

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Maa Laxmi Enterprise
Address	Uttar Ramchandrapur, Bagbari, Mahila, English Bazar, Malda, 732101, West Bengal
GSTIN	19AAMFM0708M1ZX
Case Number	19 of 2021
ARN	AD1909210053464
Date of application	October 4, 2021
Order number and date	18/WBAAR/2021-22 dated 31.12.2021
Applicant's representative heard	Mr. Sandip Choraria, Authorized Representative Mr. Rajkumar Banerjee, Authorized Representative Ms. Payel Agarwal, ACA

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be engaged in the business of selling flour (*atta*) and providing service of job work in the nature of crushing food grains supplied and owned by Food & Supplies Department, Government of West Bengal.

1.3 The applicant submits that he has entered into an agreement with the District Controller of Food and Supplies, Kolkata, Government of West Bengal for supply of fortified Wholemeal Atta. According to the said agreement, the State Govt. (Food & Supplies Department) sends the whole, unpolished food grain to the applicant for crushing and processing it into flour. The applicant returns the flour(atta) packed in the manner as the State Govt. requires by fortifying the crushed grain with the vitamin which is then distributed through the Public Distribution System (PDS) by the State Govt. (Foods & Supplies Department).

1.4 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

(i) Whether the instant composite supply of service by way of milling of food grains into flour to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?

(ii) What shall be rate of GST on such milling, if it does not fall under entry No. 3A?

1.5 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (b) and (e) of sub-section (2) of section 97 of the GST Act.

1.6 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.7 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.8 The application is, therefore, admitted.

2. Submission of the Applicant

Fact of the case as submitted by the applicant along with interpretation of law made by him is reproduced herein under:

2.1 The Indian Food Security System was established to distribute food and non-food items to India's poor at subsidized rates. Major commodities are distributed including staple food grain, sugar and essential things like kerosene through a network of fair price shops distribution and is managed by State Government through the ration shops. Basic objective of Public Distribution System is to serve the below poverty line family. The Essential Commodities Act, 1955 was legislated to provide in the interest of general public control of production, supply and distribution and trade and commerce in certain commodities. Control, Production, supply, distribution etc. of essential commodity is controlled as per the provision of section 3 of the said Act 1955. The West Bengal Public Distribution System (Maintenance and Control) Order, 2013 has been issued in exercise of power conferred by section 3 of The Essential Commodities Act 1955 and the same extends to the whole of West Bengal except the area where the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 is in force with Government of India Ministry of Consumer Affairs.

2.2 The West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 has been issued in exercise of the power conferred by Section 3 of the Essential Commodities Act 1955 read with the Ministry of Consumer Affairs, Food and Public Distribution Department Order No. G.S.R. 630(E) dated 31.08.2001. It extends to the urban area of West Bengal.

2.3 The West Bengal Public Distribution System (Empanelment of Flour Mill and Milling of Fortified Atta/Wholemeal Atta) guidelines 2017 has been framed in pursuance of clause 36 and 37 of the West Bengal Public Distribution system (Maintenance and Control) Order 2013 and clause 33 and 34 of West Bengal Urban Public Distribution System and is in control 2013. Agreement herein means agreement made between the state government and owners of flour mills thereof in accordance with the provision of the said Guidelines, 2017, as defined in Para 2(1)(a) of the said Guidelines. Para 3 deals with empanelment of flour mills whereas para 6 deals with renewal of empanelment. Paragraph 4(2) of the said guideline, 2017 provides that the empanelled flour mill shall not indulge in private milling for commercial purpose except with the prior consent of the state Government. Para 20 of the said Guideline reads as follows:

20. Maintenance of Register and furnishing returns –

- (1) *A separate register shall be maintained by the owner of flour mill to keep records of wheat received, milled and fortified atta/whole meal atta delivered by you.*
- (2) *Every owner of flour mill shall furnish fortnightly return to the district controller (food and supplies) containing an abstract of the above account and a monthly return which must reach the District Controller, Food and Supply as per format as may be provided by District Controller, Food and Supply or by the Director, District Distribution of Procurement & Supply (DDP&S).*

2.4 The aforesaid activity of Public Distribution System is in relation to the function of safe guarding the interest of weaker section of the society, entrusted to a municipality under Article 243W read with twelfth schedule of the Constitution of India as because para 2(f) of the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 is relevant which speaks as follows:

2(f) "Below poverty line family" means those family who have been identified as such by the concerned authority under the Government of West Bengal and to whom BPL Ration Cards have been issued for distribution of public Distribution Commodities under BPL Scheme along with other specified items of daily use under Public Distribution System.

