

DELHI APPELLATE AUTHORITY FOR ADVANCE RULING
C.R Building, I.P Estate,
New Delhi-110002

(Constituted under section 99 of the Delhi Goods and Services Tax Act,
2017(Delhi Act 03 of 2017) vide Govt. of NCT of Delhi's Notification No.
F.3(6)/Fin.(Rev.-1)/2018-19/DS-VI/389 dated 03.09.2019)

BEFORE THE BENCH OF

Smt. Mallika Arya, Member(Centre)

Shri Ankur Garg, Member(State)

Order No. 02/DAAAR/2022-23

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Date:- 23.05.2022

2-1.06.24.a_1.-

SI. No.	Name and address of the Appellant	M/s Deepak & Co., A-96, Chander Vihar, Opp. Rama Krishna Apartment, IP Extension, Patparganj, Delhi-110092 M/s ALA Legal, Advocates and Solicitors, 105-106, Sagar Plaza, District Centre, Laxmi Nagar, New Delhi-110092
1	OSTIN	07AADFD8487H I Z3
2	Advance Ruling Order against which appeal is filed	02/DAAR/2018 dated 28.03.2018
3	Date of filing appeal	01.05.2018
4	Represented by	Sh. Puneet Aggarwal & Ms. Purvi Sinha
5	Whether payment of fees for filing, appeal is discharged. If yes, the amount and challan details	Yes CPIN No:- 17120700124701 dated 16.12.2017



1 At the outset we would like to make it clear that the provisions of CGST, Act 2017 and DGST, Act 2017 are *pail makria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the DGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Delhi Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by MIs Deepak & Co., A-96, Chander Vihar, Opposite RK Apartment, IP Extension, Patparganj, Delhi-110092 (herein after referred to as Appellant) against the advance Ruling No. NO. 02/DAAR/2018 dated 28.03.2018. The date of communication of Advance Ruling to the appellant was 31.03.2018.

Brief facts of the case:

3. M/s Deepak & Co., A-96, Chander Vihar, Opp. Rama Krishna Apartment, IP Extension, Patparganj, Delhi-110092, the appellant, has entered into an agreements with IRCTC/Indian Railways, for supply of food and beverages (packed/ MRP/ cooked) to the passengers on Rajdhani Trains and also Mall/ Express Trains. Pursuant to these agreements, the appellant is engaged in supplying of food on board the trains to the passengers travelling on these trains vide the menu approved by the Indian Railways! IRCTC. Likewise, the appellant is also engaged in supply of food items to passengers/ public through food plaza/ food stalls on the railway station.

4. The different *modus operandi* with respect to supply of food for human consumption on board a train are as follows:

A) SUPPLY OF FOOD THROUGH THE FOOD PLAZA ON THE RAILWAY PLATFORM (WITH A/C) I FOOD STALLS ON TBE RAILWAY PLATFORM (WITHOUT A/C)

a. In these places, food and beverages (packed/ MRP/ cooked) are supplied to the passengers/ general public at the rates fixed by Indian Railways! IRCTC. Food plaza has space for the consumer to consume the said items on premises, if he so wishes. Food stalls also have a small counter offering the consumers to use the same and consume the food. Else, the consumer can take away the same and consume as per his wish.

B) SUPPLY OF FOOD ON BOARD THE RAJDHANI TRAINS

a. In the Rajdhani trains, menu for the purpose of supplying food items/ beverages is fixed by IRCTC, with respect to each class of travel preferred by the passengers. The Bid Document for services in such trains specifically provide tariff for meals supplied. The above-mentioned document also provides defined "MENU" as per which, meals are supplied to passengers. Food is supplied and served to the passengers and money for the same is charged from the Indian Railways! IRCTC by the appellant.

b. Further, in some cases, IRCTC supplies some items of dinner/lunch menu from it's own base kitchens/approved sources, to be picked-up by the representative of the appellant. The appellant charges money for the same from the Indian Railways/ IRCTC.

c. Also, it is mandatory for the appellant to supply newspaper to the passengers. Railways is to pay to the appellant with respect to said supply of newspaper, as the prices of these

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items are also included in the fare of the ticket.

C) SUPPLY OF FOOD ON BOARD THE MAIL/EXPRESS TRAINS

- a. The menu of food items and the price at which the same are to be served on board the trains is defined by the Indian Railways/ IRCTC. The appellant supplies food from its Pantry/ storage as per the defined menu to the passengers desiring to obtain the same as per the menu price. Apart from the above, there are certain MRP items which are also supplied by the appellant. The same is supplied through the team of waiters which keeps moving in the train and takes orders and supplies the food items/ beverages to the passengers and collects the price from them. It is not compulsory for the passengers to buy anything.

5 Details of Question on which Advance Ruling was sought:

- A) ; What is the applicable rate of tax on the activity of appellant of supplying food/ beverages, in each of the cases mentioned above in light of the amendment made in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 46/2017 — Central Tax (Rate) dated 14.11.2017; amendment made in Notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017 vide Notification No. 48/2017 Integrated Tax (Rate) dated 14.11.17; amendment made in Notification No. 11/2017 — State Tax (Rate) dated 30.06.2017 vide Notification No. 46/2017 — State Tax (Rate) dated 28.11.17 in the NCT of Delhi?
- B) What is the applicable rate of tax on supply of newspaper as elaborated in the cases mentioned above?

Ruling given by the Advance Authority

6 The Advance Authority for Rulings vide Advance Ruling NO. 02/DAAR/2018 dated 28.03.2018 ruled as under:

'23. In the case of supply of food and beverages (cooked/ MRP/ packed), at defined menu and tariff; by the applicant to IRCTC/ passengers on behalf of IRCTC, on board the Rajdhani/ Duronto Express trains, the service charges are covered under Service Code (Tare) 996335 in Group 99633 of heading 9963 of Annexure/ Scheme of Classification of Services as "catering services in train". The same are covered under S. No. 7(ix) of Notification No. 11/2017 — Central Tax (Rate) dated 28.06.2017 as amended vide Notification No. 46/2017 — Central Tax (Rate) dated 14.11.17 and parallel Notifications of IGST and Delhi GST. A train is a mode of transport and hence cannot be called as a restaurant, eating joint, mess or canteen etc. and hence catering services provided on-board a train are not covered under S. No. 7 (i) of the said Notcations as claimed by the applicant. The supply of goods i.e. food, bottled water etc. shall be charged to GST on value of goods (excluding the service charges) at applicable rates as pure supply of goods, as the same have no element of service. The supply of newspaper is separately invoiced and hence it shall be at 'Nil' GST under S. No. 120 of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 and parallel Notifications of IGST and Delhi GST

24. In the case of supply of food and beverages (cooked/ MRP/ packed) on board the Mail/ express trains by the applicant directly to the passengers as per the menu/ rates fixed by IRCTC/ Railways does not have any element of service and hence the same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates. The benefit of S. No. 7 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 46/2017 — Central Tax (Rate) dated 14.11.2017; amendment made in Notification No.8/2017- Integrated Tax (Rate) dated 14.11.17; amendment made in Notification No. 11/2017 – State Tax (Rate) dated 30.06.2017 vide Notification No. 46/2017 – State Tax (Rate) dated 30.06.2017 vide Notification No. 46/2017 — State Tax (Rate) dated 28.11.17 are not admissible to the applicant.

25. The supply of food and beverages (cooked/ MRP/ packed) by the applicant to the passengers/ general public at the rates fixed by the Indian Railways/ IRCTC at food stalls at Railway platforms does not have any element of service and hence the same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates. The mere heating/ cooling of beverages or similar other services are incidental and minimal required to supply of goods and such supply cannot be called composite supply. The benefit of S. No. 7 of Notification No. 11/2017-Central Tax (Rate) dated 28.06,2017 vide Notification No. 46/2017 — Central Tax (Rate) dated 14.11.2017; amendment made in Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 vide Notification No. 48/2017 — Central Tax (Rate) dated 14.11.17; amendment made in Notification No. 11/2017 — State Tax (Rate) dated 30.06.2017 vide Notification No. 46/2017 -- State Tax (Rate) dated 28.11.17 are not admissible to the applicant.

26. For the supply of food (Cooked/ MRP/ Packed) in food plaza, the relevant document pertaining to details of items supplied, pricing details, extent of services provided are not submitted. Hence, no ruling can be given in respect of supply from Food Plaza on the Railway Platform."

RECORD OF PERSONAL HEARING

The matter was posted for Personal Hearing when Shri Puneet Aggarwal, Advocate and Ms. Purvi Sinha, Advocate appeared for Personal Hearing and reiterated the written submissions.

They laid emphasis / elaborated on Board's clarification dated 31.03.2018 issued on a representation made by Ministry of Railways. They asserted that their case is squarely covered by the said clarification which is prospective in nature. In order to support the above contention, the counsel referred to Section 168 of the CGST Act, 2017, which is statutory in nature and incorporated specifically for issuing clarifications on any issue by the Board.



DISCUSSION AND FINDINGS

We have carefully gone through the records of the case and taken into consideration the submissions made by the Appellant in their grounds of appeal and at the time of the Personal Hearing. We find that the appeal is on the limited point of whether the activity of appellant relating to supply of newspaper is taxable under the provisions of the COST Act, 2017/SGST Act, 2017/ IGST Act, 2017 and applicable rate of tax on the activity of appellant of supplying food/ beverages, in each of the cases mentioned above in light of the amendment made in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 46/2017 — Central Tax (Rate) dated 14.11.2017; amendment made in Notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017 vide Notification No. 48/2017 Integrated Tax (Rate) dated 14.11.17;

We note that after findings of the Advance Authority Ruling on the issue, the relevant Notification No. 11 /2017- Central Tax (Rate) dated 28.06.2017 was amended *vide* Notification No. 13/2018-Central Tax (Rate) dated 26. 07.2 018 and an entry No. 7(ia) as reproduced below was added

"(ia) 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. "

Rate of 2.5% of COST was provided subject to the condition that no credit of input tax on goods and services used in supplying the service has been taken.

Similar amendments were issued in terms of Notification No. 13/2018- State Tax (Rate) dated 02.09.2019 and Notification No. 19/2019-Integrated Tax (Rate) dated 30.09.2019.

We also find that the appellant has submitted the clarification issued by CBIC vide letter F.No. 354/03/2018-TRU dated 231.03.2018 addressed to Shri Sanj iv Garg, Additional Member (Tourism & Catering), Railway Board, Ministry of Railways, Rail Bhawan, New Delhi wherein it has been clarified as under:

'2 Different GST rates are being applied for mobile and static catering in Indian Railways which is presently leading to a situation whereby the same licensee (selected by Indian Railways/IRCTC) supplying the same food would be subjected to different GST rates depending on whether it is mobile or static catering, as also which variant of mobile catering it is [pre-paid (without option), pre paid (with option) or post-paid. The rate difference is resulting in the same food being supplied at two different rates to the railway passengers, which is anomalous.

3. The passenger is not aware as to the GST rate applicable to the food ordered by him/her. This may also lead to unnecessary litigation and thus further strengthens the need for uniform application of tax rate in respect of food and drinks in/by Railways.

4. 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

The aforesaid clarification given in the letter *ibid* is squarely applicable to the facts of the case and we accordingly rule, that the GST rate on supply of food and/or drinks by the appellant whether in trains or at platforms (static units), will be 5% without ITC. Advance Authority's Order stands overruled to this extent

We specifically decline to give any ruling on the retrospective or prospective effect of this Order as the same was not before the Authority on Advance Ruling.

Insofar as second question is concerned i.e. supply of newspaper, we find that the same is exempt *vide* Entry at S. No. 120 of Notification No. 2/2017 — Central Tax (Rate) dated 28.06.2017, Entry at S. No. 120 of Notification No. 2/2017 — Integrated Tax (Rate) dated 28.06.2017 and Entry at S. No. 120 of Notification No. 2/2017 — State Tax (Rate) dated 30.06.2017. Hence we hold that no tax is payable on the supply of newspapers on the trains,

ORDER

In view of the aforesaid findings, we order as under:

1. The GST rate on supply of food and/or drinks by the appellant whether in trains or at platforms (static units), will be 5% without ITC.
2. In respect of supply of newspapers, the same are exempted under relevant notifications of CGST, 2017 SGST, 2017 and IGST Act, 2017.

<p><i>iikka, WI(A),</i> </p> <p>(Mallika Arya) Member (Centre) Appeal Authority for Abu</p>	<p>(Ankar, Member (State) Member Appellate Authority for Advance Ruling</p>
<p>By Speed Post & e-mail:-</p>	

2. Mis Deepak & Co., A-96,
Chander Vihar, **Opp.** Rama
Krishna Apartment, IP
Extension, Patparganj,
Delhi-110092
rkgtipta@deepakandco.com

2. Mis ALA Legal,
Advocates and Solicitors,
105-106, Sagar Plaza, District
Centre, Laxtni Nagar,
New **Delhi-110092**
puneetAalaLegal.in



Copy to:-

- 1 The Member(Centre), Advance Ruling Authority Delhi.**
- 2 The Member(State), Advance Ruling Authority Delhi.**
- 3 The Commissioner of CGST & CX, Delhi East, C.R. Building, New Delhi, along with a spare copy for jurisdictional Assistant Commissioner of COST & CX.**
- 4 Sh. Manoj Kumar Sharma, D.R./Assistant Commissioner of State Tax, (Ward-206)/KCS, Vyapar Bhawan, 1.P. Estate, New Delhi-110002, along with a spare copy for jurisdictional Assistant Commissioner of State Tax.**

