

**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 68/ 2019
Dated: 21st September,2019**

Present:

- | | | |
|----|---|------------------------------|
| 1. | Sri. Harish Dharnia,
Addl. Commissioner of Central Tax | Member (Central Tax) |
| 2. | Dr. Ravi Prasad M.P.
Joint Commissioner of
Commercial Taxes | Member (State Tax) |

1.	Name and address of the applicant	M/s HATSUN AGRO PRODUCT LTD Assessment No. 47/4, Sheeghalli Village, Yeshwanthapura Hobli, Bengaluru North Taluk, Bengaluru -5600112
2.	GSTIN or User ID	29AAACH0945G1ZP
3.	Date of filing of Form GST ARA-01	10.10.2018
4.	Represented by	Sri Harish Bindumadhavan, Advocate
5.	Jurisdictional Authority - Centre	Commissioner of Central tax, Bangalore-South.
6.	Jurisdictional Authority - State	
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN SBIN18102900020993 dated 04.10.2018 2. Rs.5,000-00 under KGST Act vide CIN SBIN18102900020993 dated 04.10.2018

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

1. M/s Hatsun Agro Product Limited, (called as the 'applicant' hereinafter), having GSTIN number 29AAACH0945G1ZP, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a private limited company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following questions:

- a) Whether the supply of ice creams, chocolates, ice cream cakes, and pizza cakes in an IBACO outlet can be classified as a composite supply defined under section 2(30) of the CGST Act, 2017 and section 2(30) of the KGST Act, 2017, wherein the principal supply is the supply of goods namely the ice cream and other products while the services supplied namely the air conditioned place, place to sit, the service of mixing various ice creams being naturally bundled in the ordinary course of business?
- b) Whether the said supply will be covered under serial no. 6(b) of schedule II of CGST Act and serial no. 6(b) of Schedule II of Karnataka GST Act? Serial no.6(b) deems the following composite supply as supply of service;
- c) Whether the said supply will be classified under chapter "9963" and chargeable to 5% GST rate in accordance with serial no. (ii) of Notification No. 46/2017 dated 14.11.2017 – Central Tax (Rate) read with serial no. 7(iv) of Notification No.11/2017 dated 28.06.2017 and similar notification under KGST Act?

3. The applicant furnishes some facts relevant to the stated activity:

a. The applicant states that they are a listed company engaged in the business of producing and marketing of dairy products viz., Milk, Curd, Butter, Paneer, Ghee, Skimmed Milk Powder, Dairy Whitener, Pizza and Ice creams. The applicant operates under brands namely "ARUN" and "IBACO" in the Ice Cream segment, "AROKYA" in milk and curd segment, and "HATSUN" in Curd, Skimmed Milk Powder, Dairy Whitener, Ghee, Butter, Paneer, Lassi and flavoured Milk and "SANTOSA" in Cattle Feed and "OYALO" in Pizza, and all their brands are leading brands in South India and enjoy continued patronage from the customers for more than three decades.

b. The applicant states that "IBACO" is one of the premium brands of the applicant in their Ice Cream segment and has been in existence since 2012. IBACO has its presence in various States. It offers wide range of exotic ice cream flavours.

c. The applicant further submits that IBACO outlets are air conditioned. In these outlets the applicant ensures proper festive ambience to the customers. Here the ice creams are not sold as such in packaged condition, instead ice cream is prepared depending on the choice of the customer with the ice creams and toppings available in the outlet. Further, ice cream cakes and chocolates are packed as per the choice of the customer.

d. The applicant submits that the customer has the option to choose from various combinations and toppings such as chocolate buttons, chocolate sauce, chocolate fudge, assorted nuts, strawberry sauce, roasted badam nuts, dark cherry, mango chunks, waffle fan, etc. available in the outlet. The applicant also submits that IBACO offers ice creams in various format viz., Ice cream Cakes, Signature Cones, Sundaes, Ice cream bars, to the customers depending upon their choice of interest.

e. The selected ice cream mix is served in cups and cones in IBACO outlet as desired by the customer and the billing is done based on the total weight of the ice creams along with toppings selected by the customers. With about 45 varieties of ice creams and about 40 varieties of toppings, customers can make more than 1000 different varieties of ice cream sundaes as per his choice from the above.

f. The applicant submits that ice cream sold/served at IBACO outlets are not bought and sold as such. The ice creams at IBACO outlets are different from the normal packaged ice creams which are sold by other players in the ice cream segment.

g. The applicant submits that ice creams sold at IBACO outlets are also not covered by the Legal Metrology Act i.e. Ice creams sold at IBACO outlets are not subject to MRP since they are not sold in retail package form. Infact the applicant themselves sell ice cream through their other brand "ARUN" in a packed condition at MRP price through their franchisee outlets.

h. In addition to ice creams, the applicant also serves / supplies chocolates and ice cream cakes at IBACO outlets. The said cakes and chocolates are not pre-packed and hence not covered by Legal Metrology Act.

i. There are 15 varieties of chocolate offerings at IBACO outlets. The packages of chocolates are custom made to the choice and count of customer.

j. Cakes at IBACO outlets are of two types, cake based ice cream cake and pizza based ice cream cakes. The same shall have cake or pizza as a base and standard mix of ice creams on it.

k. Further, the varieties of ice creams artisan cakes are made available such as Butterscotch, Almond Amore, Choco Vanilla Chateau, Mango Litchi

Medley, Choco-Vanilla delight, Mango Italian Fiesta, Choco-Caramel Waltz, etc.

