

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/29/2018-19

Date- 09.04.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri. RajivJalota, MEMBER

GSTIN Number	27AACCC9946Q1ZS
Legal Name of Appellant	Crown Beers India Private Limited
Registered Address	7 th Floor, 705/706, Midas Sahara Plaza, Andheri Kurla Road, City Greater, Andheri (E), Mumbai - 400059
Details of appeal	Appeal No. MAH/GST-AAAR-29/2018-19 dated 09.01.2019 against Advance Ruling No. GST-ARA- 31/2018-19/B-102 dated 04.09.2018
Jurisdictional Officer	State Tax Officer (C-704), Nodal Division -7, Mumbai

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.



The present appeal has been filed under Section 100 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 Crown Beers India Private Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-31/2018-19/B-102 dated 04.09.2018

BRIEF FACTS OF THE CASE

- A. The Appellant is a company incorporated under the provisions of the Companies Act, 1956. The Appellant has entered into the Agreement with PIL to brew / manufacture, package and supply Products, as specified under the Agreement, from its bottling unit to buyers / distributors in the territory identified by the Appellant. PIL holds valid licenses, permits and permissions necessary under the applicable laws for manufacture of Products at its bottling unit.
- B. In order to understand the transactions being undertaken under the Agreement, the Appellant has summarized the relevant terms of the Agreement below:
- a. In accordance with the instructions received from Appellant during the term of the Agreement, PIL undertakes to manufacture the Products at its Bottling Unit and perform certain other allied activities, including the following:
(Clause 2.1 of the Agreement):
- i. Purchasing the required materials, arranging labour and all other facilities and inputs, in compliance with the standards prescribed under the Agreement, for the purpose of manufacturing the Products;
 - ii. Carrying out all the processes required for brewing / manufacturing, bottling and packing of the Products;
 - iii. Maintaining physical stock of Products in the Bottling Unit or in bonded or other warehouses; and
 - iv. Preparation of sales invoices, ensuring timely dispatches and delivery of the Products to buyers / distributors in the territory identified by the Appellant.

- b. PIL would be responsible for carrying out its obligations under this Agreement in a timely manner and in accordance with the directions and instructions of Appellant (*Clause 2.2 of the Agreement*).
- c. PIL shall manufacture the Products in terms of the Agreement in strict compliance with the policies, operating procedures and quality and performance parameters and standards prescribed by the Appellant (*Clause 5.1 of the Agreement*). The Appellant would be entitled to specify, *inter alia*, as part of the above mentioned parameters and standards, the quality, specific varieties, sources and terms for procurement of raw materials used in the manufacture of Products, the design, content and manner of affixation of labels, marks and trademarks to the Products, the manner of production and quality control procedures to be maintained in the manufacture of Products by the PIL (*Clause 5.2 of the Agreement*).
- d. PIL shall maintain in force, at all times during the term of the Agreement, full and complete insurance cover for Products, raw materials and ingredients used in the manufacture of Products and work in process in relation thereto by nominating the Appellant as the beneficiary. Cost of aforesaid insurance shall be to the account of the Appellant (*Clause 4.11 of the Agreement*).
- e. In consideration for fulfilment of the abovementioned obligations by PIL to manufacture the Products in terms of the Agreement, PIL shall be entitled to a fixed fee for the Products so manufactured, calculated and payable in accordance with this Agreement (*Clause 2.3 of the Agreement*).
- f. The costs incurred on purchase of materials, other expenses set out in Schedule II and the sale revenue generated from sale of Products will always be incurred on account of and inure to the benefit of the Appellant. The following costs and expenses are specified under Schedule II of the Agreement:
 - i. Cost of all raw materials and ingredients used to manufacture the Products, based upon parameters agreed under the Agreement on actual price basis;
 - ii. Labour and manpower cost upon actual cost, based upon parameters agreed under the Agreement;



- iii. Cost of consumables towards boiler fuel, cost (initially furnace oil and later rice husk / briquette), demineralised water, carbon dioxide, effluent treatment plant, water treatment plant, laboratory supplies, inkjet printers, ink and any other consumables which is consumed in routine working of the Bottling Unit;
- iv. Power cost based upon parameters agreed under the Agreement on actual price basis;
- v. Bottling fee (including without limitation franchise fee and label registration charges) that may be levied by the excise department of the State of Maharashtra;
- vi. Other duties, taxes and fees levied by the State Government or Central Government payable in relation to the dispatch of Products as applicable on the date of Agreement;
- vii. Cost for taking insurance as contemplated under Clause 4.11 of the Agreement;
- viii. Cost of any permit fees or levies to be submitted under any applicable rule, regulation or law towards supply of Products pursuant to the Agreement;
- ix. Cost of loading and unloading of raw materials and ingredients used to manufacture Products and the Products;
- x. Approved cost of running and operating a bonded or other warehouse as advised by the Appellant; and
- xi. Cost of inwards freight charges in relation to the Material and Products.

g. Any costs other than as specified in Schedule II shall be borne by the Appellant(Clause 7.3 of the Agreement).

h. PIL shall open a separate bank account ('Account') wherein all proceeds from sale of Products made to buyers / distributors under the Agreement shall be deposited (Clause 7.1 of the Agreement). All costs specified in Schedule II to the Agreement shall be paid or incurred from the Account (Clause 7.2 of the Agreement). The fixed fee payable to PIL under the Agreement shall be incurred or paid from the Account(Clause 7.3 of the Agreement). The



proceeds from the sale of Products shall be credited into the Account (Clause 7.4 of the Agreement).

