

AUTHORITY FOR ADVANCE RULING

TAMIL NADU ADVANCE RULING AUTHORITY

ORDER No. 36/AAR/2019

The erstwhile regime of Service tax and Central Excise regime saw a dispute in classification between goods and services. Many scholars have opined that new GST regime will not encounter any such classification issues. But we have seen in our earlier updates also that these issues are being carried forward. Further, when both the services and goods or two services are provided together then how the GST rates are to be decided? In GST regime, the service tax regime, there was concept of “bundled services”. If these are naturally bundled then the service tax on principal activity was charged. But if the same are not naturally bundled then the highest rate will be charged. This concept has also travelled into GST regime with new name of “Composite supply”. The concept of “naturally bundled” also applies here. Thus, it is opined by many authors that the GST is new bottle with old wine.

The same principle is underlined in this update referring to case law of CHRISTY FRIED GRAM INDUSTRY, AAR TAMIL NADU

Fact of the cases:

The applicant has stated that they are manufacturing and supplying Complementary Weaning food Containing Amylase Activity to the Department of Integrated Child Development Services, Government of Tamil Nadu vide agreement dated 26.02.2016, and supplemental agreement dated 18.12.2017. The above products are distributed free to the economically weaker sections of the society under a programme duly approved by the State Government and Central government. A conditional rate of CGST @ 2.5% and SGST @ 2.5% on production of certificate not below the rank of Deputy Secretary of the Government is applicable on the supply.

They have been transporting these food items through goods carriage vehicle owned by them and they are collecting transport charges along with food charges. In this situation, they request clarification on the rate of GST applicable for transport charges received for transportation of the above said food items through the vehicle owned by them.

Held that:

In the case at hand it has been held by advance ruling that there are two supplies, one of supply of the food products and the other of supply of service of transporting the goods to the specified ICDS centers. Both of these supplies are taxable supplies for a consideration. To decide whether these two taxable supplies are naturally bundled, we have to examine the actual contract / agreement. In this case, the recipient ICDS department intends to serve nutritious weaning food to children through the ICDS/Anganwadi centers all over the State. They could have procured the food from one supplier, aggregate all and then again distribute to each of these center using their own resources or a third party contractor for the same. However, in order to ensure quality and supply of food within prescribed time limits, they have chosen to keep the responsibility of the delivery to the supplier of the food himself. In this case, it eliminates further agreements and more importantly, ensures timely delivery of fresh and quality food. This would also give them the flexibility to get the right quantity to each center at the time of requirement. Accordingly, the bid document clearly indicates that the bidder shall have the responsibility to deliver the specified quantities to all the centers. The bid price is also made inclusive of a fixed transportation charge instead of an actual basis. The applicant is also prohibited from assigning or sub lease any part of the contract including the delivery to a third party. The agreement signed and the invoicing also supports this. Therefore, in this case the supply of 'Complementary Weaning Food Containing Amylase Activity' is naturally bundled with the delivery at the designated centers as specified as per the bid and agreement and hence, this is a composite supply as per Section 2(30) of the CGST/TNGST Act 2017. The principal supply in this case is the supply of 'Complementary Weaning Food Containing Amylase Activity' as seen both in the bid document/agreement. Hence GST will be applicable on transportation charges on the rate of goods only.

Comments:-

The concept of "Composite supply" is very tedious. It can be "mixed supply" if the supplies are not naturally bundled. If they are naturally bundled than it is composite supply. Hence, there will be litigation on the point of naturally bundled. It can be interpreted both ways. It will be source of litigation in future between assessee and department.