2.5 The applicant has given a brief account of the job work done in the nature of crushing food grains supplied and owned by Food & Supplies Department, Govt. of West Bengal which is enumerated as below: -

- (a) The State Govt. (Food & Supplies Department) sends the whole, unpolished food grain to the applicant for crushing and processing into flour.

- (b) The applicant returns the flour packed in the manner as the State Govt. requires by fortifying the crushed grain with the vitamin. The packing material is supplied by the applicant.
- (c) The flour is distributed through the Public Distribution System (PDS) by the State Govt. (Foods & Supplies Department).
- (d) By crushing 100 kgs of wheat, 95 kgs of flour and by -product in the form of 4 Kgs of Bran and 1 kg of refractor is generated.
- (e) The cash consideration paid for the senders of crushing is Rs.136.48/-.
- (f) Further, the applicant also gets non cash consideration in the form of being allowed to retain 4 kgs of bran and 1 kg of refractor which is sold in the open market realizing Rs.81. Further Rs.43/- is realized by selling gunny bags which is used by the State Government for sending gunny bags to the applicant.
- (g) Therefore, total non-cash consideration is Rs.124/-.
- (h) Details of cash and non-cash consideration is as below: -

Flour Millers to be paid for crushing of 100 kg of Wheat		Cost for of 95 Kg Atta (in Rs.)
A	Crushing Charges	90.78
B	Fortification Costs	10
C	Packing Charges	50
D	Transportation & Handling Charges	28.70
E	Consideration from sale of Bran (4" Rs.20/Kg (Non-Cash)	80
F	Consideration from sale of Refractors (1" Rs.l/kg)(Non-Cash)	1
G	Total (A+ B+C+D+E+F)	260.48
H	Less: Non-Cash Consideration	
I	Less: Cost of 2 Gunny Bags	-43
J	Less: receipt from Sale of Bran and Refractor	-81
K	Net Total (Cash Consideration)	136.48

2.6 The applicant states that vide Notification No. 2/2018-Central Tax (Rate) dated 25.01.2018, Government of India, Ministry of Finance (Department of Revenue), New Delhi, in exercise of powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017, on being satisfied that it is necessary in the public interest so to do so, on the recommendation of the Council, while making further amendments in the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, inserted serial number 3A which states as hereunder:-

Sl. No.	Chapter, Section, Heading, Group or	Description of Services	Rate cent.) (per	Condition
---------	-------------------------------------	-------------------------	------------------	-----------

	Service Code (Tariff)			
(1)	(2)	(3)	(4)	(5)
3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

2.7 The applicant also states that recently the Special Secretary to the Govt. of West Bengal, Food and Supplies Department, vide Memo No. 2979(3)- FS/Sect./Food/4P-02/2016 dated 8th December 2020 wrote to the Union of India, service through the Secretary, Ministry of Finance, Department of Revenue, having office at North Block, New Delhi, Pin-110001 to clarify that it appears that GST is not applicable on the Flour Mills for crushing of wheat into fortified atta under the Govt. Scheme for Public Distribution System. It was therefore requested in the smooth running of Public Distribution System to keep the activity of investigation in abeyance till the matter is disposed by the Finance Department, Government of West Bengal.

2.8 The applicant has contended that services in the nature of crushing food grains supplied and owned by Food & Supplies Department, Govt. of West Bengal is exempt from the levy of GST vide sl. no. 3A of the notification No. 12/2017- CT (R) dated 28.06.2017.

2.9 The applicant has argued further that the flour is packed in the packing material procured by him and thus he is making a bundled supply of the services of crushing of the grains along with supply of packing materials. They are supplied in conjunction with each other in the ordinary course of business as food grain cannot be transported without proper packing. It is, therefore, a composite supply of goods and services where services of crushing food grains is the principal supply and providing packing materials is ancillary to it.