- i. Any credits, subsidies, benefits, refunds, whether monetary or otherwise, received by the Appellant in relation to costs or amounts receivable by Products pursuant to Schedule II ('Cost Subsidies') shall be to the Appellant's benefit and the Appellant may elect, at its sole discretion, to deduct or adjust the same from the amounts payable by the Appellant to PIL under the Agreement (Clause 3.5 of the Agreement).

C. In terms of the above facts and provisions, the Appellant herein filed the advance ruling application submitting that:

- a. That PIL is a manufacturer of alcoholic liquor for human consumption and holds the requisite licences under the State Excise laws.
- b. That the Products which are the subject matter of supply are alcoholic liquor for human consumption.
- c. The raw materials for the manufacture of alcoholic liquor for human consumption are purchased by PIL on its own account and it arranges for labour and all other facilities for inputs for manufacturing alcoholic liquor for human consumption. In this regard, sample invoices were filed with the Ld. Authority to demonstrate that PIL is purchasing the raw materials by itself and is the owner of the raw materials.
- d. The Appellant is the risk taker and is entitled to profits from the sale of alcoholic liquor for human consumption.
- e. PIL is entitled to a fixed fee for manufacture and supply of alcoholic liquor for human consumption. For this purpose, sales invoices are raised by PIL for delivery of alcoholic liquor for human consumption in favour of buyers/ distributors identified by the Appellant.
- f. The transaction is one of supply of alcoholic liquor for human consumption alone. The physical transfer of alcoholic liquor for human consumption is made by PIL in favour of buyers/ distributors which are identified by the Appellant. The entire sale consideration for the supply of alcoholic liquor for human consumption is split into three parts viz., (1) fixed fee which is retained by PIL, (2) the surplus which belongs to the Appellant, and (3) costs



for the manufacture of alcoholic liquor for human consumption which is reimbursed to PIL.

- g. No part of the above sale consideration for alcoholic liquor for human consumption is subject to GST as the supply of alcoholic liquor for human consumption itself is outside the purview of the GST provisions. All the above components of the sale consideration, whether retained by the Appellant or by PIL, are only parts of sale consideration of alcoholic liquor for human consumption which is manufactured and supplied by PIL.
- h. Advance Ruling No. KAR ADRG 9/2018 dated 29.06.2018 supports the Appellant's contention that the manufacturing activity undertaken by PIL is not in the nature of supply of services and, therefore, no GST is liable to be paid on the same.
- i. Merely because the cost of raw materials and ingredients used in the manufacture of Products is reimbursed by the Appellant to PIL, it cannot be concluded that PIL is engaged in job work or supply of services.
- j. Without prejudice to the abovementioned submissions, if supply of Products is held to be a supply of service by way of job work, the same shall be levied CGST at the rate of 2.5%, MGST at the rate of 2.5% and IGST at the rate of 5%.

D. In the Impugned Order, the Ld. Authority has held that since the costs are paid by the Appellant herein, there is no supply to PIL and therefore, costs are not liable to GST. However, while observing so, the Ld. Authority has held that fixed fees paid by the Appellant to PIL are liable for GST, without appreciating that there is a single consideration for supply of alcoholic liquor for human consumption which is beyond the purview of the GST provisions. The Ld. Authority by coming to such a conclusion has held that PIL is providing job work services to the Appellant and therefore, fixed fee which is consideration for such services is liable to GST in the hands of PIL. The Ld. Authority has also failed to adequately answer the second question which had been raised by the Appellant without prejudice to the submissions on the first question.

E. Appellant filed a letter seeking clarification on response to Question No.2 which was not adequately answered vide letter dated 17.12.2018 (filing acknowledgment received on 18.12.2018) with a specific request to authority to provide the clarification before 31.12.2018 so as to ably assist them in finalising the appeal. The said letter was



also served by email to them on the same day. The Appellant had not received any communication / clarification on the same as of the date of filing the application.

- F. Aggrieved by the findings of the Impugned Order, the Appellant is filing the present appeal on the following grounds which are independent of each other.

Grounds of Appeal

Merely because the cost of raw materials and inputs used in the manufacture of Products is reimbursed by the Appellant to PIL, it cannot be concluded that PIL is providing job work to the Appellant

1. It is humbly submitted that the Ld. Authority has erroneously concluded that the Appellant is paying fixed fees to PIL under the Agreement for providing job work services to the Appellant. As per Section 2 (68) of the CGST Act, 'job work' is defined as "any treatment or process undertaken by a person on goods belonging to another registered person" and the expression 'job worker' has to be construed accordingly. An identical definition of 'job work' is provided under Section 2 (68) of the MGST Act. In terms of Section 2 (24) of the IGST Act, the abovementioned definition of 'job work' under the CGST Act shall also apply to the IGST Act. In this regard, it is humbly submitted in terms of the above
2. mentioned definition of 'job work', an activity can be said to be 'job work' only if such treatment or process is undertaken by a person on 'goods belonging to another registered person'.
3. In the present case, it is clearly stated in Clause 2.1 of the Agreement that PIL shall purchase raw materials and other inputs on their own. Relevant clause is reiterated below for ease of reference;
2.1 In accordance with the instructions of Crown to PIL from time to time during the term, PIL undertakes to manufacture the products at its Bottling unit and perform certain allied activities, including the following
2.1.1 purchasing the required materials, arranging labour and all other facilities and inputs in compliance with the product and performance standards for the purpose of manufacturing the products;



By reading the relevant clauses of the agreement, it is evident that PIL is responsible for purchasing the raw materials and arranging other facilities for manufacture of products.

