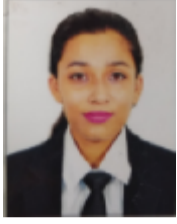




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[Treatment of Supply of Packaged Food Items from Restaurants and Sweetshops under GST Regulations](#)

In the erstwhile regime, restaurant services attracted both service tax and VAT on the supply of food/services, making it a contentious issue. The introduction of GST was expected to streamline indirect taxation of restaurant services replacing multiple taxes (such as service tax, VAT, luxury tax etc.) with a single rate of tax. To a great extent such simplification has indeed been achieved as restaurant services, which are now subject to a single GST rate of 5% [2.5% CGST +2.5% SGST]. The Government has also clarified vide the notifications/ circulars that for all supplies made from restaurants, whether by way of consumption within restaurant or takeaway, same rate of tax shall apply.

In a recent development, Appellate Authority for Advance Ruling, ('AAAR') Uttarakhand in *Kundan Mishthan Bhandar Case* ^[1], Order No. 4/2018-19 (AAAR Uttarakhand) ruled upon the treatment of supply of packaged food items such as sweets, namkeens, cold drinks and other edible items from restaurant and sweetshops from separate parts of same premises. The ruling has been summarized below:-

Facts

Kundan Mishthan Bhandar was running sweetshop and restaurant in two distinctly marked separate parts of the same premise and was maintaining separate accounts as well as separate billings for the two types of business. The goods such as sweets, namkeens, cold drinks and other edible items sold from the sweetshop were billed exclusively as sweetshop sales whereas goods supplied from restaurant were billed under restaurant head.

Findings

Supply of Packed Food items from Restaurant

The AAAR observed that when goods such as sweets, namkeens, cold drinks and other edible items are supplied to customers in the restaurant or as takeaway from the restaurant counter and billed under restaurant sales head qualifies as 'composite supply' with restaurant service being the principal supply. **Accordingly, GST rate on restaurant service shall be applicable and no ITC shall be allowed in such case** (vide updated Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, ITC for restaurant supplies @5% GST is blocked).

Supply of Packed Food items from Sweetshop

The AAAR observed that when goods were supplied through sweetshop counter, there is no direct or indirect nexus with restaurant service. Anyone can come and purchase any item of any quantity from the counter without visiting the restaurant. The billings of such sales are also done separately. Thus, such sales, by no stretch of imagination, can be clubbed with restaurant service. Accordingly, these sales are completely independent of restaurant activity and will continue even when the restaurant is closed, either temporarily or permanently. Hence, such sales will be treated **as supply of goods with applicable GST rates on the items sold. Input tax credit will be allowed on such supply.**

AAAR further ruled that Kundan Mishthan Bhandar must maintain separate records for restaurant and sweetshop with respect to input, output, billings as well as other accounting records.

Author's Comments

The decision of AAAR is strictly on its specific facts. The manner of billing, maintenance of records/accounts, how the sale is made and under what head whether 'restaurant' or 'shop' etc. are some of the relevant facts to be examined before reaching any conclusion on taxability of the

'supply'. It is not uncommon for restaurants to have a separate sweets counter. In all such cases the above relevant factors shall have to be examined to determine taxability of the 'supply' made and whether it shall qualify as a 'restaurant service' or supply of 'goods'.

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[1] [In re Kundan Mishthan Bhandar Case, Order No. 4/2018-19 \(AAAR Uttarakhand\); \(2019\) 03 CCHGST 0111 AAARUK](#)

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