2.10 The primary condition to be covered under the said entry of exempt supply reads as – “Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply ...”.

Accordingly, it is submitted by the applicant that in the instant composite supply,

- Value of Supply of Goods = Fortification Charges + Packing Charges = Rs. (10 + 50) = Rs. 60
- Value of Composite Supply = Rs. 260.48

Therefore, value of supply of goods vis-à-vis value of composite supply is 23.03% which is much lesser than 25% as specified in the sl. no. 3A of the notification No. 12/2017- CT (R) dated 28.06.2017.

2.11 Distribution through PDS is covered under Entry No. 28 of the Eleventh Schedule of the Constitution. It is an activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

2.12 The Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi vide its recent Circular No. 153/09/2021-GST dated 17.06.2021 has further clarified in the matter of GST applicability on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS, wherein it has been clarified as hereunder:

- *Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis.*
- *In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.*

2.13 On the basis of above-mentioned facts and the provisions of law, the applicant has submitted that the instant composite supply of service by way of milling of food grains into flour to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Alternatively, even if it is assumed without accepting that the aforesaid exemption is not available to the applicants, the services by way of job work in relation to all food and food products falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) is taxable at the rate of as 5% (CGST + SGST) vide Notification No. 11/2017- Central Tax (Rate).

3. Submission of the Revenue

3.1 The concerned officer from the revenue, in respect of admissibility of the application, has submitted that the points raised by the applicant regarding applicability of entry number 3A of

Notification No. 1136 F.T. dated 28.06.2017 [Central Notification No. 12/2017- CT (R) dated 28.06.2017] in this case may be admissible if the goods supplied in such composite supply does not exceed 25% of the value of supply but the same requires ascertainment on case to case basis in view of CBIC Circular. In addition to this, the concerned officer from the revenue has not expressed any other view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representatives of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the Revenue.

4.2 Admittedly, the applicant has entered into an agreement with the District Controller of Food and Supplies, Government of West Bengal for supply of fortified atta upon crushing and processing of wheat provided by the State Government. The issue involved in the instant case, as we find, is to determine whether the instant supply shall get covered under entry serial no. 3A of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 or not which is required to be analysed considering the following aspects:

- (a) whether the supply made by the applicant can be regarded as composite supply of goods and services;
- (b) if the supply qualifies as composite supply, whether the same is made by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution;
- (c) if the answers of (i) and (ii) are found to be affirmative, whether the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply.

4.3 Clause (30) of section 2 of the GST Act defines 'composite supply' as under:

“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;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

4.4 The applicant, according to the agreement as produced, has been selected for empanelment for crushing of wheat into wholemeal atta and fortify it by premixing of micro-nutrients containing Iron, Folic acid and Vitamin to a specific percentage. The agreement further requires the applicant to pack the crushed stock of wholemeal atta after fortification into properly levelled poly-packs having thickness of 40 microns or above. It, therefore, appears that the activities undertaken by the applicant for milling of wheat into wheat flour,

along with fortification and supplied upon packing of the same qualify the definition of 'composite supply' under clause (30) of section 2 of the GST Act where the supply of services by way of milling is the principal supply.

4.5 Now we take the issue to decide whether this composite supply is made in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

4.6 The agreement between the applicant and the State Government for supply of fortified Wholemeal Atta/Atta is found to be executed in terms of G.O. No. 2834-F.S. dated 6th September, 2017. The said Notification provides guidelines for the procedure of empanelment of flour mills/ attachakki to convert wheat into fortified atta/wholemeal atta in pursuance of clauses 36 and 37 of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 and clauses 33 and 34 of the West Bengal Urban Public Distribution System (Maintenance & Control) Order, 2013. In this context, we refer to Para 3.1 of the Circular No. 153/09/2021-GST dated 17.06.2021 where it is stated that 'Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution.' Hence, the instant composite supply made by the applicant is found to be in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

4.7 The issue now left with us is to ascertain whether the value of supply of goods in this case exceeds 25 percent of the total value of the supply or not. According to the applicant, the value of supply of services in respect of milling of 100 kilograms wheat should be Rs.260.48 though the applicant receives consideration in cash only to the tune of Rs.136.48 against such supply. The applicant has contended that the value of supply shall include consideration not received in money but otherwise in the form of cost of gunny bags retained by him and also the receipt from sale of Bran and Refractor. Para 6(1) of the agreement speaks that 'The out-turn ratio of Atta will be minimum of 95% per quintal of wheat allowing refraction of 1% for cleaning and 4% for debranning to the maximum'.

