

Whether GST would be leviable on export of pre-packaged and labelled rice upto 25 Kgs, to foreign buyer? HELD Answered in affirmative (2) Whether GST would be applicable on supply of pre packaged and labelled rice upto 25 Kgs, to exporter on "bill to ship to" basis i.e., bill to exporter and ship to customs port. Exporter ultimately exports the rice to foreign buyer. HELD Answered in affirmative (3) Whether GST would be applicable on supply of prepackaged and labelled rice upto 25 Kgs, to the factory of exporter. Exporter will export the rice HELD Answered in affirmative

ADVANCE RULING NO. HR/HAAR/34/2022-23, Dated 09th February, 2023

HARYANA AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICE TAX

HARYANA VANIJYA BHAWAN, PLOT NO 1-3,

SECTOR -5, PANCHKULA -134151 (HARYANA)

Name & Address of the Applicant.	M/s D D International Pvt. Ltd, Kutail Road, Karnal - 132001.
GSTIN of the Applicant.	06AABCD0696B1Z2
Online ARN No.	AD0612220089558
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the questions have been raised.	b. Applicability of a notification issued under the provisions of this Act. e. Determination of the liability to pay tax on any goods or services or both.
Date of Hearing:	31.01.2023

APPLICANT'S ELIGIBILITY FOR SEEKING AN ADVANCE RULING:

To file an application before the Authority of Advance Ruling, the applicant must satisfy the conditions prescribed under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as HGST Act, 2017). Since the provisions of both the Acts are parimateria, any reference to provisions of CGST Act, 2017 in this order should be construed as a reference to corresponding provisions in HGST Act, 2017/IGST Act, 2017 as well.

Sections 97(2) of the CGST Act, 2017 prescribes that Advance Ruling may be sought inter alia on the question of (b) Applicability of a notification issued under the provisions of this Act (e) Determination of the liability to pay tax on any goods or services or both.

Proviso with reference to the Section 98(2) of CGST Act, 2017 states that where the questions raised in the application is already pending or decided in any proceedings in the case of the applicant under any provision of this Act, the application may be rejected by the Advance Ruling Authority after providing an opportunity of being heard to the applicant. And in this case, the applicant has undertaken in form ARA-01 that the issue is neither pending nor decided in any proceedings under any of the provisions of the Act. Besides the applicable fees in the case has been paid. So, he is eligible to seek an Advance Ruling under the above provisions and the case is being heard on merits.

Statement of facts as per ARA-01

1. That the applicant is engaged in the business of manufacturing and supplying of rice and we are supplying rice to customers in pre-packaged and labelled packages, having quantity upto 25 kilograms. We have 3 types of customers to whom sales/supplies are executed details of which is as under:

A. Customers located abroad ("foreign buyer supplies"):-^

i) Foreign buyer provides the specifications which have to be printed/labelled on the packages of rice, which are intended for sale to it. Therefore, we procure empty bag and get them printed/labelled according to the specifications of the foreign buyer from supplier of packing material.

ii) The supplier of packing material dispatches the printed/labelled empty bags, having capacity upto 25 kgs, to our premises.

iii) We pack rice in our factory in these bags and export it to foreign buyer.~

B. Customers located in India who purchase rice from us for the purpose of exports on "bill to ship to" basis ("Exporter"),-^

i) The supplier of packing material dispatches the printed/labelled empty bags, having capacity upto 25 kgs, to our premises on directions of exporter (i.e ., on "bill to ship to" basis, bill to exporter and ship to us).

ii) We pack the rice in empty bags and dispatch the pre packaged rice to customs port on instructions of Exporter (i.e bill to exporter and ship to customs port). Exporter ultimately exports the rice to foreign buyer.~

C. Customers located in India who purchase rice from us for the purpose of exports ("Exporter"),-^

i) The supplier of packing material dispatches the printed/labelled empty bags, having capacity upto 25 kgs, to our premises on directions of exporter (i.e ., on "bill to ship to" basis, bill to exporter and ship to us).

ii) We pack the rice in empty bags and dispatch the pre packaged rice to factory of Exporter. Exporter exports the pre packaged rice to foreign buyer.~

In view of amendment in Entry 51 of Schedule I of Notification No 1/2017-Central Tax (Rate) dated 28-6-2017, Central Tax (CGST) @2.5% and State Tax (SGST) @2.5% is applicable on supply of pre-packaged and labelled rice with effect from 18th July 2022 (Notification No 06/2022-Central Tax (Rate) dated 13th July, 2022).

Further, as per Explanation (ii) of Notification No 1/2017-Central Tax(Rate), The expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (I) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is prepacked or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.

The relevant extracts of Notification No 06/2022-Central Tax (Rate) dated 13 th July, 2022 has been reproduced below:-^

1. In the said notification, -

A.....

B. in Schedule I - 2.5%,

(viii) against S. Nos. 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58 and 59, in column (3), for the portion beginning with the words "put up in" and ending with the words and bracket "as in the ANNEXURE]", the words ", pre-packaged and labelled" shall be substituted,

G. after the Schedule VII, in the explanation, for clause (ii) and the entries relating thereto, the following clause shall be substituted namely: -

'(ii) The expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (I) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.'.-~

Further, the Ministry of Finance has clarified certain doubts regarding the GST levy on 'prepackaged and labelled' goods vide Press Release dated 18th July 2022.Vide FAQ 2 of the said press release, it has been clarified that:a) if specified commodities are supplied in a package that do not require declaration (s)/compliance(s) under the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder, the same would not be treated as pre-packaged and labelled for the purposes of GST levy, b) In the context of food items (such as pulses, cereals like rice, wheat, flour etc), the supply of specified pre-packaged food articles would fall within the purview of the definition of 'pre-packaged commodity' under the Legal Metrology Act, 2009, and the rules made thereunder, if such pre-packaged and labelled packages contained a quantity upto 25 kilogram [or 25 litre] in terms of rule 3(a) of Legal Metrology (Packaged Commodities) Rules, 2011, subject to other exclusions provided in the Act and the Rules made thereunder.

Applicant's interpretation of the legal provisions with respect to the issue at hand:-

1. GST would apply on specified goods where the pre-packaged commodity is supplied in packages containing quantity of less than or equal to 25 kg.
2. Pre-packaged and labelled commodities manufactured exclusively for export have not been excluded from the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder.
3. Therefore, we understand that GST would be applicable on the supply of prepackaged and labelled rice upto 25 kgs, irrespective of the fact that it is for domestic sale or for the purpose of exports.
4. Without prejudice to the above, it is stated that if the then supply of prepackaged rice upto 25 kg for the purpose of Export is exempted from GST. Then, following compliances under the GST law would not be required on export of exempt goods:-^
 - a. Issuance of E-way bill
 - b. Issuance of E-invoice
 - c. Obtaining Letter of Undertaking/Bond for export~

Questions on which Advance Ruling has been sought:-

1. Whether GST would be leviable on export of pre-packaged and labelled rice upto 25 Kgs, to foreign buyer?
2. Whether GST would be applicable on supply of pre-packaged and labelled rice upto 25 Kgs, to exporter on "bill to ship to" basis i.e., bill to exporter and ship to customs port. Exporter ultimately exports the rice to foreign buyer.
3. Whether GST would be applicable on supply of pre-packaged and labelled rice upto 25 Kgs, to the factory of exporter. Exporter will export the rice,

PERSONAL HEARING:

On 11.10.2022 Ms. Suman Bansal, Chartered Accountant presented the matter before the authority on behalf of the applicant and apprised the details of the case. Whereas the Proper Officer has submitted the comments on the issue in writing.

COMMENTS OF THE PROPER OFFICER dated 30.01.2023:-

It is submitted that as per Notification No. 06/2022 - Central 'fax (Rate) dated 13th July 2022, that GST @5% is applicable on supply of pre-packaged and labelled rice upto 25 kg, if following conditions are satisfied:-^

- i. It is pre-packaged and labelled; and
- ii. It is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.~

Above provision is applicable on all goods whether supplied domestically or are being exported.

