

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)
**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE
STATE OF UTTARAKHAND
(Goods and Services Tax)**

Present:

श्री अनुराग मिश्रा(सदस्य)

Shri Anurag Mishra (Member)

श्री रामेश्वर मीणा (सदस्य)

Shri Rameshvar Meena (Member)

The 11th day of April, 2022

अग्रिम विनिर्णय संख्या. 03/2022-23

Ruling No: 03/2022-23

in

आवेदन संख्या . 9/2021-22

Application No: - 9/2021-22

1	आवेदक Applicant	M/s AS Bharat Refinery (India) Private Limited, F-01, Prakash City, Bajpur Road, Kashipur, Uttarakhand- 244713.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. Hemant Singhal, Chartered Accountant
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Mrs. Preeti Manral, Deputy Commissioner, SGST-Dehradun
6	आवेदन प्राप्ति की तिथि Date of receipt of application	22.01.2022
7	सुनवाई की तिथि Date of Personal Hearing	22.02.2022 (Through video Conferencing)

नोट: इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

Note: An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND

PROCEEDINGS

1. This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s AS Bharat Refinery (India) Private Limited, F-01, Prakash City, Bajpur Road, Kashipur, Udham Singh Nagar, Uttarakhand- 244713 (herein after referred to as the "applicant"), a private limited company incorporated under the Companies Act, 2013 and registered with GSTIN- 05AAVCA0824G1ZR under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. In the application dated 22.01.2022, the applicant submitted that:

- a) they are engaged in manufacturing of Fortified Rice Kernels- Premix (herein after referred to as the 'FRK') and classifying under Heading No. 1904 90 90 'Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals[other than maize(corn)] in grain form or in the form of flaked or other worked grains (except flour, groats and meal), precooked or otherwise prepared, not elsewhere specified or included', wherein the applicable GST rate is 18%;
- b) vide Notification No. 11/2021-CT (R) dated 30.09.2021, the principal exemption Notification no. 39/2017- CT (R) dated 18.10.2017, was amended, wherein the rate of GST on FRK was reduced from 18% to 5%, when supplied for ICDS or similar schemes of the Central/ State Government;
- c) vide letters dated 03.01.2022 and 13.01.2022, the Government of Uttarakhand, instructed them to supply FRK, to 79 listed rice mills for supply under the Public Distribution Schemes.

3. In view of the above facts, 'the applicant' is seeking an advance ruling on the following issue:

Whether the applicant is eligible for concessional rate of tax of 5% under the exemption notification no. 39/2017 CT (R) with effect from 1 Oct 2021?

3. At the outset, we would like to state 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 provisions under the SGST Act.

4. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (a) Classification of any goods or services or both
- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

5.2 In the present case, the applicant has sought advance ruling on the issue of applicability of a notification issued under the provisions of this Act, therefore, in terms of said Section 97(2) (b) of CGST/SGST Act, 2017, the present application is hereby admitted.

6. Accordingly opportunity of personal hearing was granted to the applicant on 22.02.2022. Sh. Hemant Singhal, Chartered Accountant, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Ms. Preeti Manral, Deputy Commissioner, SGST-Dehradun, Concerned Officer from State Authority was also present during the hearing proceedings. She presented the facts and requested the authority to decide the case on merits.

7. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AAVCA0824G1ZR. Before proceeding in the present case, we would first go through the submissions filed by the applicant and the same is summarized as under:

- (a) In order to address anaemia and micro-nutrient deficiency in the country, the Government of India approved Centrally Sponsored Pilot Scheme on "Fortification of Rice & its Distribution under Public Distribution System" for a period of 3 years beginning in 2019-20. Fifteen State Governments including Uttarakhand have consented and identified their respective Districts for implementation of the Pilot Scheme. FRK is purchased by various Rice mills in the region for supply of Fortified Rice under the schemes.
- (b) As per Notification No. 39/2017- CT (R) dated 18.10.2017, as amended, the rate of GST on FRK is 5% if the Fortified Rice Kernel (Premix) is supplied for ICDS or similar scheme duly approved by the Central Government or any State Government and when the supplier of such goods produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such goods have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within a period of five

months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central tax or jurisdictional commissioner of the State tax, or jurisdictional officer of the Union Territory Tax as the case maybe, may allow in this regard.