4.8 In this context, we find that in a similar kind of activity, the Appellate Authority for Advance Ruling (AAAR, for short), Andhra Pradesh in the matter of Sri Kanakadurga Rice and Flour Mill reported in [2020] 121 taxmann.com 121 (AA - GST - AP) held that 'it is clear that the value of by-products so retained by the appellant yielded during CMR milling, which were allowed to be retained by the appellant to meet the CMR activity cost shall obviously be included as part of value of supply and also to be termed as a *bona fide* form of consideration'.

4.9 The applicant has submitted a few copies of invoices in support of his submission towards value of supply wherein the rate towards non-cash consideration is shown as under:

- (a) Cost of gunny bag: Rs.21.5/pc
- (b) Receipt from sale of bran and refractors: Rs.81.00/ Qtl

4.10 Thus, the value of supply for providing milling services to convert 100 kgs of wheat supplied by the State Government into 95 kg of fortified atta, according to the applicant, comes at Rs.136.48 + Rs.124.00 [Cost of 02 gunny bags : Rs.43/- + Receipt from sale of bran and refractors : Rs.81/-] = Rs.260.48

4.11 The part of value of supply representing non-cash consideration towards crushing of 100 kgs of wheat as stated by the applicant and noted earlier in Para 2.5(f) refers that the applicant gets such consideration in the form of being allowed to retain 4 kgs of bran and 1 kg of refractor which is sold in the open market realizing Rs.81. Further Rs.43/- is realized by selling of 02 (two) gunny bags.

4.12 A composite supply shall qualify for exemption under entry serial no. 3A of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upon fulfillment of following criteria:

- i) The supply has to be provided to Government/Local Authority/Governmental authority/Government Entity;
- ii) The supply has to be by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution;
- iii) The value of supply of goods in the said composite supply shall not exceed 25% of the value of the said composite supply.

4.13 In Para 3.2 of the Circular No. 153/09/2021-GST dated 17.06.2021 [CBIC-190354/36/2021-TRU Section-CBEC], it has been clarified that "In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate."

4.14 In the instant case, the supply undisputedly fulfils the criteria as referred to in (i) and (ii) above. The applicant receives Rs.10/- and Rs. 50/- i.e., Rs. 60/- in total against fortification cost and packing charges for crushing of 100 kgs of wheat which involves supply of goods. However, the applicant has not furnished before us any document in support of receipts towards non-cash consideration upon sale of bran, refractor and gunny bags which are claimed to have been sold in the open market by the applicant. In absence of such document, we are unable to ascertain whether the value of supply of goods in the composite supply exceeds 25% of the value of supply or not.

4.15 We are, therefore, of the view that where the non-cash consideration involved in the instant supply is found to the extent of such an amount that the value of supply of goods does not exceed 25% of the total value of supply, the supply shall qualify for exemption vide entry serial 3A of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 [corresponding State Tax Notification No. 1136-FT dated 28.06.2017]. Otherwise, the supply shall attract tax @ 5% (CGST @ 2.5% + WBGST @ 2.5%) vide entry serial No. 26 of the

Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [corresponding State Tax Notification No. 1135-FT dated 28.06.2017].

In view of the above discussions, we rule as under:

RULING

- (1) In the instant case, value of supply shall be the consideration in money and shall also include all the components towards non-cash consideration, as discussed. This composite supply of services by way of milling of food grains into flour (atta) to Food & Supplies Department, Govt. of West Bengal for distribution of such flour under Public Distribution System is eligible for exemption under entry serial no. 3A of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 only when the value of goods involved in such composite supply does not exceed 25% of the value of supply.
- (2) If the value of goods involved in such composite supply exceeds 25% of the value of supply, the supply shall attract tax @ 5% (CGST @ 2.5% + WBGST @ 2.5%) vide entry serial No. 26 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [corresponding State Tax Notification No. 1135-FT dated 28.06.2017].

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling