

**AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH**

**4, Vibhuti Khand, Gomti Nagar, Lucknow**

**PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S. 98 OF  
THE GOODS AND SERVICES TAX ACT, 2017**

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 03.04.2019 from M/s Rajeev Kumar Garg, Lucknow, Uttar Pradesh – Order-Reg.

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1) M/s Rajeev Kumar Garg, 14/310, Madan Mohan Gate, Civil Lines, Agra, Uttar Pradesh, 282002 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AGVPG1061E1ZF.

2) The applicant is engaged in General Minor Units (GMU) at Railway Platforms at which counter sale of packed food items, drink and cooked items is done.

3) The Applicant has submitted application for Advance Ruling dated 03.04.2019 enclosing duly filled Form ARA-01(the application form for Advance Ruling).along with annexure and attachment.

4) The Applicant in his application sought clarification and Advance Ruling as follows: –

a) Whether supply of food items at GMUs (General Minor Units) at Railway Platforms which include only counter sale of packed food items, drinks and cooked item shall be treated as "Sale of Goods" or "Sale of Services"?

b)If it is sale of services, whether the whole revenue shall be taxed @ 5% without ITC under serial no. 7(ia) of notification no. 11/2017-CT (Rate) dated 28.06.2017 or assessee can opt to pay tax @ 18% with ITC under serial no. 7(ix) of that notification.

c) If the assessee pays the taxes @ 5% under serial no. 7(ia), whether assessee can claim the Input Tax Credit (ITC) of GST paid on license fees to Indian Railway or IRCTC.

d) If answer to question (c) is negative. What will be the consequences for wrong availing of ITC?

5) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter, which were received in the office vide letter C. No. V(1)Misc. Corres./R-IX/Agra/01/2019/87 dated 19/05/19.

6) The applicant was granted a personal hearing on 22.05.2019. Shri Gaurav Goyal, CA and Shri Amit Agarwal, Advocate, Authorized representatives on behalf of applicant appeared for hearing.

During the PH, they stated that they would like to submit certain documents in support of their case, which was allowed by the Authority and the same was submitted vide letter dated 21/05/2019. They requested to consider the said submission while deciding the case.

#### **DISCUSSION AND FINDING**

7) We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the questions sought by the applicant are-

a) Whether supply of food items at GMUs (General Minor Units) at railway platforms which include only counter sale of packed food items, drinks and cooked item shall be treated as "**Sale of Goods**" or "**Sale of Services**"?

b) If it is sale of services, whether the whole revenue shall be taxed @ 5% without ITC under serial no. 7(ia) of notification no. 11/2017-CT (Rate) dated 28.06.2017 or assessee can opt to pay tax @ 18% with ITC under serial no. 7(ix) of that notification.

c) If the assessee pays the taxes @ 5% under serial no. 7(ia), whether assessee can claim the Input Tax Credit (ITC) of GST paid on license fees to



Indian Railway or IRCTC.

d) If answer to question (c) is negative. What will be the consequences for wrong availing of ITC?

8) The Applicant in its application submitted the details of the services are as follows:-

Applicant has been allotted "General Minor Units" (GMUs) at Agra Cantt, Agra Fort, Mathura, Saharanpur, Tundla, Firozabad, & Etawah Railway stations by Indian Railway.

At these GMU, they are allowed to sale packed food items like namkeen, chips, biscuits, cake, cold drinks, juice and water. Besides these packed items, counter sale of cooked items like Samosha, Kachori, Bread-cutlet and Veg biryani is also done. These cooked items are not prepared at GMU stalls because they are not permitted to do this. They prepare these cooked items in other place.

These are the takeaways counters and no sittings space is allowed at these places. Customers purchase these food items from these takeaway counters. No services like sitting space, air conditioning, serving of food or any other facility besides selling of food items are made available at these GMUs.

9) As per the understanding of the applicant, in its submission, applicant opined that the supply at GMUs should be considered as 'supply of goods' not as 'supply of services'. Therefore, change in notification No. 11/2017- CT should not be applicable on them. The reason according to the applicant is that they are making the counter sale of food items only. No services are being provided at these minor units as provided in case of major units like fat foods units, food plaza & pantry car.

