, Whatsapp, Swiggy, Zomato or through any other mode of communication, which are then delivered directly to the respective address provided by them.

The applicant procures raw materials, equipments and machinery for preparation and display of food items, take premises on rent, incur expenses for designing of the premises as per standard infrastructure, repair and maintenance of the premises and the machinery, hiring of manpower for the designated roles and various other administrative expenses.

B Interpolation and understanding of applicant on question rose in brief

In this case applicant claimed that applicant is eligible to sought clarification from advance ruling in light of sub section (c) of section 95 & section 97(2) of CGST Act 2017,

Further applicant contended that the act carried out by them falls under Entry 6(b) of Schedule II and should be treated as supplies of services.

Applicant also stated that service supplied by them is restaurant service' other than at specified premises falls under the entry no 7(ii) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended and attracts 5% GST without ITC.

Applicant further quoted Circular No. 164 /20 /2021-GST dated 6.10.2021 under which clarity has been brought on the aspect of for 'Clarifications regarding applicable GST rates & exemptions on certain services' and it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under "restaurant service", as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

C. Question(s) on which advance ruling is sought

Whether the supply of food and beverages by the eating joints by way of following should be treated as supply of goods or supply of services?

Dine In

Take Away

Delivery

What should be the classification and applicable tax rate on the supply made by the applicant?

If the supply shall be treated as supply of goods, whether Input Tax Credit will be available to the applicant?

If the supply shall be treated as supply of services, whether Input Tax Credit will be available to the applicant?

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 06.09.2022. On behalf of the applicant CA, Shuchi Sethi (Authorised Representative) appeared for PH. During the PH, she reiterated the submissions already made in the application. Applicant further submitted written submission on dated 9.9.2022.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

In the matter, Deputy Commissioner, Circle H, Jaipur SGST Jaipur has submitted his comments which are as under:-

1) The supply of food by the entity partially or completely cooked in the central kitchen through or from the various eating joints would be covered by 'restaurant service' and the supply of all the items of food and beverages offered by the eating joints/central kitchen of applicant are classifiable under HSN 9963 under Sl. No. 7(ii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended time to time and are taxable at the rate of 5% (without ITC).

2) The classification and applicable tax rate on the supply made by the applicant?

The instant case supply made by the applicant is classifiable under Chapter, Section or Heading 9963 under Sl. No. 7(ii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended time to time and is taxable at the rate of 5% (without ITC).

3) if the supply shall be treated as supply of goods, whether Input Tax Credit will be available to the applicant - It is submitted that as the supply in the instant case will be treated as Supply of 'restaurant service' as per clause (b) of entry 6 of the Schedule II to section 7 of the CGST Act, 2017 therefore, it will attract 5% GST (2.5% CGST + 2.5% SGST) provided that credit of input tax charged on goods and services used in supplying the service has not been taken.

4) If the supply shall be treated as supply of services, whether Input Tax Credit will be available to the applicant?

As the supply in the instant case will be treated as Supply of 'restaurant service' as per clause (b) of entry 6 of the Schedule II to section 7 of the CGST Act, 2017 therefore, it will attract 5% GST (2.5% CGST + 2.5% SGST) provided that credit of input tax charged on goods and services used in supplying the service has not been taken. In this regard, it is submitted that supply to be made by the applicant is covered under "restaurant service", as defined in notification No. 11/2017- Central Tax (Rate) as amended and attract 5% GST (2.5% CGST + 2.5% SGST) provided that credit of input tax charged on goods and services used in supplying the service has not been taken. The aforesaid notification is prescribing rate with specific condition, no option is provided. Wherever the intention to provide option is there, it is clearly mentioned by providing multiple rates 'with ITC' and 'without ITC'. Thus, we find that applicant is not Quick Links entitled to take ITC as per condition laid down at Sl. No. 7(ii) of Notification No. 11/2017 - CT (Rate) dated 28.06.2

F. FINDINGS, ANALYSIS & CONCLUSION:

1) We have perused the records on file and gone through the facts of the case and the submissions made by the applicant as well as the department. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

2) As per written submission made by the applicant i.e M/s Vyom Food craft Private Limited (hereinafter referred to as "applicant"), is a chain of restaurant which offers various food items including cooked food, beverages and bakery items.

The question of law raised by the Applicant is -

- 1) Whether the supply of food and beverages by the eating joints by way of following should be treated as supply of goods or supply of services?
 - a. Dine In
 - b. Take Away
 - c. Delivery
- 2) What should be the classification and applicable tax rate on the supply made by the applicant?
- 3) If the supply shall be treated as supply of goods, whether Input Tax Credit will be available to the applicant?
- 4) If the supply shall be treated as supply of services, whether Input Tax Credit will be available to the applicant?

3) Applicant submitted a brief note in respect of fitment of case under advance rulings and tried to justify the fitness of application for advance ruling. It is relevant to mention here that the applicant filed his application for seeking advance ruling on 17.03.2022 and activities of supply, payment of GST and submission of GST returns taken place since long back and to interfere the matter which already taken place is out of preview of Advance Ruling and can only be decided by competent authority under which jurisdiction of GST paid and GST returns has been submitted.

4) We shall now examine the provisions of laws as laid down under the GST Act for the purposes of advance rulings. Chapter XVII of the GST Act comprising of Sections 95 is relevant provisions for advance ruling purposes.

(i) As per Section 95 of CGST Act, 2017; this authority shall decide on matters or on questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both **being undertaken or proposed to be undertaken**, by the applicant and "Authority" means the Authority for Advance Ruling, constituted under Section 96. Thus Section 95 allows this authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant itself. In this case, We find that the Applicant already taken place the supply in question, GST is being paid since implementation of GST law and monthly GST returns also being filed.

(ii) From the above-mentioned provision, it is seen that this authority is constituted to decide on matters or questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

(iii) We observe that purpose of Advance ruling is to provide certainty of tax liability in advance in relation to a future activity to be undertaken by the applicant and help the applicant in planning about GST liability on activities well in advance along with proper interpretation and understanding of tax laws. Advance rulings can be given only for a proposed transaction & matters related to qualify for advance ruling whether it will be undertaken or proposed to be undertaken. We also observe that advance ruling under GST can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant but the transactions on which GST is being paid are out of preview of advance ruling.

(iv) Moreover, on gone through the facts of the case, we observe that applicant filed their application before the Rajasthan Authority for Advance Ruling (RAAR) on **17.03.2022** i.e. much later from the discharging his GST liability on restaurant services supplied by him. We also find that clarification vides Circular No. 164 /20 /2021-GST dated 6.10.2021 has already been issued by the Government and Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended is very much clear on the issue. We observe that the applicant is well aware about the notification and circular and discharging his tax liability in accordance to them.

(v) We observe that applicant motto is to find out whether the mechanism opted by him for payment of GST on said service is right or wrong, which is against the spirit of advance ruling.

(vi) From the above definition, it is very much clear that the scope of the ruling for Authority for Advance Ruling (AAR) is limited to the transactions being undertaken or proposed to be undertaken on the matters which are not sorted out. In the instant case, the application seeking advance ruling was filed on **17.03.2022** before the RAAR with respect to supplies already being undertaken, GST being paid and GST returns has been submitted. Hence, the case is out of the purview of the Advance Ruling.

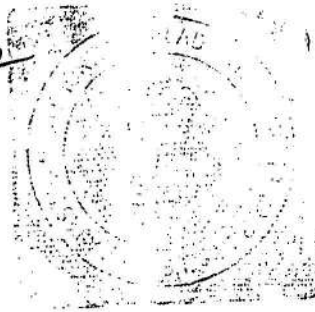
In view of the foregoing, without going into the merits of the case, we rule as under: -

RULING

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

The subject application for advance ruling made by the applicant is not maintainable and hereby rejected under the provisions of the GST Act, 2017.


11.11.2022
(Umesh Kumar Garg)
MEMBER
CENTRAL TAX




11/11/2022
(M. S. Kavia)
MEMBER
STATE TAX

SPEED POST

M/s Vyom Food Craft Private Limited Ground Floor and First Floor, 11 A-B, Shri Mahavir Swami Grah Nirman Sahkari Samiti Limited, Sharma Colony, NandPuri, Swej Farm, Sodala, Jaipur, Rajasthan, 302019

F.No. . RAJ/AAR/2022-23/...225, 239 ,

Date: 11/11/2022

Copy to:-

1. The Chief Commissioner, CGST and Central Excise, Jaipur Zone, NCRB, Statue Circle, Jaipur-302005 (Raj.).
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Pr. Commissioner, Central Tax, CGST and Central Excise Commissionerate, Jaipur (Rajasthan).
4. The Deputy Commissioner, Circle H, Jaipur SGST Jaipur).

