

RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR - 302005 (RAJASTHAN)

ADVANCE RULING NO. RAJ/AAR/2021-22/36, Dated 25th January, 2022

J.P.MEENA Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Shrivika Foodcraft (Prop. Mrs. Richa Jalani) 59, Suraj Nagar East, Civil Lines, Jaipur, Rajasthan, 302006.
GSTIN of the applicant	:	08BGKPM6084K2ZQ
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(a) Classification of any goods or services or both; (d) Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	11.01.2022
Present for the applicant	:	CA. Shuchi Sethi.
Date Of Ruling	:	25.01.2022

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s M/s Shrivika Foodcraft (Prop. Mrs. RichaJalani) 59, Suraj Nagar East, Civil Lines, Jaipur, Rajasthan, 302006(hereinafter the Applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a)& (d)given as under:-

(a) Classification of any goods or services or both; and

(d) Admissibility of input tax credit of tax paid or deemed to have been paid

Further, the applicant being a registered person (GSTIN is 08BGKPM6084K2ZQ)as per the declaration given by him in Form (ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

A- SUBMISSION OF THE APPLICANT:(in brief)

> M/s Shrivika Foodcraft(hereinafter referred to as "applicant")is looking forward to setup restaurants which will be offering various food items including cooked food, beverages and bakery items. The applicant will obtain a license from FSSAI under the Business Category "Food Services -Restaurants". The applicant is registered under GST having GSTIN 08BGKPM6084K.2ZQ in the state of Rajasthan.

> The major food items offered by the applicant in their menu will be as follows:

S.No.	Item Name
1.	Sandwiches / Burgers / Wraps /Continental Food
2.	Salads / Indian Food
3.	Milk Based Shakes / Beverages
4.	Non Milk Based Beverages
5.	Brownie
6.	Cakes / Pastries
9.	Bread/Pizza base/ Bun / Pav
7.	Cookies / Rusk
8.	Foxnut/Nachos

> The applicant will have a dedicated central kitchen for the preparation of food items and there will be various eating joints under the brand name of applicant from where the food preparations will be offered to the customers. The consumers will only have access to such eating joints.

> A substantial part of cooking process of majority food items will be carried out at the central kitchen and the eating joints will receive the pre-cooked or semi-cooked preparations from the kitchen in different forms, containers or packaging having a self-life as applicable for the food item. The preparations may be sent to the outlets in packed form to be offered to the customers as such or to be further processed for offering the food items or dishes at the choice and desire of consumers.

> That the eating joints will also have kitchen areas developed according to the requirements for offerings in the menu of the outlets. There are some outlets which offer an elaborate menu in the restaurant and they have a dedicated and fully equipped kitchen area wherein all facilities for cooking will be available. The entity will also have smaller outlets with a brief menu of limited food items out of the elaborate one and the kitchen area of such outlets will be equipped accordingly with required apparatus.

> That the kitchen area of the eating joint will also be used for further cooking, assembling and garnishing process on the pre-cooked/frozen food received from the dedicated workshop to make it ready for offering to the customers. For instance, the eating joints will receive pre-cooked preparations like the gravies, semi-cooked sandwiches, frozen food etc. from the workshop and the dishes like pasta, sandwiches, burgers etc. will be fully prepared at the kitchen area of eating joint. Fresh food will also be cooked for the consumers at the kitchen of eating joint, whenever required and the kitchens will have all the equipment and facilities required for cooking.

> The eating joints will have staff designated for various roles where some / manpower will be exclusively assigned the role of preparation of food in kitchen area, some will be assigned an exclusive role of taking orders and serving, some will be responsible for cleaning the tables and premises and some will be responsible for overall management of the eating joint and till management.

> The eating joint will be equipped to offer its services through following methods:

a. Dine In: Applicant will be providing Casual Dining facility to its customers. Dine In is the category where customers will visit to the eating joint, have an access to look around the displayed food items available and the complete menu and choose to sit and consume it within the restaurant premises. Under this category, customers will be using the restaurant infrastructure for the consumption of food.

b. Take Away: Under this method, customers can visit to the eating joint, avail of the infrastructure facilities, look around for the entire display of

food items and complete menu available and opts to get the food packed for consume later at desired location as per their own convenience.

c. Delivery(Own or through Food Delivery Apps): Under this category, the customers are provided with a facility to place their orders over call, Whatsapp, Swiggy, Zomato or through any other mode of communication, which will then be delivered directly to the respective address provided by them.