Therefore, PIL is undertaking the manufacturing activity on its goods procured and paid for on its own. In this regard, sample invoices have already been enclosed herewith to demonstrate that PIL is purchasing the raw materials by itself and is the owner of the raw materials. It is humbly submitted that documents of title such as lorry receipts, tax invoices are issued in the name of PIL by the suppliers and those documents effectively shows that PIL is the owner of the goods and not the Appellant. It is also informed that insurance on the products, materials, work in progress is taken in the name of the PIL. In this regard, reference may also be made to Clause No. 1.3.1 (f) of the Agreement which categorically mentions that *"PIL has valid legal title to and rights to use, all movable properties, machineries and equipment used in the Bottling Unit"*. It is clear from the above that before the sale of Products to the Appellant, the ownership of all raw materials and inputs used in manufacturing of the Products is with PIL. Only because the name of Appellant is mentioned as beneficiary in the insurance cannot take away the fact that PIL is the owner of the materials. The clause relating to insurance cited by the Authority in the Impugned Order can in no way be said to lead to a conclusion that the raw materials and inputs used by PIL in manufacture of the Products effectively belong to the Appellant. Therefore, it is the Appellant's humble contention that the Appellant cannot be said to have an effective ownership of the raw materials and inputs used for manufacture of the Products in terms of the Agreement. In any case, it is most humbly submitted that the definition of 'job work' under the CGST Act does not envisage any concept of notional or beneficial ownership of the goods for determining whether an activity amounts to job work. Accordingly, it is humbly submitted that the manufacturing activity undertaken by PIL cannot be said to be in the nature of 'job work', as defined under Section 2 (68) of the CGST Act.

4. In this regard, it is humbly submitted that merely the fact that the cost of raw materials and ingredients used to make the Products is reimbursed by the Appellant does not change the fact that such raw materials and ingredients are procured by and owned by PIL. It is respectfully contended that in any case of supply of goods or



services, the consideration charged for supplying such goods or services can be broadly split into (1) the cost incurred for supplying such goods or services; and (2) the amount of profit. The fact that the cost of raw materials used for supplying such goods or services is recovered from the recipient of goods or services at the time of supply does not imply that the raw materials always belonged to the said recipient (i.e. even before the time of supply). Relying on the same reasoning, it is humbly submitted that merely because the cost of raw materials and ingredients used in manufacture of Products is recovered from the Appellant, it cannot be concluded that the said raw materials and ingredients always belonged to the Appellant and PIL was undertaking the manufacturing activity on goods owned by the Appellant.

Fixed fees and costs are for supply of alcoholic liquor for human consumption which has been excluded from the ambit of GST regime, whether such supply is in the nature of supply of goods or supply for services

5. It is humbly submitted that the Ld. Authority has failed to appreciate that the supply of alcoholic liquor for human consumption, whether in the nature of supply of goods or supply of services, has been expressly excluded from the ambit of GST. Therefore, any kind of supply pertaining to alcoholic liquor for human consumption cannot be charged to GST. In this regard, reference may be made to the amendments introduced by the Constitution (One Hundred and First Amendment) Act, 2016 wherein Article 246A and Article 269A were introduced in the Constitution of India to authorize the Parliament and the Legislature of every State to make laws with respect to GST. Furthermore, Article 366 (12A) was inserted in the Constitution of India which defined 'goods and services tax' to mean "any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption". Moreover, Entry 54 in List II of Seventh Schedule (State List) to the Constitution of India, which authorizes the State Government to levy taxes on certain subject matters, was amended as follows:

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods."



(Emphasis Supplied)

6. The CGST Act provides for provisions for levy and collection of GST on intra-State supply of goods and services or both by the Central Government. Under the CGST Act, Section 9 (1) specifically provides for the levy of CGST on *"all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption"*. Similarly, the MGST Act provides for provisions for levy and collection of GST on intra-State supply of goods or services or both by the State Government of Maharashtra. Under the MGST Act, Section 9 (1) specifically provides for the levy of MGST on *"all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption"*. As far as the IGST Act is concerned, the same provides for provisions for levy and collection of tax on Inter-State supply of goods and services or both by the Central Government. Under the IGST Act, Section 5 (1) specifically provides for the levy of IGST on *"all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor of human consumption"*.
7. Based on a plain reading of Article 366 (12A) of the Constitution of India, Section 9 (1) of the CGST Act / MGST Act and Section 5 (1) of the IGST Act, it is respectfully submitted that *'supply of alcoholic liquor for human consumption'* has been expressly excluded from the ambit of levy of CGST / MGST / IGST. Further, the amendment in Entry 54 in List II of Seventh Schedule (State List) to the Constitution of India that the power to impose tax on alcoholic liquor for human consumption has been separately prescribed to the State Government. The Appellant would like to point out that prior to the Constitution (One Hundred and First Amendment) Act, 2016, Entry 84 to List I (Union List) of Schedule 7 to the Constitution of India excluded *'manufacture'* or *'production'* of *'alcoholic liquors for human consumption'* from duties of excise levied by the Central Government. However, with the passing of the above mentioned constitutional amendment and the consequent GST legislations, what is excluded from the levy of GST is the *'supply of alcoholic liquor for human consumption'*. In this regard, it is humbly submitted that *'supply'*, as defined in the CGST Act / MGST Act / IGST Act, is a much wider concept which includes *'all forms of supply of goods or services or both'* within its ambit. As far as GST on *'supply of alcoholic liquor for human consumption'* is concerned, the same has been excluded from the overall incidence of *'supply'*, which includes the supply of goods as well as supply for services. Therefore,



