

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 13 / 2018

Dated : 26th July, 2018

Present:

1. Shri. Harish Dharnia,
Joint Commissioner of Central Tax,
Bangalore West Commissionerate,
Bangaluru. . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of
Commercial Taxes (Vigilance)
Bangaluru . . . Member (State Tax)

1.	Name and address of the applicant	M/s Coffee Day Global Limited, #23/2, 6 th Floor, Vittal Mallya Road, Bangaloe – 560 001.
2.	GSTIN or User ID	29AABCA5291P1Z3
3.	Date of filing of Form GST ARA-01	18-01-2018
4.	Represented by	Sri S Vishnumurthy, Chartered Accountant
5.	Jurisdictional Authority – Centre	Bangalore North Commissionerate, North Division-1, 29/2, Basaveshwara Building, Crescent Road, Bengaluru - 560001
6.	Jurisdictional Authority – State	LVO – 020, V V Tower, Shivajinagar, Bangalore – 560 001.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.5,000-00 CGST : Rs.NIL and KGST: Rs.5,000-00 CIN: SBIN18012900060485 dated 11-01-2018

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

M/s Coffee Day Global Limited, 23/2, 6th Floor, Vittal Mallya Road, Bangalore – 560 001, having GSTIN number 29AABCA5291P1Z3, have filed an application, on 18.01.2018, for advance ruling under Section 97 of CGST Act,2017, KGST Act, 2017 & IGST Act, 2017 read with rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01. They also enclosed copy of challan for Rs.5,000/- bearing CIN number SBIN18012900060485 dated 11.01.2018.

2. The Applicant is engaged in supply of non-alcoholic beverages to SEZ units using coffee vending machines and undertakes the following types of transactions:

- a) The applicant installs beverage vending machines inside SEZ premises, prepares beverages using the vending machines & its ingredients, supplies to SEZ units which are consumed by the employees of SEZ units and charge the SEZ units based on number of cups of beverages supplied. (Cuppage billing)
- b) The applicant installs beverage vending machines inside SEZ premises, supplies beverage ingredients to the SEZ units and bills based on the quantity of ingredients supplied. SEZ units prepare the beverages using the vending machines and serve them to its employees. There will not be any consideration for the usage of vending machine by the SEZ units.

3. The Applicant contends that all supplies to SEZ, without any distinction, have been declared to be zero-rated supplies by Section 16 of the IGST Act' 2017. Rule 89 of CGST Rules 2017 dealing with refund of input tax credits relating to SEZ supplies speaks of inputs being used for authorized operations. It is difficult to comprehend that the beverages consumed by employees as being used for authorized operations in SEZ & therefore it is possible to argue that such supplies are not zero rated supplies. However the provisions of the Act have the ability to silence the provisions contained in the rules to the extent they are inconsistent with the Act. Therefore, the supplies to the SEZ units are in the nature of zero rated supplies notwithstanding that they are not used for authorized operations. Accordingly, the applicant is eligible to claim refund of the tax paid on inputs used for such supplies. The applicant also contends that they are entitled to make the said supplies under a bond or letter of undertaking as provided in Rule 89 of CGST Rules 2017.

In view of the above, the applicant filed this instant application seeking advance ruling on the following issue :

“Whether supply of non-alcoholic beverages to SEZ units using coffee vending machines is in the nature of zero rated supply as defined under Section 16 of the IGST Act 2017 ?”

PERSONAL HEARING: / PROCEEDINGS HELD ON 30.01.2018.

3. The Applicant submitted power of attorney, issued by Sri. Jayraj C Hubli, Director, M/s Coffee Day Global Ltd., authorizing Sri S Vishnumurthy, Chartered Accountant to represent the applicant before the Authority for Advance Ruling in connection with the instant application for Advance Ruling.

4. The authorized representative Sri. S Vishnumurthy, Chartered Accountant appeared for personal hearing proceedings and submitted written arguments inter alia stating as under :

- a) The instant application is in respect of issues relating to classification of goods & services and hence is maintainable under Section 97(2) of CGST Act'2017.

- b) Any supply of goods or services to SEZ units is zero rated.
- c) A Person making zero rated supplies can claim refund of input tax credits or claim refund of IGST paid on such supplies, as per Section 16 of IGST Act'2017
- d) The phrase “any supplies” would cover everything, including beverages and ingredients for beverages, if literal interpretation is applies.
- e) SEZ obtains separate registration as an independent vertical of a person and suppliers to SEZ mention such GSTIN. Accordingly invoices will show SEZ as the recipient. Thus no further proof is required to show that it is a supply made to SEZ.
- f) Once the supplies are zero rated, refund of input tax credit of IGST paid on such supplies is automatic. The conditions such as they should be authorized operations etc can be treated as ultravires the statue.

FINDINGS & DISCUSSION:

5. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri S Vishnumurthy, Chartered Accountant during the personal hearing. We also considered the issue/transaction(s) involved on which advance ruling is sought by the applicant, relevant facts & the applicant’s interpretation of law.

6. The Applicant seeks advance ruling on the question *“Whether supply of non-alcoholic beverages to SEZ units using coffee vending machines is in the nature of zero rated supply as defined under Section 16 of the IGST Act’2017?”*

7. The various terms and related discussion in the context of the question are dealt as follows.

7.1 Zero-rated supply as defined in Section 16(1) of the IGST Act, 2017, means any of the following supplies of goods or services or both namely:-

- a) export of goods or services or both; or
- b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

7.2 Further Special Economic Zone shall, in terms of Section 2(19) of IGST Act,2017, have the meaning as assigned to it in clause (za) of Section 2 of the Special Economic Zones Act, 2005 (28 of 2005). This Act provides for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.

7.3 The operations to be carried out in the Special Economic Zone and also in the Units located therein have to be in accordance with the authorisation to be given by the Central Government, in terms of Section 4(2) of the SEZ Act, 2005. Further Section 15(9) of the said Act further requires that the SEZ Unit shall carry out only the authorised operations in the Unit. These provisions are incorporated in the definition of 'authorised operations' under Section 2(c) of the SEZ Act, 2005.

7.4 The definition of the authorised operations and the provisions of Section 4(2) and Section 15(9) clearly establish that the Units operating in the SEZ are required to undertake well defined activities. Such activities are termed as authorised operations. The Act also provides that the proper officer shall certify the authorised activities. It thus flows that any special benefit accruing to the Units located in the SEZ shall be strictly in respect of the authorised operations only.

8. In the backdrop of the various definitions discussed in the preceding paragraph, we proceed to answer the question.

8.1 The applicant undertakes two types of transactions. In the first type of transaction the applicant installs beverage vending machines inside SEZ premises, prepares beverages using the vending machines & its ingredients, supplies to SEZ units which are consumed by the employees of SEZ units and charge the SEZ units based on number of cups of beverages supplied. (Cuppage billing). In the second type of transaction the applicant installs beverage vending machines inside SEZ premises, supplies beverage ingredients to the SEZ units and bills based on the quantity of ingredients supplied. SEZ units prepare the beverages themselves using the vending machines and serve them to its employees. There will not be any consideration for the usage of vending machine by the SEZ units.

8.2 The applicants' contention is that any supply of goods or services to SEZ units is zero-rated and interprets that the phrase 'any supply' would cover everything, including beverages and ingredients for beverages.

8.3 The applicant has used the term 'any supply'. We find that this term is not used anywhere in the statute. The word 'any' has been used only once in Section 16(1) of IGST Act, 2017. It reads '(1) "zero-rated supply" means **any** of the following supplies of goods or services or both, namely:- ...'. This sentence is followed by two options (a) and (b) and there is an 'or' between them. The word 'any' refers to either (a) or (b). Had the word 'any' been placed at the beginning of the sentence in (b) to read 'any supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone Unit' then the contention of the applicant would have been worth consideration. The statute has not used this word in (b). Therefore the interpretation of the applicant is not correct.

8.4 In this regard we once again refer to the provisions of Section 4(2) and Section 15(9) of the SEZ Act, 2005. These Sections provide that each SEZ Unit is allowed to carry out predefined activities (termed as 'authorised operations') to be eligible to avail the benefits of being in the Special Zone. The activities to be carried out have, therefore, to be strictly in consonance with the authorized operations certified by the proper office of the SEZ. Though the IGST Act, in Section 16(1)(b) does not categorically say that the supplies of goods and services should be for authorized operations, it is implicit therein when it says that the supplies are for the SEZ Developer or SEZ Unit. Therefore the litmus test for any supply to be termed as zero-rated supply is to ascertain essentially whether it is for authorized operations or not.

8.6 In this regard we consider it relevant to dwell in the provisions of Rule 89 of the CGST Rules, 2017. It reads as under.

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-(1) *Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided *that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:*

Provided *further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –*

*(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone **for authorised operations**, as endorsed by the specified officer of the Zone;*

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

The Rule related to refund stipulates that the supply, in respect of which tax had been paid and refund is sought, shall be necessarily for authorized operations. In other words the sine qua non or indispensable element is that the supply has to be certified by the proper officer as constituting authorized operations. Benefit flowing out from the SEZ Act, 2005, accrues to anyone only when the condition of authorized operations is fulfilled. Therefore even in the event of the IGST Act, 2017, not explicitly using the term 'authorised operations' in Section 16(1)(b), it is implicit that the supply of goods or services or both described in Section 16(1)(b) have to be read as in relation to authorized operations.

8.7 The applicant has not made out a case that the activity undertaken by them is certified as an authorized operation by the proper officer of the SEZ. We are, thus, of the considered opinion that the activity undertaken by the applicant does not qualify to be a zero-rated supply.

9. In view of the foregoing, we Rule as follows:

R U L I N G

The supply of non-alcoholic beverages / ingredients to such beverages, to SEZ units using coffee vending machines by the applicant, do not qualify as zero rated supply, as defined under Section 16 of the IGST Act'2017.

(Harish Dharnia)
Member

(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,

Date : 26.07.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Central Tax, Bangalore North Commissionerate,
Bengaluru.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Asst. Commissioner, LVO - 20, Bengaluru-01.

Office Folder.