Regarding query No. 2, whether GST No. is applicable on pre-packaged and labeled rice upto 25 KGs, to exported on "bill to ship" basis i.e bill to exporter and ship to customs port. Exporter ultimately exports the rice to foreign buyer. In this regard it is submitted that declaration to be mentioned on pre-packaged commodities, Section 18 of Legal Metrology Act, 2009 reads as under:

"No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodities unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed. "

Regarding query no. 3, whether GST would be applicable on supply of prepackaged and labeled rice upto 25 KGs, to the factory of exporter. Exporter will export the rice. In this regard "Neither notification no. dated 6/2022 and dated 13th July, 2022, that nor the Legal Metrology Act, 2009 has made any differentiation with regard to applicability of GST on export of goods/mentioning of declarations or pre-packaged commodities

for export.

Therefore, if rice is being supplied in pre-packaged and labeled bags, having capacity upto 25 Kg, it will be liable for GST @ 5% irrespective of the fact that it is for domestic supply or for export.

DISCUSSION AND FINDING:

The Authority has deliberated upon all the factual details and legal provisions with reference to the issue at hand and equally considered the verbal submissions made by the representative of the applicant during the personal hearing. Besides the details of the matter available on the case file has also been perused by us. It is noticed that the applicant is a manufacturer of rice and supplies the goods in the taxable as well as non taxable territory. He has mentioned that there are three types of customers to whom the supply of rice is being made.-^

i. The applicant exports the goods to the foreign buyer/recipient after procuring the empty bags from the domestic market and printing and labelling it as per the specification given by the recipient of the goods and pack 25 Kg rice in the said labelled and printed bag.

ii. In the mode of "bill to ship to" model of export of the goods, the applicant receives the printed/labelled empty having capacity upto 25 kg from the supplier of the packing materials to his own premises on the direction of the exporter and thereafter the applicant pack the rice in these bags and dispatch the pre packaged and labelled goods to the custom port on the instruction of the exporter (i.e. bill to exporter and ship to custom port).

iii. Thirdly, the applicant pack the rice in printed and labelled empty bags having capacity upto 25 Kg provided by the exporter and dispatch the pre-packaged and labelled goods to the factory of the exporter (supply of pre-packaged and labelled rice to the customers located in the taxable territory for the purpose of export).~

On the above mode of supplies, the applicant has sought an advance ruling that whether these supplies attract the levy of tax under the GST Act, 2017 or not? The authorities observations after going through the contents of the matter is that the legislature intention is that the supply of the rice in packets of upto 25 Kg which are duly pre-packaged and labelled as per the Legal Metrology Act, 2009(1 of 2010) and the rules made thereunder is an taxable event and It's not an exempted/nil rated supply. Besides Ministry of Finance, Govt, of India has clarified the applicability of GST on pre-packaged and labelled goods through FAQs which were uploaded online on 18th July, 2022 w.r.t the notification no. 6/2012-CT(Rate). Though FAQs are not binding on the statutory authorities but they have a persuasive value for any authority while interpreting the legal provisions. From the perusal of the said notification and subsequent clarification on it, it can be said that in the present matter if supplied goods are the prepackaged and labelled and in the packages of less than or equal to 25 kg in quantity then the same are taxable. Further, the scope of supply under the GST Act, 2017 is an all encompassing event and only goods and services which have been categorically declared as non taxable/exempted/nil rated supplies under the Act are outside the purview of the section 7 of the CGST Act, 2017. In the light of this discussion, the Authority is of considered view that the transactions undertaken by the applicant falls within the purview of the scope of supply and attracts levy of tax as applicable under the CGST/HGST/IGST Act, 2017.

7. Ruling: -

Questions	Answers
1. Whether GST would be leviable on export of pre-packaged and labelled rice upto 25 Kgs, to foreign buyer?	Yes
1. Whether GST would be applicable on supply of pre-packaged and labelled rice upto 25 Kgs, to exporter on "bill to ship to" basis i.e., bill to exporter and ship to customs port. Exporter ultimately exports the rice to foreign buyer.	Yes
2. Whether GST would be applicable on supply of prepackaged and labelled rice upto 25 Kgs, to the factory of exporter. Exporter will export the rice,	Yes

(Sunder Lal)

Member CGST

(Kumud singh)

Member SGST

Note: An Appeal against this advance ruling order lies before the Haryana Appellate Authority for Advance

Ruling for Goods and Service Tax Haryana Vanijya Bhawan, Plot No. 1-3, Sector 5, Panchkula-134 151 (Haryana), within 30 days from the date of service of this order.