the intention of the concerned legislatures has been to exclude every aspect of supply of alcoholic liquor for human consumption from tax under the GST legislations, be it supply of goods or supply of services.

8. It is not disputed by the Appellant that the transaction undertaken by them falls within the definition of 'supply' under the respective legislations. This is clear from the fact that there is a transfer or a disposal of Products by the Appellant for a consideration (i.e. fixed fee and costs specified in Schedule II to the Agreement) in the course of or in furtherance of their business. Therefore, the Appellant's activities would be squarely covered under the definition of 'supply' under the CGST Act / MGST Act / IGST Act. However, it is most humbly submitted that the nature of supply being made by the Appellant is of alcoholic liquor for human consumption for which consideration is paid by the Appellant. Since the supply under consideration is that of alcoholic liquor for human consumption which is expressly excluded from the ambit of GST, it is humbly submitted that no GST is leviable on any component of the consideration (including fixed fees) paid for the said supply.

That the Ld. Authority has erred in sub-dividing the consideration paid for supply of Products into fixed fees and costs

9. The Ld. Authority failed to appreciate that there is no independent service provided by PIL to the Appellant. The alleged service gets subsumed in the manufacture of alcoholic liquor for human consumption and finally what is supplied is only alcoholic liquor for human consumption. Therefore, it would be incorrect to sub-divide the transaction of alcoholic liquor for human consumption and attempt to tax the service portion, if any, which already stands subsumed in the final product which is alcoholic liquor for human consumption alone. For instance, if the manufacturer enters into an agreement to supply packaged pens, the activity of packaging pens gets subsumed in the manufacture and no separate service of packaging pens will be said to be undertaken. Therefore, observing that there is a job work activity which is being done for which fixed fee is being paid is entirely incorrect.

10. In this regard, it is humbly submitted that the following facts are undisputed:

- a. That PIL is a manufacturer of alcoholic liquor for human consumption and holds the requisite licences under the State excise laws (Recital (b), Clause 1.3.1(a) and (d) of the Agreement).
 - b. That the Products which are the subject matter of supply are alcoholic liquor for human consumption as is clear from the definition of Products under Clause 1 (u) of the Agreement which defines "Product (s)".
 - c. The raw materials for the manufacture of alcoholic liquor for human consumption are purchased by PIL and it shall arrange for labour and all other facilities for inputs for manufacturing alcoholic liquor for human consumption (Clause 2.1.1 of the Agreement).
 - d. The Appellant is the risk taker and is entitled to profits from the sale of alcoholic liquor for human consumption (Clause 3.1 and 3.5 of the Agreement).
 - e. PIL is entitled to a fixed fee for manufacture and supply of alcoholic liquor for human consumption (Clause 2.3 and 7.3 of the Agreement).
 - f. Sales invoices are raised by PIL for delivery of alcoholic liquor for human consumption in favour of buyers/ distributors identified by the Appellant.
11. On a perusal of the above, it becomes clear that the transaction is one of supply of alcoholic liquor for human consumption alone. The physical transfer of alcoholic liquor for human consumption is made by PIL in favour of buyers/ distributors which are identified by the Appellant. The entire sale consideration for the supply of alcoholic liquor for human consumption is split into three parts viz., (1) fixed fee which is retained by PIL, (2) the surplus which belongs to the Appellant, and (3) costs for the manufacture of alcoholic liquor for human consumption which is reimbursed to PIL. No part of the above sale consideration for alcoholic liquor for human consumption is subject to GST as the supply of alcoholic liquor for human consumption itself is outside the purview of the GST provisions. All the above components of the sale consideration, in toto, whether retained by the Appellant or by PIL, are only parts of sale consideration of alcoholic liquor for human consumption which is manufactured and supplied by PIL. It is humbly submitted that the Ld. Authority has thus erred in breaking up the sale consideration which is entirely for supply of alcoholic liquor for human



consumption into costs which are not liable for GST and fixed fee which is liable for GST.

The relevant provisions under the GST have to be strictly construed

12. The Ld. Authority has erred in its interpretation of the legal provisions to observe that there is a supply of job work service to the Appellant which is taxable under GST. It is submitted that it is well settled that taxing statutes are to be strictly construed i.e. a taxing statute has to be looked at merely in terms of its language and there is no room for any intendment. The reasoning behind such construction of taxing statutes is that there is no concept of equity in taxation law. This principle has been upheld by the Hon'ble Supreme Court in a series of judgments, including by a Constitutional Bench of the Hon'ble Supreme Court in **Hansraj Gordhandas v. HH Dave, (1969) 2 SCR 253** as well as in **Sales Tax Commissioner v. Modi Sugar Mills, AIR 1961 SC 1047**.
13. In light of the above mentioned rule of construction relating to taxing statutes, it is humbly submitted that the definition of 'job work' only includes such treatment or process undertaken by a person on 'goods belonging to another registered person'. In the present case, it is already established that PIL is working on its own goods and not on Appellant's goods. Further, the language of Article 366 (12A) of the Constitution of India, Section 9 (1) of the CGST Act / MGST Act and Section 5 (1) of the IGST Act have to be strictly construed as well, without considering the consequences that it may have. Once the said provisions are interpreted strictly in terms of their language, it is respectfully contended that the 'supply of alcoholic liquor for human consumption' in all forms, either as a supply of goods or a supply of services, is excluded from the levy of CGST / MGST / IGST. Therefore, it is the Appellant's contention that there shall be no levy of CGST / MGST / IGST on the consideration paid by the Appellant as the same are in relation to 'supply of alcoholic liquor for human consumption'.
14. The Ld. Authority also failed to appreciate that since there is a constitutional bar on the very supply of alcoholic liquor for human consumption, GST cannot be levied on any aspect of a transaction pertaining to the supply of alcoholic liquor for human consumption. In this regard, the Appellant places reliance on the well-settled position of law that a thing which cannot be done directly cannot be done indirectly. Accordingly, it is respectfully contended by the Appellant that something which is not



constitutionally / statutorily permissible, the same cannot be justified by relying on the language of the Schedule to the relevant statute. To explain the said submission in the context of the instant factual scenario, it is submitted by the Appellant that levy of GST on supply of alcoholic liquor for human consumption is expressly excluded under the Constitution of India as well as the CGST Act / MGST Act / IGST Act. Therefore, the Ld. Authority erred in observing that GST can be levied on supply of alcoholic liquor for human consumption if the same amounts to a treatment / process on another person's goods. To substantiate this contention, reference may be made to the judgment of the 7-judge Bench of the Hon'ble Supreme Court in **Re Kerala Education Bill, 1957 Reference under Article 143 (1) of the Constitution of India, AIR 1958 SC 956** wherein it was held that "*Even the legislature cannot do indirectly what it certainly cannot do directly*". Similarly, a Constitution Bench of the Hon'ble Supreme Court in **State of Punjab v. Devans Modern Breweries Ltd, (2004) 11 SCC 26** held that "*It is a well-settled principle of law that a thing which cannot be done directly cannot be done indirectly*". Relying on these judgments, it is humbly contended by the Appellant that once the supply of alcoholic liquor is excluded from the very definition of GST under the Constitution of India as well as from the charging provisions levying CGST / MGST / IGST under the CGST Act / MGST Act / IGST Act, there is a total bar on imposing GST on such a supply in any form, including by way of creating a deeming fiction.

Advance Ruling No. KAR ADRG 9/2018 dated 29.06.2018 supports the Appellant's contention that the manufacturing activity undertaken by PIL is not in the nature of supply of services and, therefore, no GST is liable to be paid on the same

15. The Ld. Authority erred in ignoring the fact that the Advance Ruling No. KAR ADRG 9/2018 dated 29.06.2018 given by the Authority for Advance Ruling, Karnataka ('Karnataka Advance Ruling') in the case of M/s. United Breweries Limited ('UBL') actually supports the Appellant's contentions. The facts of the Karnataka Advance Ruling are similar to the facts of the present case insofar as UBL, apart from manufacturing beer on its own, also has manufacturing arrangement with Contract Bottling Units ('CBUs') who manufacture beer under brand names belonging to the applicant and supplies such beer to market. As per the agreements under consideration in the Karnataka Advance Ruling, CBUs were entitled to a fixed sum and



the cost of the raw material, cost related to energy consumption, fixed costs etc. Similar to the present case, the said agreements provided that the CBUs shall be procuring the raw materials required, even if it was under the close supervision of UBL.

16. With respect to the question of levy of GST on the profit earned by the CBUs out of their manufacturing activity, it was noted in the Karnataka Advance Ruling that UBL had not supplied any goods used in the manufacturing activity undertaken by the CBUs and, therefore, the CBUs are not engaged in supply of any service to UBL. Accordingly, it was decided that there is no liability of GST on the amount retained by the CBUs.
17. In view of the decision in the Karnataka Advance Ruling, it is humbly submitted that the said decision is directly contrary to the position taken in the Revenue submissions. The said decision, in fact, supports the interpretation adopted by the Appellant. It is humbly submitted that in the instant facts, PIL is not working on another person's goods. This is a case where PIL purchases the required materials on their own and then manufactures and packs Products out of such goods. Therefore, it is respectfully submitted that the present case cannot be said to be one of "*any treatment or process which is applied to another person's goods*". Accordingly, relying on the Karnataka Advance Ruling, it is humbly submitted that PIL is not engaged in supply of any service to the Appellant and, therefore, no GST is liable to be paid.