4. The business model of IBACO, as per the submission of the applicant, is as under:

To demonstrate the flow of process on sale of an ice cream or ice cream cakes and chocolates, the applicant summarises the process with schedules to support:

- a. Under IBACO brand the applicant is engaged in selling customized ice creams, chocolates and ice cream cakes. Once the customer enters the IBACO outlet, there is a display freezer with various varieties of ice creams, chocolates, ice cream cakes and Pizza cakes with name tags giving details of flavours like chocolate, Vanilla, Butterscotch among various other flavours. Based on the said options, the customer shall be at the liberty of choosing various combinations as they feel free. Apart from the cakes displayed in freezer, IBACO outlets also undertake to supply custom made artisan cakes.
- b. The customer is free to have the taste of ice creams of his choice for selecting his order. After tasting, the customer shall decide on the choice of ice cream and then place the order. The said choices would be served by the IBACO outlet to the customer in cup/ cone or bar depending on the choice of the customer.
- c. Now the customer moves to the toppings section, wherein the customer is greeted with various choices like chocolate buttons, chocolate sauce, chocolate fudge, assorted nuts, strawberry sauce, etc. Based on the choices, the customer decides the combination.
- d. Once the final combination is ready, the combination is weighed and the customer is billed on total weight of the ice cream along with the toppings selected by the customer. Based on the weight and based on the price, the customer is charged along with GST.
- e. Once the customer has discharged the bill, the customer can enjoy the ice cream at the air conditioned outlet using the seating facility provided by the applicant or is at liberty to take home the ice cream.
- f. With respect to ice cream cakes, the applicant submits that the ice cream cake selected is packed with special gel pad to retain the ice cream cake in frozen condition.
- g. The applicant submits that based on the aforesaid process, it is very clear and an apparent distinction can be seen that the IBACO outlet is completely different from a normal ice cream shop selling packed ice creams. The applicant also submits that they not only sell ice creams but also provide services like scooping of ice cream, mixing of toppings,

servicing of ice cream, seating facility, air conditioning facility, drinking water facility, provision of dust bin and tissue papers, etc. This gives the customer a good ambience and overall different experience vis-a vis compared to a normal ice cream parlour. Similar to the aforesaid process the ice cream cakes are also sold to customers in a similar manner, where the customer provides various customizations of combination of ice creams.

5. The applicant makes the following submissions in relation to the questions on hand:

5.1 The supply made by IBACO is a composite supply:

5.1.1. The applicant submits that the consideration charged to customer for ice cream is a consolidated charge for following supplies:

- a. Ice cream or a mix of ice creams
- b. Service charges for mixing the toppings with ice cream as desired by customer
- c. Service charges for serving the ice cream in cup or cone or ice cream bar as desired by the customer
- d. air conditioned seating facility provided to customers
- e. Drinking water facility, provision of tissue papers and dustbin.

Similarly the consideration charged for chocolates, ice cream cakes and pizza cakes at IBACO outlets also includes the service charges, air-conditioned seating facility and provision of drinking water and tissue papers and dustbin.

5.1.2. Thus, two or more goods and/or services are combined in supplies made by IBACO outlets leading to classification as composite supply to determine tax liability.

The applicant compares the supplies made by them with definition of composite supply to ascertain whether the said supplies would qualify as composition supplies in the table given below:

S.No.	Condition for composite supply	IBACO business model	Fulfilment of condition
1	Supply consists of two or more taxable supplies	Supplies made by IBACO as brought out above are all taxable supplies. Also two or more	Fulfilled

		supplies are involved in supply of ice cream and cakes	
2	Supplies should be naturally bundled and in conjunction with each other	Mixing of toppings with ice cream to give it a new flavour is the uniqueness of IBACO. Services such as mixing of ice creams and toppings, providing seating facility etc., are in connection with the supply of ice cream. Such services will not exist if there is no supply of ice cream. The said services are connected to and dependent on supply of ice cream. Its dependency proves that such services are naturally bundled with supply of ice cream. Similar analogy applies for supply of chocolates and cakes	Fulfilled
3	One among the multiple supplies should be the principal supply	As the supply of services such as seating place, serving, etc. will not exist without supply of ice cream or cake. Thus the predominant element of supply becomes supply of ice cream or cake, as the case may be.	Fulfilled

5.1.3. The applicant submits that it is clear from the above analysis that supplies made by IBACO outlets are a composite supply, and not a mixed supply.