(c) In terms of the referred notification, operational guidelines of the pilot scheme, empanelled list and the correspondences with the government, it is concluded that the supply by the applicant to various rice millers is for the purpose of PDS scheme approved by the Central government and Uttarakhand Government and hence, the applicant is eligible for concessional rate of tax on supply of FRK to Rice mills.

8. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed for our consideration in the application. Now we proceed to decide the issue in hand.

8.2 Before dwelling into the issue, Notification No. 39/2017-C.T. (Rate) dated 18-10-2017 has to be examined carefully. For a clear perspective, the same is reproduced as under:

"In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the central tax rate of 2.5 per cent on intra-State supplies of goods, the description of which is specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2), subject to the condition specified in column (4) of the Table below, namely :-

TABLE

Sl. No	Tariff item, sub-heading, heading or Chapter	Description of Goods	Condition
(1)	(2)	(3)	(4)
1.	19 or 21	<p>(a) Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;</p> <p>(b) Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the</p>	When the supplier of such goods produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such goods have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within a period of five months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central tax or jurisdictional commissioner of the State tax, or jurisdictional officer of the Union Territory Tax as the case may be, may

	Central Government or any State Government.	allow in this regard.
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8.3 Upon perusal of the above said Notification, we find that in the Notification the goods namely **"Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government"** have been taxed at concessional rate of tax, only on fulfillment of the condition **"When the supplier of such goods produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory concerned to the effect that such goods have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, within a period of five months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central tax or jurisdictional commissioner of the State tax, or jurisdictional officer of the, Union Territory Tax as the case may be, may allow in this regard"**.

8.3.2 From the above we are of the opinion that since under the head **"Description of Goods"** at Column (3), the use of words **"Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government"** signifies that the goods in question must be supplied for ICDS or similar scheme duly approved by the Central Government or any State Government, which clearly means that the supplier must be aware beforehand that the particular quantity/ lot/ batch of said goods are intended for supply for ICDS or similar scheme. We further opine that the use of words **"..... supply for ICDS or similar scheme...."** in the Notification is a pre-supply condition to stop the misuse of the exemption at the initial stage i.e. at the time of supply and the condition mandated at Column (4) of the said Notification, is a post-supply condition, to be complied by the supplier and is a end use compliance.

8.3.3 The use of words **"...that such goods have been distributed free to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned..."** signifies that the agency entrusted with the free distribution of the said goods to the economically weaker sections of the society under a programme, keeps a track record and ensure that said goods (food preparation) have been distributed to the actual beneficiary.

8.4 We observe that in the instant case, as per the applicant's own admission they have to supply the FRK to the Rice Millers, enlisted in the letter dated 03.01.2022 and not to the agency (ies) entrusted by the Government for free distribution to the economically weaker sections of the society. From the above letter, it appears that the Rice Millers referred to in the letter dated 03.01.2022 have to supply, such goods (food preparation) to the agency (ies) entrusted by the Government in this regard and not the applicant.

8.4.2 We further find that in the letter dated 13.01.2022 issued by the अपर आयुक्त, कार्यालय आयुक्त, खाद्य, नागरिक आपूर्ति उपभोक्ता मामले विभाग उत्तराखंड, खाद्य भवन, मसूरी बाइपैस, रिंग रोड, लाडपुर, देहरादून to सम्भागीय खाद्य नियंत्रक, गड़वाल/कुमायूँ सम्भाग, देहरादून/हल्द्वानी, referred to by the applicant, following norms, terms and condition have been specified. Relevant portions are reproduced below;

“इस सम्बन्ध में आपको पूर्व में भी फोर्टिफाइड चावल तैयार किये जाने तथा इस वितरण करने हेतु दिशा-निर्देश जारी किये गये हैं तथा खरीफ-खरीद सत्र 2021-22 के अन्तर्गत चावल मिलर्स के साथ किये जाने वाले अनुबन्ध में फोर्टिफाइड चावल की आपूर्ति हेतु चावल मिलर्स से किये जाने वाले अनुबन्ध पत्र में ब्लैडिंग यूनिट / अपेक्षित मशीनरी लगाने एवं राज्य सरकार की मांग के अनुसार फोर्टिफाइड चावल उपलब्ध कराने हेतु कार्यवाही करने के निर्देश जारी किये गये हैं...

3- फोर्टिफाइड चावल के वितरण हेतु चावल मिलर्स को खरीफ-खरीद सत्र 2021-22 हेतु हलिंग किये जाने के लिये अनुबन्ध पत्र में ब्लैडिंग यूनिट / अन्य उपकरण लगाने व राज्य सरकार की मांग पर फोर्टिफाइड चावल अनिवार्यतः दिये जाने का स्पष्ट उल्लेख किया जायेगा।

4- फोर्टिफाइड चावल हेतु राज्य सरकार व भारत सरकार के मध्य हुये अनुबन्ध के अनुसार कस्टम मिल्ड चावल के बोरो में पृथक से (+F) Logo तथा बोरो की पैकिंग के समय बोरो के मुँह पर रेक्सीन स्लिप पर अंकित की जायेगी।”

8.4.3 We observe that it is only the Rice Millers i.e. चावल मिलर्स, who has to supply ‘such goods (food preparation)’ and all the conditions enumerated in the above said letters have to be complied by the चावल मिलर्स, hence at Para 3 it has been mentioned that “फोर्टिफाइड चावल के वितरण हेतु चावल मिलर्स को खरीफ-खरीद सत्र 2021-22 हेतु हलिंग किये जाने के लिये अनुबन्ध पत्र में ब्लैडिंग यूनिट / अन्य उपकरण लगाने व राज्य सरकार की मांग पर फोर्टिफाइड चावल अनिवार्यतः दिये जाने का स्पष्ट उल्लेख किया जायेगा।”. Even the special packaging as mandated therein with the Logo etc. has to be undertaken at the Rice Millers, manufacturing premises and not at the applicant’s premises.

8.4.4 Further, at Para 8 and 9 it has been mandated as under:

“8- प्रत्येक चावल मिलों में जहां पर फोर्टिफाइड चावल निर्मित होगा तथा उचित दर विक्रेताओं की दुकान पर फोर्टिफाइड चावल का नियमानुसार नमूना लेकर NABL द्वारा मान्यता प्राप्त लैब से परीक्षण कराया जाना अनिवार्य होगा।

9-मिलों में भण्डारित स्टॉक से भी 10 प्रतिशत मात्रा के नमूने तिमाही रूप से आहरित कर विश्लेषण कराये जायेंगे।”

8.4.5 From the above it is also clear that even the sample has to be taken from the Rice Mills, where the fortified Rice is being manufactured and not from the premises of the applicant.

8.4.6 From the above facts on record, we observe that the designated Rice Millers have been requisitioned for supply of the फोर्टिफाइड चावल and the applicant has neither been supplying the said goods for free distribution to the economically weaker sections of the society under a programme duly approved by the Central Government or the State Government concerned, nor they are into final supply of said goods in terms of Notification No. 39/2017-C.T. (Rate) dated 18.10.2017.

8.5 In view of the above discussions, we hold that the applicant is not eligible for concessional rate of tax of 5% under the exemption Notification No. 39/2017-C.T. (Rate) dated 18.10.2017.

8.6 Further, we find that the applicant has cited the Advance Ruling dated 21.10.2021 in the case of M/s Rasi Nutri Foods, passed by the Authority for Advance Ruling, Tamil Nadu, however, we observe that the facts and circumstances of the case of M/s Rasi Nutri Foods, are different from the instant case, in as much as M/s Rashi Nutri Foods, raised invoices to the Tamil Nadu Civil Supplies Corporation, which had been entrusted upon implementation of distribution of Fortified Rice under the Public Distribution System and in the instant case the applicant is supplying FRK to different Rice Millers and not to the organization/agency(ies) which has/have been entrusted for free distribution to the economically weaker sections of the society, under a program duly approved by the Central Government or the State Government.

9 In view of the discussions held above, we rule as under:

RULING

Applicant is not eligible for concessional rate of tax of 5% under the exemption Notification No. 39/2017-Central Tax (Rate) dated 18.10.2017.


ANURAG MISHRA
(MEMBER)


RAMESHVAR MEENA
(MEMBER)

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F. No.: 9 /S.Tax-UKD/GST/Sec-97/2021-22/DDN/

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/Date: 12/04/2022

Copy to:

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Range-III, Kashipur for information and necessary action.
5. The Assistant Commissioner Sec-02, SGST, Kashipur for information and necessary action.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.