With respect to the Appellant's second question which has been raised without prejudice to the submissions in the first question, the Impugned Order has failed to provide a specific and adequate response to the Appellant's question

18. It is humbly submitted that the Ld. Authority has failed to provide a specific answer to the second query raised by the Appellant. The Ld. Authority has merely noted that what is a service in this case is the entire gamut of brewing / manufacturing, packaging and supplying beer by PIL to the Appellant for which PIL is receiving a consideration. In its answer to the Appellant's query, the Ld. Authority has merely held that supply of beer *per se* is not taxable and that what is taxable in the subject case is the job work which is a service provided by PIL to the Appellant.



19. It is humbly submitted that the Appellant had not sought a response on the nature of service which is taxable but the specific rate at which GST will be charged, if brewing, bottling and supplying Products is considered to be a taxable supply. In this regard, it is the Appellant's humble contention that all the activities under consideration i.e. brewing, bottling and supplying Products are in relation to beer which is classifiable as Customs Tariff Item 2203 00 00 of the First Schedule to the Customs Tariff Act, 1975.
20. Accordingly, it was the Appellant's respectful contention that if brewing, bottling and supplying Products is considered to be a taxable supply, the same shall be levied CGST (in case of intra-State supply) at the rate of 2.5% in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017. Similarly, there shall be a levy of MGST (in case of intra-State supply) at the rate of 2.5% on the said taxable supply in terms of Notification No. 11/2017-State Tax (Rate) dated 29.06.2017, as amended by Notification No. 31/2017-State Tax (Rate) dated 13.10.2017. In case of an inter-State supply, IGST shall be levied at the rate of 5% on the said taxable supply in terms of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017, as amended by Notification No. 39/2017-Integrated Tax (Rate) dated 13.10.2017. It is humbly submitted that the Authority has not considered the submissions made by the Appellant and has not given any specific finding with respect to the rate. It is humbly submitted that insofar as no specific response has been recorded, the Impugned Order has failed to give an adequate and correct response to the Appellant's question on which advance ruling had been sought.

Personal Hearing

21. A personal Hearing in the matter was conducted on 14.03.2019, wherein Shri Tarul Gulati, Advocate and authorised representative of the Appellant, reiterated the written submissions, made earlier before us. Shri Rajesh Advani, Deputy Commissioner of State Tax, appearing as jurisdictional officer, reiterated the submissions, which were made previously before AAR.



Discussion and Findings

22. We have gone through the entire records, facts of the case and have also taken on record, the written and oral submissions, made by the appellant as well as by the respondent. We have also gone through the impugned order, issued by the Advance Ruling Authority, which states that the entire gamut of activities viz.- brewing, bottling and packaging of the product, which in the instant case is alcoholic liquor, undertaken by PIL at the behest of the Appellant, as per the agreement entered between PIL and the Appellant, will constitute job work and accordingly, will attract GST, as prescribed under the GST Act.

23. Ongoing through the written submissions, made before us while preferring appeal against the impugned advance ruling, it is observed that the contention of the Appellant mainly revolve around the following arguments:

- (i) The fees paid to PIL by them for undertaking the said activities of brewing/manufacturing, bottling and packaging of the products i.e. beer, along with other allied activities required for carrying out the said manufacturing of beer, e.g. purchasing the raw materials, arranging labour and all other facilities and inputs as per the Product and Performance Standard, clearly laid out by the Appellant in the said agreement, is towards the supply of the alcoholic liquor for human consumption and therefore, will not come under the ambit of GST as per the provision of Article 366(12A) of the Constitution of India and also as per the levy and collection provision carved under Section 9(1) of the CGST Act.
- (ii) They have also contended that since PIL is the actual owner of the raw materials and other ingredients required for the manufacture of the beer as the said raw materials are purchased by the PIL on their own account in accordance with the terms and covenants of the agreement, they are not performing any treatment or process on the goods belonging to another registered person, which is an essential requirement of the activity of 'Job work' as provided under Section 2(68) of the CGST Act, 2017.
- (iii) The Appellant, further, contended by submitting that merely the fact that the cost of raw materials and other ingredients used to make the Products is reimbursed by the Appellant does not change the fact that such raw materials



and ingredients are procured by and owned by PIL and hence till the time the manufactured Product is supplied by PIL to the buyers/distributors identified by the Appellant, the ownership of the raw materials and other ingredients remain with PIL, which is also reflected from lorry receipts , tax invoices issued by the various vendors in the name of PIL. The Appellant also relied upon the fact that the insurance in respect of the raw materials, Products and work in process are also in the name of the PIL.

24. Taking into account, the aforementioned contention made by the Appellant, in seriatim, and the facts of the case before us, first we will ascertain whether there is a supply of alcoholic liquor for human consumption by PIL to the Appellant. For this we will refer to the meaning of supply as provided under Section 7 of the CGST Act, 2017, which has been reproduced herein under:

(1) For the purposes of this Act, the expression "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b)

(c)

In the instant case, it is expressly clear that PIL is being paid a fixed amount of fee for undertaking the manufacturing and other allied activities required for the manufacturing of the Product i.e. beer for the Appellant and not for the sale of the manufactured beer. In fact, the manufactured Product i.e. beer is sold to the buyers identified by the Appellant. Thus, there is no sale taking place between PIL and the Appellant. Therefore, this contention of the Appellant that the consideration received by PIL from the Appellant is for supply of alcoholic liquor for human consumption, is factually incorrect and fallacious, and hence not tenable.