> The applicant will procure raw materials, equipments and machinery for preparation and display of food items, take premises on rent, incur expenses for designing of the premises as per standard infrastructure, repair and maintenance of the premises and the machinery, hiring of manpower for the designated roles and various other administrative expenses.

> That this Advance Ruling is sought from the Authority for Advance Ruling in respect of the following question:-

- Whether the supply of food and beverages (as per illustrative list mentioned in Statement of Facts above) by the eating joints by way of following should be treated as supply of goods or supply of services?

- Dine In
- Take Away
- Delivery

- What should be the classification and applicable tax rate on the supply made by the applicant?

- If the supply shall be treated as supply of goods, whether Input Tax Credit will be available to the applicant?

- If the supply shall be treated as supply of services, whether Input Tax Credit will be available to the applicant?

STATEMENT CONTAINING INTERPRETATION OF LAW & FACTS, IN RESPECT OF THE AFORESAID QUESTIONS

> In Circular No. 164 /20 /2021-GST has been issued on 6th October for 'Clarifications regarding applicable GST rates & exemptions on certain services' has also squarely covered the matter involved in the present case under the heading 'Services by cloud kitchens/central kitchens'. The clarification in the Circular is reproduced as under for reference:-

"3. Services by cloud kitchens/central kitchens:

3.1 Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word "restaurant service" is defined in Notification No. 11/2017 • CTR as below: -

"Restaurant service " means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied. "

3.3 The explanatory notes to the classification of service state that "restaurant service " includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply °f food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens central kitchens are covered under "restaurant service " as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC] "

> That on above case also it has been clearly mentioned that service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. In case of applicant since cooking shall be done by the applicant only (partially at central kitchen and partially at outlet).

> That on the basis of above rationale, applicant is of the understanding that since all the goods offered and supplies by the entity go through a process of cooking by the entity itself at various stages, the supply made by them is essentially a supply of service.

> The GST rates on services have been notified by the Government in Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 which has been

amended by various notifications and the relevant extract of the said notification (as amended up to date) for the present issue is reproduced as under:

In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

SI. No	Chapter, Section or Heading	Description of Service	Rate(%)	Condition
7	Heading 9963 (Accommodation, food and beverage services)	(i) Supply of 'hotel accommodation' having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	-
		(ii) Supply of 'restaurant service' other than at specified premises	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken

				[Please refer to Explanation No. (iv)]
		<p>(iv) Supply of 'outdoor catering', at premises other than 'specified premises ' provided by any person other than,-</p> <p>(a) suppliers providing 'hotel accommodation ' at 'specified premises or</p> <p>(b) suppliers located in 'specified premises</p>	2.5	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation (iv)]</p>
		<p>(v) Composite supply of 'outdoor catering ' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises '</p>	2.5	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation (iv)]</p>

		<p>provided by any person other than,-</p> <p>(a) suppliers providing 'hotel accommodation ' at "specified premises ', or</p> <p>(n)suppliers located in 'specified premises'.</p>		
		<p>(vi) Accommodation, food and beverage services other than (i) to (v) above</p> <p>Explanation.- (a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5), which is a mandatory rate and shall not be levied at the rate</p>	9	-

		<p>as specified under this entry.</p> <p>(b) This entry covers supply of 'restaurant service' at 'specified premises.'</p> <p>(c) This entry covers supply of 'hotel accommodation ' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.</p> <p>(d) This entry covers supply of 'outdoor catering provided by suppliers providing 'hotel accommodation ' at 'specified premises or suppliers located in 'specified premises '</p> <p>(e) This entry covers composite supply of 'outdoor catering'</p>		
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		<p>together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) provided by suppliers providing 'hotel accommodation ' at 'specified premises or suppliers located in 'specified premises.'</p>		
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> As evident from the tariff above, there is a specific entry for Supply of 'restaurant service' other than at specified premises in Entry 7(ii) and for the purpose of the said Notification. 'restaurant service' has been defined in the notification itself as under:

(xxxii) "Restaurant service" means supply, by way of or as part of any service of goods, being food or any other article for human consumption or any drink. provided by a restaurant, eating joint including mess, canteen whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

> The only exclusion from the entry is supply of such service at 'specified premises which is also defined in the notification as premises providing hotel accommodation' services having declared tariff beyond a limit, which is not the case in present facts since the eating joints of the applicant are not intended to be located in any premises having hotel accommodation services. Hence the case of the applicant is not covered in exclusion.

> Now, after primarily understanding that the supply of food and beverages shall be treated as service as per Entry 6 of Schedule II, the classification of the service

under Notification 11/2017 - CT(Rate) has to be determined and for such purpose, the coverage of the above Entry 7(ii) of the notification read with definition of 'restaurant service' has to be understood.

