

THE APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, UTTAR PRADESH

4, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW - 226 010.

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Appeal Order No. 01/AAAR/_____/ /2021

Date: 11.05.2022

Before the Bench of:-

1. **Shri S. Kannan,**
Member, Central Tax

2. **Smt. Ministhy S.,**
Member, State Tax

Legal name of the Appellant	DEPUTY COMMISSIONER, CGST & C.EX. DIVISION-II, AGRA COMMISSIONERATE
Trade Name of the Appellant	DEPUTY COMMISSIONER, CGST & C.EX. DIVISION-II, AGRA COMMISSIONERATE
GSTIN Number (Of respondent)	09AAVCS3344P2ZC
Registered address/Address provided while obtaining user ID (Of respondent)	Unit No. 302, Third Floor, Padam Business Park, Plot No. 12, INS1 Sector 12A, Awas Vikas Sikandra Yogna, Agra, Uttar Pradesh
Order of Advance Ruling Against which the appeal is filed	ORDER NO. UP ADRG 84/2021 dated 18.10.2021 issued by the Authority for Advance Ruling, Uttar Pradesh

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act and UPGST Act") by Deputy Commissioner, CGST & C. Ex. Division-II, Agra Commissionerate (hereinafter referred to as the "Appellant") against the Advance Ruling Order No. UP ADRG 84/2021 dated 18.10.2021 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017 and vice versa.

Brief Facts of the Case

- 1) M/s Golden Tobie Private Limited, is a private limited company, having registered address at Unit No. 302, Third Floor, Padam Business Park, Plot No. 12, INS1 Sector 12A, Awas Vikas Sikandra Yogna, Agra, Uttar Pradesh (the Respondent) is a registered assessee under GST having GSTN: 09AAVCS3344P2ZC.
- 2) As per appeal, the respondent is engaged in the business of manufacturing, marketing and distribution of cigarettes. The goods are manufactured outside the state and later on transferred, on stock transfer basis, after payment of 28% GST and Compensation Cess. In order to grow the business the respondent has launched a new sale scheme wherein they will be supplying extra packs of cigarettes along with regular supply quantity without receiving any extra consideration for that additional supply.
- 3). Accordingly, in order to ascertain the tax liability on the additional quantity of cigarettes, the respondent had filed an advance ruling, before the Advance Ruling Authority, Uttar Pradesh, on following issues:-
- Whether the extra packs of cigarettes would again be leviable to GST.*
 - If yes, the taxable value which can be attributed to such extra packs of cigarettes for levy of GST.*
 - Whether extra packs of cigarettes would be considered as exempt supply or free samples and hence attracts provisions of Section 17(2) of the UPGST, Act 2017 read with Rule 42 of the UPGST Rules 2017, or clause (h) of Section 17(5) of the UPGST Act, 2017.*
- 4). The Authority for Advance Ruling, vide Order No. 84/2021 dated 18.10.2021 ruled that:
- Q-1 - Whether the extra packs of cigarettes would again be leviable to GST ?*
Ans- Answered in negative, in view of the discussions made above.
- Q-2 - If yes, the taxable value which can be attributed to such extra packs of cigarettes for levy of GST ?*
Ans -Not answered in view of answer to Question No. 1 above.
- Q-3 - Whether extra packs of cigarettes would be considered as exempt supply or free samples and hence attracts provisions of Section 17(2) of the UPGST, Act 2017 read with Rule 42 of the UPGST Rules 2017, or clause (h) of Section 17(5) of the UPGST Act, 2017 ?*
Ans - The extra packs of cigarettes will not be considered as exempt supplies or free samples and hence the provisions of 17(2) of the UPGST Act, 2017 read with Rule 42 of the UPGST Rules, 2017 or clause (h) of Section 17(5) of the UPGST Act, 2017 will not be applicable.

5) Being aggrieved with the Order No. 84/2021 dated 18.10.2021, the Appellant filed this appeal application before us.