25. As regards the second and third contention elucidated above, it is observed that the purchase transaction of the raw materials and other ingredients required for the brewing of beers is undertaken by PIL under the instruction and guidance of the Appellant as prescribed under **clause/entry 5 Product and Performance Standard** of the said agreement entered between PIL and the Appellant, which stipulates that



"Crown would be entitled to specify , inter alia, as part of the Product and Performance Standards, the quality, specific varieties, sources and terms for procurement of Materials....."

Thus, PIL does not have any stake in deciding the quality, varieties and even the source of the materials, which are used to manufacture the Product i.e. beer. This fact is also reflected from the entry 4.5 of the said agreement, which is reproduced herein under:

"4.5 PIL shall not settle without Crown's prior written consent any claims or disputes with any supplier of the materials identified by the crown or any third parties in relation to activities undertaken by PIL pursuant to this agreement including operation of the Bottling unit."

Thus, from the above, it is aptly clear that though PIL is undertaking the purchase transaction of the raw materials and other ingredients used in the manufacture of beers, it is the Appellant, who is deciding not only the qualities and varieties of the materials, but also the suppliers from whom these materials are to be purchased along with the terms and conditions for the purchase transaction. PIL is undertaking these purchase transaction simply as an agent or representative of the Appellant as they do not enjoy any autonomy, whatsoever, while performing these transaction. Further, it is germane that the cost of the purchase of the entire raw materials and other inputs is also incurred to the Appellant, as is submitted by the Appellant. Further, it is observed that the Appellant bears the cost of the insurance in respect of the materials, Products and work in process and accordingly is the beneficiary of any insurance claims which may arise and accrue in future. Further, it has been clearly stipulated under entry 3 of the said agreement that the risks and rewards arising from the business of sale of the Products under this Agreement belong solely and exclusively to Crown, i.e. the Appellant. All these abovementioned facts clearly establish that all the goods, on which PIL is undertaking the manufacturing process, belong to the Appellant and certainly not PIL. Thus, this contention of the Appellant is not tenable and hence not considered.

26. Thus, on perusal of the said agreement entered between the Appellant and PIL and discussions made above, it is adequately clear that the transaction between the Appellant and PIL is not that involving goods, rather it is in the nature of the job work



activity in accordance with the provision of Section 2 (68) of the CGST Act, 2017, which has been reproduced here for ease of reference:

"(68) Job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly;"

Thus, applying the above provision in the present case, it is abundantly clear that the activities of PIL as contemplated under the said Agreement are those of the "job worker" as they are carrying out their entire activities of brewing, bottling and packaging on the goods belonging to another registered person, in this case, the Appellant. The final manufactured Products i.e. beer also belong to and are owned by the Appellant, as the final products are delivered by PIL to the buyers, which are identified by the Appellant and entire sale consideration against the same is credited to the designated bank account meant for manufacturing expenses and sale proceeds of the Product i.e. beer. It has been stipulated in entry 3.5 of the said Agreement that *"The costs incurred on purchase of Materials, other expenses set out in Schedule II and the sale revenue generated from the sale of products will always be incurred on account of and inure to the benefit of Crown. It is therefore clearly understood and acknowledged by the parties that any surplus arising or recorded in the Manufacturing and Sales Account will always belong to Crown and would be utilized by Crown at its sole discretion."*

Entry 3.1 contemplates that PIL shall be entitled only to the Fixed Fee for performance of its obligations under this agreement to the reasonable satisfaction of Crown.

Entry 7.8 of the said Agreement stipulates as under:

"The Parties agree and acknowledge that Crown shall be responsible for the collection of proceeds from the sales of products and crediting of the same in the Account."

All these above clauses clearly establishes that the actual owner of the finished Product is the Appellant and not the PIL as the entire sale process viz.- identification of the actual and potential buyers and recovery of the sale proceeds etc. is controlled and administered by the Appellant, making them accountable for the sale of the Products.



27. All the above discussions and finding leads us to this fact that the PIL is acting merely as the "Job Worker" for the Appellant. Now, coming to the Appellant contention wherein they have argued that any supply, whether of goods or of services, which are made in relation to alcoholic liquor for human consumption, is beyond the ambit of GST in accordance with the provision of the Entry 54 of List II to the Seventh Schedule to the Constitution of India as amended, which provides that "*Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.*" It is observed that this provision clearly proscribes to levy any tax on the sale of the alcoholic liquor for human consumption by the authority other than the state Govt. Authority as the same falls under the jurisdiction of the State Govt. However, the said provision does not prohibit to levy the taxes on the process leading to the manufacture of the alcoholic liquor for human consumption, as the word mentioned therein is the "**sale**" and not "**in relation to**" or **the like**, which would have given much wider connotation which in that case would also have rendered the processes involved in the manufacture of the alcoholic liquor beyond the scope and ambit of GST .
28. This inference is also supported by the Article 366 (12A), which was inserted in the constitution which defined "goods and services tax" to mean "*any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.*" This provision again points out that only the supply of the alcoholic liquor for human consumption is outside the purview of GST and not the process involved in the manufacture of the same. Had it been the intention of legislature to keep the processes involved in the manufacture of the alcoholic liquor, then the word having wider connotation like "in relation to" or the similar words would have been used which would have wider implication in so much that the processes involved in the manufacture of alcoholic liquor would have been kept out of the purview of the GST. However, that is not the case. Therefore, it would not be proper and legal to interpret the provision by adding, altering the words used by the legislature by going against the well settled rule of literal construction of interpretation even if the provision does not have any ambiguity.