> The infrastructure facilities and amenities made available by the eating joints are evenly offered for all the customers and there is no separate demarcation of area in the premises of the eating joint for customer taking the services by the different methods be it Dine In, Take Away or Delivery. The kitchen area is common for all the orders; the staff is commonly handling the orders whether to serve in the premises or to serve for consumption away from the premises as per the desire of the customer. The display of food items is also common for service by any of the methods. There is a common billing counter for all the orders and no separate billing mechanism for the orders to be served on the table or to be consumed outside.

> Hence Entry No. 7(ii) of the Tariff Notification for services read with the definition of "restaurant service" in the said notification under clause (xxxii) of the Explanation appears to cover the supply of all items of food and beverages made by the applicant.

EXEMPTIONS / CHANGES IN GST RATES / ITC ELIGIBILITY CRITERIA

All stand-alone restaurants irrespective of air conditioned or otherwise, will attract 5% GST without ITC. Food parcels (or takeaways) will also attract 5% GST without ITC.

> Further, the above entry 7(ii) of the Notification is subject to a condition that credit of input tax charged on goods and services used in supplying the service has not been taken. It appears from a bare reading of the entry along with the condition that ITC cannot be availed on goods and services used in supplying the service which is taxable at the rate of 5%. There are other entries in the same Tariff Notification where two different tax rates are available for the same supply with different conditions regarding claim of ITC, for instance Entry 8(vi) for Passenger Transport Services under Heading 9964 for which tax rate of 5% without ITC and 12% with ITC are available. However, in Entry 7(ii) there is no other tax rate available in case the condition is not fulfilled. Hence it does not appear to be optional. Further, under an Explanation to the residual rate of 18% in Entry 7, it has been categorically clarified for the removal of doubt that supplies covered by 7(ii) shall attract tax at the rate of 5% only prescribed against it subject to specified conditions against them, which is a mandatory rate and shall not be levied at the rate as specified under this entry.

> That signed minutes of the meeting of 23rd GST council meeting - para 65.22 to 65.29 are as under,-

Comments of Mr. Upendra Gupta on asking whether the rate 5% rate is mandatory or optional

The notification is issued under section 9 wherein the rate prescribed is 20% for supply. The relevant notification is prescribing rate with specific condition, no option is provided. Wherever the intention to provide option is there, it is clearly mentioned by providing multiple rates 'with ITC and 'without ITC.

> That Circular No. 164 /20 /2021-GST has been issued on 6th October 2021 for 'Clarifications regarding applicable GST rates & exemptions on certain services' has also squarely covered the matter involved in the present case under the heading 'Services by cloud kitchens/central kitchens'.

> That the circular has clarified that when the service is provided by an entity, by way of cooking and supply of food, even if it is through or from any restaurant, it would be covered by restaurant service. The circular has categorically mentioned that this would thus cover services provided by cloud kitchens/central kitchens.

> That on the basis of the above clarification, the applicant is of an opinion that the supply of food by the entity partially or completely cooked in the central kitchen through or from the various eating joints would be covered by 'restaurant service'.

> Hence in view of the applicant, the supply of all the items of food and beverages offered by the eating joints of appellant are classifiable under HSN 9963 under SI. No. 7(ii) of Notification No. 11/2017 - CT (Rate) dated 28.06.2017 amended as on date and are taxable at the rate of 5%.

> That further in the said entry in SI. No. 7(ii), a condition has been mentioned in the Notification that credit of input tax charged on goods and services used in supplying the service has not been taken. Further, in the residual entry of SI. No. 7 it is clarified for the removal of doubt that supplies covered by items (ii) shall attract central tax at the rate of 5% subject to condition that credit has not been taken, which is a mandatory rate and tax at 18% in residual entry shall not be levied. Hence on basis of above, applicant is of the view that ITC will not be available.

B. Question(s) on which advance ruling is sought

- Whether the supply of food and beverages (as per illustrative list mentioned in Statement of Facts above) by the eating joints by way of following should be treated as supply of goods or supply of services?-

- Dine In
- Take Away
- Delivery

- What should be the classification and applicable tax rate on the supply made by the applicant?

- If the supply shall be treated as supply of goods, whether Input Tax Credit will be available to the applicant?

- If the supply shall be treated as supply of services, whether Input Tax Credit will be available to the applicant?

C. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 11.01.2022 through video conferencing. On behalf of the applicant CA, Shuchi Sethi (Authorised Representative) appeared for PH. During the PH, she reiterated the submissions already made in the application.