5.2 The applicant submits that when two or more supplies of goods or services are supplied as composite supply, tax liability needs to be arrived as per section 8 of the CGST Act.

5.2.1. In line with the provisions contained in clause (a) of section 8, the composite supply shall be treated as supply of its principal supply and the tax rate applicable for principal supply shall be applicable for composite supply.

5.2.2. As per the analysis made above, principal supply shall be supply of ice cream or chocolate or cake, as the case may be, i.e., the principal supply is supply of goods.

5.2.3. However, entry 6 of Schedule II of CGST Act deems certain composite supply to be supply of services irrespective of its principal supply. From the above, it is clear that in a composite supply where supply of food and supply of services are naturally bundled, irrespective of its principal supply, the said composite supply shall be deemed to be a supply of services. Hence, though the principal supply of supplies of IBACO outlets is ice cream or cake, the same shall be deemed to be supply of services. The applicant has referred to an article published in ICAI publication in support of this contention. Further, the applicant states that the above contention also includes the take-away, home delivery, etc.

5.3 Regarding the classification of composite supply made by IBACO, the applicant states that for the above mentioned services as derived, GST rate of 18% is applicable as per entry no. 7(iv) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and with effect from 15th November, 2017, Entry No.7 (iv) of the above Notification is amended vide entry No. (ii) of Notification No. 46/2017 dated 14.11.2017 – Central Tax (Rate) dated 14.11.2017 prescribing a tax rate of 2.5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken. Therefore, with effect from 15th November, 2017, the applicant has the option to levy GST rate of 5% on its ice cream and cake supplies provided it does not avail any input tax credit on goods and services.

6. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri. Harish, Advocate, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

6.1 The transaction of the applicant is examined and found that the applicant is supplying ice cream and other items of food which are made to order along with certain services. Hence the applicant is supplying both

services and goods and they are naturally bundled.

6.2 Clause (30) of Section 2 of the Central Goods and Services Tax, 2017 defines the composite supply as under:

"(30) 'composite supply' means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"

Since the supplies made by the applicant in IBACO outlets involve both supplies of goods and services, with one of them as principal supply, the same has to be considered as a composite supply.

6.3 Entry No. 6 of the Schedule 2 to the Central Goods and Services Tax Act, 2017 reads as under:

"6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) 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 any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration."

By virtue of the above provision, the composite supply of goods being food or any other article for human consumption or any drink, where supply or service is for a consideration, then such composite supply shall be treated as a supply of services. Since the applicant is supplying ice creams, which are items for human consumption, by way of or as part of any service or in any other manner, the composite supply has to be treated as a supply of services.

6.4. Entry No.7 (i) of the Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 46/2017 - Central Tax (Rate) dated 14.11.2017 reads as under:

(3)	(4)	(5)
(i) Supply, by way of or part of any service or in any other manner whatsoever, of goods, being	2.5	Provided that credit of input tax charged on goods and

<p>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.</p> <p>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.</p>	<p>services used in supplying the service has not been taken [please refer to Explanation No.(iv)]</p>
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The Explanation (iv) to the Notification states as under:

"(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 services 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."


On cursory reading of the above, it is seen that the applicant is supplying items of food as a part of service and since the provision of eating in the premises is provided or the customers may take the same away from the applicant's place, the transactions under question are covered under the amended provision of Entry 7(i) of Notification No. 11/2017- Central Tax

(Rate) dated 28.06.2017 as amended by Notification No.46/2017 – Central Tax (Rate) dated 14.11.2017 and attracts a tax of 2.5% without any input tax credit.

5. In view of the foregoing, we rule as follows

RULING

1. The ice creams, chocolates, ice cream cakes and pizza cakes made as per the orders of the customers and served in IBACO outlet qualifies as composite supply under section 2(30) of the CGST Act and section 2(30) of the Karnataka Goods and Services Tax Act, 2017.
2. The said composite supply shall be deemed to be a supply of service as per the entry 6(b) of Schedule II to the CGST Act and entry 6(b) of Schedule II to the KGST Act.
3. The above supplies are classified under chapter "9963" and chargeable to tax at a rate of 2.5% subject to the conditions under CGST Act, 2017 as per entry no. 7(i) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 46/2017 – Central Tax (Rate) dated 14.11.2017 from 14.11.2017 and at a rate of 2.5% subject to the conditions under KGST Act, 2017 as per entry no. 7(i) of Notification (11/2017) No.FD 48 CSL 2017 dated 28.06.2017 as amended by Notification (46/2017) No. FD 48 CSL 2017 dated 14.11.2017 from 14.11.2017.


21.09.2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,
Date: 21.09.2019

To
The Applicant

Copy To:

1. The Pr. Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Pr. Commissioner of Central Tax, Bangalore-West, Bengaluru.
4. The Asst. Commissioner, LGSTO-100, Bengaluru.
5. Office Folder.