12) We have considered the submissions made by the applicant in their application for advance ruling, additional submission at the time of personal hearing and as well as views of the Jurisdictional office on the subject. The first issue to be decided in this case is whether supply of food items at GMUs (General Minor Units) at railway platforms which include only counter sale of

packed food items, drinks and cooked item shall be treated as "Sale of Goods" or "Sale of Services", it has been observed From Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, (as amended) Notification No. 13/2018-Central Tax(Rate) dated 26.07.2018, it is evident that the supply made/to be made by the taxpayer as detailed in their application for advance ruling, falls under Chapter Heading 9963 (Accommodation, Food and Beverage Services) with the description of Service mentioned at SI. No. 7(ia) of the table, *"Supply, of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd., or their licensees, whether in trains or at platforms."* as a service. From the above notifications it is evident that the activity carried out by the applicant is *"supply of services"*.

13) Now, coming to the second issue raised by the applicant, which is valid only if the activity is supply of services, which is already ruled by the Authority, then the issue is to whether services are to be taxed @ 5% without Input Tax Credit (ITC) under Serial No. 7(ia) of Notification no. 11/2017-CT (Rate) or applicant can opt to pay tax @ 18% with ITC under serial no. 7(ix) of the same notification. On this issue letter F. No. 354/03/2018-TRU dated 31/03/2018 of the OSD (TRU), Ministry of Finance, Department of Revenue (Central Board of Excise and Customs) (Tax Research Unit) needs to be taken into consideration which clarifies the issue & is quoted below:-

*"With a view to remove any doubt or uncertainty in the matter and bring uniformity in the rate of GST applicable for all kinds of supply of food and drinks made available in trains, platforms or stations, it is clarified with the approval of GST Implementation Committee, that the GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms (static units), will be 5% without ITC".*

From the above, it is clear that the services will be taxed @ 5% without ICT.

14) In the third question, applicant wants to clarify whether they can claim ICT of GST paid on license fee to Indian railways or IRTC, if they are paying taxes @ 5% under serial No. 7 (ia). Rate of Central Tax levied at the rate as mentioned in



corresponding entry in column (4) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 read with Notification No. 13/2018-Central Tax (Rate) dated 26.07.2018 have been prescribed subject to conditions as specified in the corresponding entry in column (5) of the table i.e. *"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)]"*. (Explanation No. (iv)): Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,- (a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and (b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder).

Hence, Input tax credit of tax paid or deemed to have been paid appears not to be admissible.

15) As for the fourth part of the question is concerned it is out of the purview of the mandate of the Advance Ruling U/s 95 (a) which provides that:- *"advance ruling" 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.*

In view of the above, both the members unanimously rule as under;

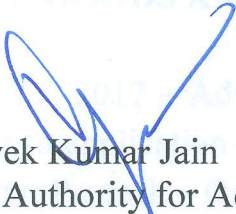
### **RULING**


Question 1:- Supply of Food items at GMUs (General Minor Units) at railway platforms which includes only counter sale of packed food items, drinks and cooked item shall be treated as *'Supply of Services'*.

Question 2:- Whole revenue shall be taxed @ 5% without ITC under serial No. 7(ia) of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.

Question 3:- Applicant cannot claim the Input Tax Credit of GST paid on license fees to Indian railway or IRCTC.

Question 4:- Question raised is out of purview of the mandate of Advance Ruling U/s 95(a).

  
Vivek Kumar Jain  
Member of Authority for Advance  
Ruling

  
Sanjay Kumar Pathak  
Member of Authority for Advance  
Ruling

To,

M/s Rajeev Kumar Garg  
14/310, Madan Mohan Gate,  
Civil Lines, Agra, U.P., 282002.

**AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH**

Order No. 32

Date: 02/06/19

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & CX, Agra, Uttar Pradesh.
4. The Deputy Commissioner, CGST & Central Excise, Division-II, Agra, Uttar Pradesh;
- ✓ 5. Through the Additional Commissioner, Commercial Tax, Agra, Uttar Pradesh to jurisdictional tax assessing officers.