D. FINDINGS, ANALYSIS & CONCLUSION;

We have considered the submissions made by the Applicant in their application for advance ruling. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

1. Based on the submission of the applicant, we find that applicant is in regular scheme and not in composition scheme. There are different issues to be discussed in respect of which the applicant has asked questions seeking Advance Ruling on the same. They are as under:-

1) Whether the supply of food and beverages (as per illustrative list mentioned in Statement of Facts above) by the eating joints by way of following should be treated as supply of goods or supply of services?

- a. Dine In
- b. Take Away
- c. Delivery

2) What should be the classification and applicable tax rate on the supply made by the applicant?

3) If the supply shall be treated as supply of goods, whether Input Tax Credit will be available to the applicant?

4) If the supply shall be treated as supply of services, whether Input Tax Credit will be available to the applicant?

2. We will take up all the above questions for discussion one by one. The first question pertains to nature of supply whether it is supply of goods or supply of service. Based on the submission of the applicant, we find that applicant is looking forward to setup restaurants in form of central kitchen/ eating joints for sale of following food items alongwith various modes of services thereof to their customer for a consideration:

S.No.	Item Name
1.	Sandwiches / Burgers / Wraps /Continental Food
2.	Salads / Indian Food
3.	Milk Based Shakes / Beverages
4.	Non Milk Based Beverages
5.	Brownie
6.	Cakes / Pastries
9.	Bread/Pizza base/ Bun / Pav
7.	Cookies / Rusk
8.	Foxnut/Nachos

As per facts laid down in their written submission, the applicant will have a dedicated central kitchen for the preparation of food items and there will be various eating joints under the brand name of applicant from where the food preparations will be offered to the customers. The consumers will only have access to such eating joints. A substantial part of cooking process of majority food items will be carried out at the central kitchen and the eating joints will receive the pre-cooked or semi-cooked preparations from the kitchen in different forms, containers or packaging having a shelf life as applicable for the food item. The preparations may be sent to the outlets in packed form to be offered to the customers as such or to be further processed for offering the food items or dishes at the choice and desire of consumers.

In view of above facts, we are of the view that activity of sale of aforementioned food items alongwith services thereof to be performed by the applicant in respect of central kitchen/ eating joints by way of Dine In, Take away & delivery is covered under 'supply' as per section 7 of the CGST Act. 2017 and liable to tax

as per section 9 of the CGST Act, 2017. As far as nature of supply in the present case is concerned, we can visit the clause (b) of entry 6 of the Schedule II to the section 7 of the CGST Act, 2017 which is as under: -

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

a) _____ -

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

As per explanatory notes to the scheme of classification under heading 9963: Accommodation, Food and Beverage service, we find that activity to be performed by the applicant will be classified under heading 996331 "services provided by Restaurants, Cafes, and similar eating facilities including take away services, Room services, and door delivery of food".

Further, the GST rates on services have been notified by the Government vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended vide Notification No. 20/2019-CT(R) dated 30.09.2019 and the relevant extract of the said notification (as amended) for the present issue is reproduced as under:

(1)	(2)	(3)	(4)	(5)
7	Heading 9963 (Accommodation, food and beverage services)	"(i) Supply of 'hotel accommodation' having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand live hundred rupees per unit per day or equivalent.	6	-
		(ii) Supply of 'restaurant service' other than at	2.5	Provided that credit of input tax charged on

		'specified premises'		goods and services used in supplying the service has not been taken [Please refer to Explanation no, (iv)]
		(iv) Supply of 'outdoor catering', at premises other than 'specified premises' provided by any person other than- (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation (iv)]
		(v) Composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to

		<p>than 'specified premises' provided by any person other than-</p> <p>(a) suppliers providing 'hotel accommodation' at 'specified premises', or</p> <p>(b) suppliers located in 'specified premises'.</p>		Explanation (iv)]
		<p>(vi) Accommodation, food and beverage services other than (i) to (v) above Explanation:</p> <p>(a) for the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5), which is a mandatory rate and shall not be levied at the rate as specified under this entry.</p>	9	-";

		<p>(b) This entry covers supply of 'restaurant service' at 'specified premises'</p> <p>(c) This entry covers supply of 'hotel accommodation' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.</p> <p>(d) This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.</p> <p>(e) This entry covers composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place,</p>		
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		<p>specially arranged for organising a function) provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises',</p>		
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As evident from the tariff above, there is a specific entry for Supply of 'restaurant service' other than at specified premises in Entry 7(ii) and for the purpose of the said Notification, 'restaurant service' has been defined in the notification itself as under:

(xxxii) "Restaurant service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

The only exclusion from the entry 7(ii) is supply of such service at 'specified premises'. In the notification No. 11/2017-CT(R) dated 28.06.2017 at explanation No (xxxvi) the "specified premises defined as under:

"Specified premises" means premises providing "hotel accommodation" services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

In present facts since the eating joints of the appellant are not intended to be located in any premises having hotel accommodation services. Hence the case of the applicant is not covered in exclusion as premises will be as standalone restaurant(s).

Further, we can also visit the Circular No. 164 /20 /2021-GST dated 6-10-2021 in respect of 'Clarifications regarding 'Services by cloud kitchens/central kitchens'. The clarification in the Circular is reproduced as under for reference:-

"3. Services by cloud kitchens/central kitchens:

3. 1 Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word "restaurant service" is defined in Notification No. 11/2017 • CTR as below: -

"Restaurant service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied. "

3.3 The explanatory notes to the classification of service state that "restaurant service" includes services provided by Restaurants. Cafes and similar eating facilities including takeaway services, room services and door delivery' of food. Therefore, it is dear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under "restaurant service", as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC]

The aforesaid circular has clarified that when the service is provided by an entity, by way of cooking and supply of food, even if it is through or from any restaurant, it would be covered by restaurant service. The circular has categorically mentioned that this would thus cover services provided by cloud kitchens/central kitchens.

Hence, we find that the supply of food by the entity partially or completely cooked in the central kitchen through or from the various eating joints would be covered by 'restaurant service' and the supply of all the items of food and beverages offered by the eating joints/central kitchen of applicant are classifiable under HSN 9963 under SI. No. 7(ii) of Notification No. 11/2017• CT (Rate) dated 28.06.2017 as amended time to time and are taxable at the rate of 5% (without ITC).

2. Now, we are required to discuss the second question of the applicant which is related to the classification and applicable tax rate on the supply made by the applicant. In this regard, we are of the view that in the instant case supply made by the applicant is classifiable under Chapter, Section or Heading 9963 under SI. No. 7(ii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended time to time and is taxable at the rate of 5% (without ITC).

3. Now, we are required to discuss the Third & forth question of the applicant which is related to availability of Input Tax Credit (ITC) to the applicant if the supply considered as supply of goods or as supply of service. In this regard, we find that supply to be made by the applicant is covered under "restaurant service", as defined in notification No. 11/2017- Central Tax (Rate) as amended and attract 5% GST (2.5% CGST + 2.5% SGST) provided that credit of input tax charged on goods and services used in supplying the service has not been taken. The aforesaid notification is prescribing rate with specific condition, no option is provided. Wherever the intention to provide option is there, it is clearly mentioned by providing multiple rates 'with ITC' and 'without ITC'. Thus, we find that applicant is not entitled to take ITC as per condition laid down at SI. No. 7(ii) of Notification No. 11/2017 - CT (Rate) dated 28.06.2017.

4. In view of the foregoing, we rule as follows: -

RULING

Q. 1: Whether the supply of food and beverages (as per illustrative list mentioned in Statement of Facts above) by the eating joints by way of following should be treated as supply of goods or supply of services?

- Dine In
- Take Away
- Delivery

Ans.1: In the present case, the supply will be treated as Supply of 'restaurant service' as per clause (b) of entry 6 of the Schedule II to section 7 of the CGST Act, 2017.

Q.2: What should be the classification and applicable tax rate on the supply made by the applicant?

Ans.2: Supply made by the applicant are classifiable under Chapter, Section or Heading 9963 at SI. No. 7(ii) of Notification No. 11/2017 - CT (Rate) dated 28.06.2017 as amended time to time and is taxable at the rate of 5% (without ITC).

Q.3: It the supply shall be treated as supply of goods, whether Input Tax Credit will be available to the applicant?

Ans.3: As the supply in the instant case will be treated as Supply of 'restaurant service' as per clause (b) of entry 6 of the Schedule II to section 7 of the CGST Act, 2017 therefore, it will attract 5% GST (2.5% CGST + 2.5% SGST) provided that credit of input tax charged on goods and services used in supplying the service has not been taken.

Q.4: If the supply shall be treated as supply of services, whether Input Tax Credit will be available to the applicant?

Ans.4: As the supply in the instant case will be treated as Supply of 'restaurant service' as per clause (b) of entry 6 of the Schedule II to section 7 of the CGST Act, 2017 therefore, it will attract 5% GST (2.5% CGST + 2.5% SGST) provided that credit of input tax charged on goods and services used in supplying the service has not been taken.