29. It is worth noting here that in erstwhile Service Tax regime also, the said activities of CBUs of manufacturing alcoholic liquor on behalf of Brand Owners (BOs) against a consideration, were subjected to Service Tax and this was clarified also by CBIC(earlier CBEC) vide Circular No. 249/1/2006-C.X.4 dt. 27.10.2008 and Circular No. 332/17/2009-TRU dt. 30.10.2009. This levy of Service Tax continued upto 30.06.2012. Thereafter, with effect from 01.07.2012, the activity of production of or process amounting to manufacture was covered under Section 66D (Negative List) implying that the activity undertaken by the CBU went out of purview of Service Tax. The statute was yet again amended and process undertaken by CBUs once again came under the purview of Service Tax with effect from 01.06.2015 and remained there till 30.06.2017. Therefore, it is observed that the activities of CBUs were subjected to Service Tax just prior to introduction of GST.
30. We also observe here that the Ruling given by AAR, Karnataka, in the matter of M/s UBL, cited by the appellant in this case, cannot be relied upon on following grounds:-
- (i). The Rulings given by Authority for Advance Ruling are applicant specific and cannot be generalised.
 - (ii). No Ruling of any AAR is binding on the Appellate Authority.
 - (iii). Even to have the persuasive value, the agreement between M/s UBL and their CBUs is not before us to compare with the agreement of Appellant with their CBU (M/s. PIL).
 - (iv). Based on the recordings in the said referred ruling, it prima facie appears that the facts of two cases are different as in case of M/s UBL, a brand fee was charged by the Brand Owner from the CBU which is not the case here.
31. Now, coming to the second question asked by the Appellant, wherein they have submitted that without prejudice to the submissions made elsewhere, if the supply of Products is held to be services by way of job work in relation to beer, what shall be the rate of CGST / MGST / IGST that shall be levied on the said taxable supply?
32. As regards the contention made in respect of the rate of GST that would be levied on the job working activities in respect of the manufacture of beer, we do not agree to the argument put forth by the Appellant wherein they submitted that all the activities under consideration i.e. brewing, bottling and supplying Products are in relation to beer which is classifiable under item 2203 00 00 of the First Schedule to the Customs



Tariff Act, 1975 and hence liable to 5% GST (2.5% CGST +2.5 % SGST) in accordance with the entry 26(f) bearing Heading 9988 of the Notification 11/2017 dated 28.06.2017. There is no dispute about classification of Beer under heading 2203 but all the products classifiable under Chapter 1 to 22 do not attract 2.5% CGST under entry no. 26(f) of Notification no. 11/2017-C.T.(Rate) dt. 28.06.2017. Only food and food products of these chapters are eligible for this exemption. Now, it is to be seen whether alcoholic liquor for human consumption can be considered as food for the purpose of exemption under the said notification. There is no definition of food and food products under GST Acts. However, Hon'ble Supreme Court has discussed this issue in detail in the matter of Collector of Central Excise Vs Parle Exports (P) Ltd. reported in 1998(38) E.L.T.741(S.C.) and decided that non -alcoholic beverages were not eligible to exemption as food products. Everything consumed by human cannot be considered as food or food products for the purpose of exemption from GST. The context, spirit and reason of law need to be examined to extend exemption. . Hon'ble Supreme Court in the said judgment had opined that " *it cannot be contended that expensive items like Gold-Spot base, Limca-base or Thums up-base were intended to be given exemption at the cost of public exchequer.*" Similarly, it would have never been the intention of law to exempt expensive item like 'alcoholic liquor' under the category of food and food products even though the same is for human consumption.

Additionally, Hon,ble Supreme Court, in the matter of Commissioner of Customs(Import) Vs Dilip Kumar & Company reported in 2018(361) E.L.T. 577(S.C.) has given a landmark judgment concluding that:

"Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue."

In view of the above two judgments of Hon'ble Apex Court, we conclude that the benefit of exemption under entry no. 26(f) of Notification 11/2017-C.T.(Rate) dt. 28.06.2017 is not available to alcoholic liquor for human consumption.



33. In view of the above discussions and finding, we are of the opinion that the activities performed by the PIL, on the goods of Appellant, are in the nature of the Job work and accordingly attract 18% GST. Accordingly, we pass the following order:

Order

We do not find any reason to differ with the ruling pronounced by the Advance Ruling Authority in as much as the activities performed by the PIL, on the goods of the Appellant, are in the nature of the Job work and accordingly attract 18% GST.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

- Copy to- 1. The Appellant
2. The AAR, Maharashtra
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
4. The Commissioner of State Tax, Maharashtra
5. The Jurisdictional Officer
6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy