



JUDGEMENT

Taxability and ITC Treatment Clarified for Retailers Running Hybrid Models of Restaurant and E-Commerce Sales

Issued By:

Kerala AAR

In Case Of:

M/s Shubham Treats

N J JAIN & ASSOCIATES

CHARTERED ACCOUNTANTS

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FACTS & OBSERVATIONS

- M/s Shubhan Treats, a firm selling sweets, snacks, and food under the brand Mishti & More, also **operates a restaurant offering dine-in, takeaway, and delivery** through e-commerce operators (ECOs) like Swiggy and Zomato.
- The applicant sought clarity on **how to classify its supplies whether as goods or as restaurant services** and the consequent implications for GST and Input Tax Credit (ITC) eligibility.
- A major question involved distinguishing **over-the-counter packaged or loose items from freshly prepared food supplied** for immediate consumption, especially through dine-in or online orders.
- The applicant also sought **clarity on ITC availability** for inputs used in the preparation of goods versus restaurant services, especially given the different GST treatment of each.
- Further clarification was sought on **who bears GST liability for supplies made through e-commerce platforms**: the applicant or the e-commerce operators.

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- The AAR held that **items sold in packaged or loose form for home consumption (without service elements) are classified as goods**, while items supplied via dine-in, takeaway, or app-based delivery involving preparation and immediate consumption are classified as restaurant services.
- For **restaurant services taxed at a concessional 5% GST rate, ITC is not available** on inputs used in providing such services. This restriction remains even if the same inputs are otherwise taxable.
- Where common inputs are used for both taxable goods and exempt restaurant services, the **taxpayer must reverse proportionate ITC under Rule 42 of CGST Rules**, treating restaurant service as exempt for ITC purposes.
- On sales made through ECOs, the AAR ruled that **GST liability lies with the e-commerce platform (Swiggy/Zomato) for restaurant services supplied through them**.
- However, where goods (like sweets/snacks) are sold via ECOs **without any service component or preparation for immediate consumption, GST liability continues to rest with the supplier**, i.e., Shubhan Treats.

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