Grounds of appeal submitted by the Appellant:-

6) The Appellant made the following grounds for filing of appeal: -

6.1) Since the cigarettes is not only subjected to ad-valorem taxation rather it is subjected to specific taxation of quantity based system, therefore any ruling passed without considering all the aspect is bad in law.

6.2) The Authority for Advance Ruling does not have authority to discuss about Central Excise Act, 1944, IGST Act, 2017 and GST (Compensation to State) Act, 2017.

6.3) Compensation Cess on cigarettes is applicable at specific rate (depending upon filter/non filter and length of cigarette) hence calculation of tax on all 130 packs of cigarette on the basis of tax invoice issued showing taxable value only for 100 packs of cigarettes is misleading. The respondent appears to have intentionally avoided the mention of quantity in numbers with categorization of filter or non-filter and length of filter and cigarettes on which compensation cess to be calculated. Accordingly there appears a mode of possible substantial tax evasion in the form of compensation cess as it is leviable on per thousand quantities.

6.4) The respondent has relied upon Circular No. 92/11/2019-GST dated 07.03.2019, however by reading all the definitions "Cess" is not the tax for which the said Circular deals with. Further buy one get one free clause in the said Circular talks about only certain sections of trade and industry such as pharmaceutical companies etc and not about evasion prone commodity like cigarette and pan masala.

6.5) The party did not inform the Authority that there are several alerts issued against the said firm by department. Investigation also revealed that the party is also one of the beneficiaries of fake ITC generated. A case against the party is pending at Hon'ble High Court of Delhi for fake input credit and misuse of ITC.

6.6) The party did not inform the authority that they are indulged in claiming refund of accumulated ITC obtained through fraudulent means and many search operations have been conducted against the party.

7) The Appellant was granted personal hearing on 19th May 2022. Further, Following the principle of natural Justice, the respondent was also requested to present its case with reference to appeal filed by the Appellant. Ms. Resham Dwivedi, Deputy Commissioner, Division-II, Agra Commissionerate appeared in

personal hearing on behalf of the Appellant and Sh. Manish Priyadarshi, Advocate/Authorized Representative, appeared in virtual mode, on behalf of the respondent.

During the course of personal hearing, the Appellant reiterated the submissions already made vide appeal application, whereas Sh. Manish Priyadarshi sought time till 23.05.2022 to file detailed written submission. They have nothing more to add. Further, vide email dated 24.05.2022, Sh. Manish Priyadarshi requested two more days time to file written submission. Here we observe that as per sub-section (2) of the Section 101 of the Act, the order has to be passed within 90 days from filing of appeal. Accordingly, due to time constrain, we proceed to decide the case on the records available.

DISCUSSION AND FINDING

8) We have gone through the submissions made by the Appellant and examined the detailed explanation submitted by them. We observe that the grounds on which the Appellant has filed the appeal, are as under :-

a. *Cigarettes are subjected to ad-valorem taxation as well as specific taxation of quantity based system, therefore any ruling passed without considering all aspect of applicable is bad in law.*

b. *The Authority for Advance Ruling does not have authority to discuss about Central Excise Act, 1944, IGST Act, 2017 and GST (Compensation to State) Act, 2017.*

c. *Compensation Cess on cigarettes is applicable at specific rate (depending upon filter/non filter and length of cigarette) hence calculation of tax on all 130 packs of cigarette on the basis of tax invoice issued showing taxable value only for 100 packs of cigarettes is misleading.*

d. *Buy one get one free clause in the Circular No. 92/11/2019-GST dated 07.03.2019 talks about only certain sections of trade and industry such as pharmaceutical companies etc and not about evasion prone commodity like cigarette and pan masala.*

e. *The respondent did not inform the Authority that there are several alerts issued against the said firm by department and that they are indulged in claiming refund of accumulated ITC obtained through fraudulent means and many search operations have been conducted against the party.*

9) Now, coming to the issue regarding ad-valorem / specific taxation, mandate of the Advance Ruling Authority and Compensation Cess, we observe that the

scope of Advance Ruling has been defined under Section 95(a) of the Act, which is as under:-,

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an application on the matters or on the questions specified in sub-section (2) of the Section 97 or sub-section (1) of section 100 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant".

Further, as per sub-section (2) of the Section 97 of the Act:-

"(2) The question on which the advance ruling is sought under this Act, shall be in respect of,-

- (a) classification of any goods or services or both,
- (b) applicability of a notification issued under the provisions of this Act,
- (c) determination of time and value of supply of goods or services or both,
- (d) admissibility of input tax credit of tax paid or deemed to have been paid,
- (e) determination of the liability to pay tax on any goods or services or both,
- (f) whether applicant is required to be registered,
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amount to result in a supply of goods or services or both, within the meaning of that term.

In light of above, we are of the opinion that advance ruling can be sought on the questions specified in the sub-section (2) of the Section 97 of the Act and there is no bar on the any specific commodity / entity, in the Act. Further, we also observe that the Authority for Advance Ruling can give its ruling, on the question specified under sub-section (2) of the Section 97 of the Act, with reference to the tax levied under the Act. If any particular commodity attracts tax/cess, levied under any other statutory Act/Rules then the advance ruling will be restricted to the tax portion levied under the CGST Act, 2017 only.

10) Further, as regard to the contention of the Appellant that "buy one get one free clause" in the Circular No. 92/11/2019-GST dated 07.03.2019 talks only about certain sections of trade and industry such as pharmaceutical companies etc and not about evasion prone commodity like cigarette and pan masala, we observe that the said Circular doesn't talk/bar any particular commodity. Rather, it elaborate the scheme "Buy one get one free offer". As per the said circular "In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can best be treated as supplying two goods for the price of one". In view of this, we observe that the contention of the Appellant is not tenable.

(11). Now, coming to the objection of the Appellant that the respondent did not inform the Authority that there are several alerts issued against the said firm by department and that they are indulged in claiming refund of accumulated ITC obtained through fraudulent means and many search operations have been conducted against the party, in this regard, we observe that as per sub section (2) of Section 98 of the Act, :-

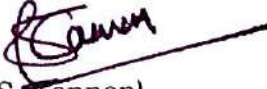
"(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, by order, either admit or reject the application:

PROVIDED that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act."

In view of this, we are of the opinion that the application for advance ruling can only be rejected if the issue raised in the application has already been pending or decided in any proceedings in the case of an applicant under any of the provisions of the Act. However, here we observe that though the Appellant has informed that there are several alerts issued against the said firm by department and that they have indulged in claiming refund of accumulated ITC obtained through fraudulent means and many search operations have been conducted against the party, but, nowhere it has been objected by the Appellant that the questions raised in the advance ruling application of the respondent is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the Act. Accordingly, we are of the opinion that the Advance Ruling Authority has rightly admitted and decided the application for advance ruling filed by the respondent.

RULING

In view of the above discussion, we hold that the ORDER No. UP/ADRG 84/2021 dated 18.10.2021 issued by the Authority for Advance Ruling, Uttar Pradesh is proper and needs no interference.


(S. Kannan)
Member AAAR
CGST


(Ministhy S)
Member AAAR
SGST

To,

1. The Deputy Commissioner, CGST & C. Ex. Division-II,
Agra Commissionerate, Sanjay Palace,
Agra.
2. M/s. Golden Tobie Private Limited,
Unit No. 302, Third Floor, Padam Business Park,

Plot No. 12, INS1 Sector 12A,
Awas Vikas Sikandra Yogna,
Agra, Uttar Pradesh.

3. M/s. Golden Tobie Private Limited,
Industrial Plot No. 69-A,
Toy City Ecotech-III,
Greater Noida, Gautam Buddha Nagar,
Uttar Pradesh, 201306.

APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTAR PRADESH

Copy to -

1. The Additional Commissioner, CGST & Central Excise, Audit Commissionerate, Lucknow, Member, Authority for Advance Ruling.
2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.
3. The Commissioner, CGST & CX, Agra Commissionerate, Uttar Pradesh.
4. Through the Additional Commissioner, Commercial Tax,, Uttar Pradesh to jurisdictional tax assessing officers.