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 9 / 2018
Dated: 29 June, 2018

Present:

1. Sri. Harish Dharnia,
   Joint Commissioner of Central Tax,
   Bangalore West Commissionerate,
   Bengaluru.

   . . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.
   Joint Commissioner of
   Commercial Taxes (Vigilance)
   Bengaluru . . . . Member (State Tax)

1.	Name and address of the applicant	M/s United Breweries Limited, 20th Mile, Tumkur Road, Nelamangala, Bangalore Rural, Karnataka-562 123. **Correspondence address:** UB City, UB Tower, 4th Floor, 24, Vittal Mallya Road, Bengaluru – 560 001
2.	GSTIN or User ID	29AAACU6053C1ZH
3.	Date of filing of Form GST ARA-01	10-01-2018
4.	Represented by	Sri K S Ramesh, Advocate, Sri. Govind Iyengar, Sr. Vice President, Legar & Secretarial, UBL & Sri Venkatesh, Authorised Representatives

5.	Jurisdictional Authority – Centre	Range DNWD5, Division 5, Bengaluru North West Commissionerate, Bengaluru.
6.	Jurisdictional Authority – State	--NA—
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.10,000-00 CGST : Rs.5,000/- and SGST: Rs.5,000-00 CIN: SBIN18012900046712 dated 09-01-2018

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 United Breweries Limited, 20th Mile, Tumkur Road, Nelamangala, Bangalore Rural, Karnataka – 562 123, having correspondence address at UB City, UB Tower, 4th Floor, 24, Vittal Mallya Road, Bengaluru – 560 001(herein after referred to as 'UBL' / 'Applicant') having GSTIN number 29AAACU6053C1ZH, have filed an application, on 10.01.2018, 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.10,000/- (CGST-Rs.5,000/- & SGST-Rs.5,000/-) bearing CIN number SBIN18012900046712 dated 23.11.2017.

2. The Applicant is engaged in manufacture and supply of beer under various brand names. The Applicant, apart from manufacturing beer on its own, also has manufacturing arrangement with contract brewing / bottling units (CBU) who manufacture brands of beer belonging to the applicant and supply such beer to market. CBUs manufacture beer bearing brands owned by the applicant by procuring raw materials, packaging materials, incurring overheads and other manufacturing costs etc. on its own and sell the beer directly to Government corporations / wholesale depending on the state market.

3. The CBUs, upon the sale of the goods, pay the statutory levies and taxes. The CBUs further account for the manufacturing cost and distribution overheads in their books of account as they had procured all

the resources for the manufacture of the beer. Further they retain a certain amount of profit. After accounting all these revenues the CBUs transfer the balance amount to the applicant.

4. In this backdrop the applicant has sought advance ruling on the following Questions:

(a) Whether beer bearing brand/s owned by M/s United Breweries Limited (Brand Owner/UBL) manufactured by Contract Brewing Units (CBUs) out of the raw materials, packaging materials and other input materials procured by it and accounted by it and thereafter selling such beer to various parties under its invoicing would be considered as supply of services and whether GST is payable by the CBUs on the profit earned out of such manufacturing activity?

(b) Whether GST is payable by the Brand owner on the "Surplus Profit" transferred by the CBU to the Brand Owner out of such manufacturing activity?

5. The 'Statement of Facts' enclosed as Annexure -2 to the application reveals as follows:

5.1 UBL is in the business of manufacture and sale of beer under brands owned by them. They also have manufacturing arrangements with Contract Brewing/Bottling units (CBUs). The CBUs procure the required material and manufacture beer according to the specifications of UBL, label them with brands owned by UBL and sell the final produce as per the extant excise laws of the State(s). In order to ensure the quality and standard of the beer the manufacturing process is supervised by personnel from UBL.

5.2 The CBUs realize the sale proceeds and the same are apportioned as follows. The statutory levies and taxes are paid by the CBUs. Besides this the CBUs retain the manufacturing cost, the manufacturing and distribution overheads and its portion of net profit. The balance of the sale proceeds, after the CBUs have apportioned part of the proceeds as enumerated above to themselves, is transferred to UBL as surplus/profit earned by the brand owner.

5.3 The contract manufacturing arrangement empowers the CBUs to use the brand name of UBL for the limited purpose of facilitating manufacture of UBL owned brands of beer by the CBUs and this usage is in accordance with Section 48(2) of Trademark Act.

5.4 UBL has further trailed the levy of service tax in relation to the activity of production/process of alcoholic liquor for or on behalf of brand owners like UBL commencing on 01.09.2009. This levy of service tax under Business Auxiliary Service continued up to 30.06.2012. Thereafter with effect from 01.07.2012 the activity of production of or process amounting to manufacture was covered under Section 66D (Negative List) implying that the activity undertaken by the CBU went out of the purview of Service Tax. The statute was yet again amended and the process undertaken by the CBUs once again came under the purview of Service Tax with effect from 01.06.2015.

5.5 During the alternating periods when this arrangement of manufacturing at the hands of CBUs was taxable the then CBEC issued certain clarificatory Circulars to tide over issues related to valuation and taxability.UBL has extensively discussed and cited the contents of Circular F. No. 332/17/2009-TRU dated 30.10.2009. The contents of this Circular are discussed at the appropriate place in this Ruling. UBL has further added that during the periods from 23.09.2009 to 30.06.2012 and 01.06.2015 to 30.06.2017 the CBUs have discharged Service Tax on the agreed bottling charges (comprising of manufacturing overheads and margin of profit) and the amounts reimbursed by the brand owner towards agreed expenses. **This indicates that service tax was being paid by the CBUs in respect of the amount retained with them, excluding the cost of the raw material, packing materials and statutory levies (excise duty/VAT).** This fact closely relates to the first question raised by the applicant.

5.6 UBL has further traced the past litigations (pre-GST period) in respect of the matter contained in their second question seeking Ruling, i.e. taxability at the hands of UBL in respect of the amount received by them from the CBUs. It is stated the even though the CBEC had clarified that there was no service provided by the brand owner to the CBUs by permitting use of brand name, the filed formation of Service Tax administrations held out that the activity amounted to provision of intellectual property service and charged service tax thereon. The brand owners contested the issue and finally the Tribunals, relying of the aforementioned CBEC Circular dated 30.10.2009, held that the said activity was not liable to Service Tax.

5.7 UBL has also discussed an adjudication order passed in their own case. The adjudicating authority held that service tax was payable on the amount accounted by them as 'brand fee' under intellectual property service. UBL has challenged this Order before the Tribunal. The matter is sub-judice. UBL has further based their challenge in the matter on the basis of decision by Tribunal in the case of BDA Pvt. Ltd reported in

2014(35)STR 570(Del) upheld by the Supreme Court as reported in 2016(42) STR J143 SC.

5.8 UBL has further presented that in the GST regime, post 01.07.2017, alcoholic liquor for human consumptions has been kept out of the levy of GST. With respect to the manufacturing activity carried out by the CBUs the levy of GST would arise only on the activity of 'treatment or process which is applied to another person's goods' as per Schedule II to the CGST Act, 2017. It is further stated that since the CBUs procure the material on their own account and are not applying any treatment or process on goods belonging to UBL, GST would not be applicable on the activity. The applicant concludes that in respect of income earned by the brand owner the CBEC has already clarified that there is no service from the brand owner.

5.9 In the sum up the applicant has held that GST is not payable either on the income earned by the CBUs or on the brand owner's surplus profit. Hence the application preferred for Ruling on both the issues.

6. In Annexure-3 of the application comprising of 'Statement containing the applicant's interpretation of law and facts', the applicant has more or less reiterated the contents of Annexure-2.

6.1 Additionally, the applicant has drawn attention to Notification 11/2017 Central Tax (Rate) dated 28.06.2017 to further drive home the assertion that the activity of manufacturing would amount to supply of service only if manufacturing is carried out on physical inputs(goods) owned by others (serial No. 26 of the Notification). The sum and substance of the applicants contention is that since in their case the CBUs manufacture beer out of raw materials physically procured by themselves, the activity of manufacture of beer of their brands does not amount to supply of service by the CBUs to the applicant. Reference is also made to Serial number 27 of the said Notification to emphasise that the manufacturing activity carried out by the CBUs does not fall within the purview of HSN Heading 9989 also. It has thus been summed up by the applicant that the manufacturing activity undertaken by the CBUs does not amount to supply of service to the applicant and therefore GST is not payable in respect of the amount retained in the hands of the CBUs.

6.2 In respect of the second question concerning the applicability of GST on surplus profit earned by them, the applicant has cited several case laws in favour of their arguments. The case laws are decisions by Tribunals in the cases of M/s Skol Breweries Ltd reported in 2013(29) STR 9 (Tri), Radico Khaitan Ltd reported in 2016(44) STR 133 (Tri) and BDA Pvt Ltd reported in 2014 (35) STR 570 (Tri).The decision in the case of BDA Pvt Ltd was maintained by the Supreme Court as reported in 2016 (42) STR

J143 (SC) where it was ruled by the Supreme Court that the activity of permitting the CBUs to manufacture alcoholic beverages on behalf of the principal does not amount to rendering of taxable service under the category of IPR service. The applicant has further stated that there has been no change in the law during the GST regime as compared to the law existing during the prior period for which the issue was decided by the Supreme Court. Consequently the ratio of the judgments applies to the present law and therefore they are not liable to pay GST on the surplus profit earned by them.

7. The applicant and their representatives appeared before the Authority on 30.01.2018 and thereafter again on 09.02.2018. All the narrations made in their application and both the Annexures were reiterated during the hearing. The representatives also submitted the following records for consideration in the matter:

(a) Brewing and Distribution Agreements between UBL and
   (i) Master (India) Brewing Company
   (ii) CMJ Breweries Private Ltd.
   (iii) Mount Everest Breweries Ltd
   (iv) Denzong Albrew Private Ltd

(b) Technical know-how agreements between UBL and M/s Baba Loknath Glass Industries and Pacific Packaging Industries for manufacture of bottled water under brand name of 'Kingfisher'.

(c) Copies of judgements passed by Tribunals in the following cases:
   (i) BDA Pvt Ltd Vs Commissioner of Central excise, Meerut
   (ii) Radico Khaitan Ltd Vs Commissioner of Service Tax, Delhi
   (iii) SKOL Breweries Ltd Vs Commissioner of C. Ex. & S.T., Aurangabad

(d) Copy of CBEC Clarification Letter F. No. 332/17/2009-TRU dated 30.10.2009

(e) Copy of Order No. 17/2016-17 dated 02.06.2016 passed by Commissioner of Service Tax-I, Bengaluru.

(f) Additional written submissions on both the questions raised for Ruling.

8. The jurisdictional Central Tax office, where the applicant is registered, has not made any representation in the matter. The questions are therefore taken up for Ruling in the matter on the basis of material facts and views put forth by the applicant.

BACKGROUND DISCUSSION ON THE QUESTIONS

8. In order to answer the two questions raised by the applicant it is imperative to first study and analyse the business model adopted by the applicant and to examine the fine nuances of the various agreements between the applicant and other parties in business with them. There are two clearly distinguishable arms of the business model. On one hand is the applicant who owns the brands commanding a market for themselves and the second is the CBUs who have the licences to manufacture beer of any specification. The agreements between the applicant and the CBUs seek to synergise these two arms where the applicant would provide the authority to the CBUs to manufacture beer to their specifications and then sell the same after affixing their brand on the product.

8.1 The applicant is engaged in manufacture and supply of beer under various brand names. The Applicant, apart from manufacturing beer on its own, also has manufacturing arrangement with contract brewing / bottling units (CBUs) who manufacture beer under brand names belonging to the applicant and supplies such beer to market. Copies of the following brewing and distribution agreements have been submitted by the applicant for illustration:

(i) Master (India) Brewing Company
(ii) CMJ Breweries Private Ltd.
(iii) Mount Everest Breweries Ltd
(iv) Denzong Albrew Private Ltd

The salient features of each of the agreements are discussed in the following paragraphs.

8.2 UBL and Master (India) entered into a Brewing and Distribution Agreement. The salient features of the agreement are as follows:

(i) Master (India) authorized to manufacture UBL beer
(ii) UBL will provide process parameters and specifications to Master (India) for manufacture of beer under the supervision and control of UBL
(iii) Master (India) permitted to use the trademarks owned by UBL and to manufacture, bottle, package and dispose UBL beer
(iv) UBL will depute its process executive to the manufacturing facility of Master (India) who will be responsible for the brew as per their specifications, would inspect the brewery and advice on processing and quality control
(v) UBL may also depute commercial executive to guide the procurement of raw materials, packing material etc.

(vi) Master (India) will not obtain any commercial advantage from the process information available to them
(vii) Master (India) will pay a brand fee of Rs 5 per case as consideration for the representational right for manufacture and supply of beer under UBL Labels
(viii) the proceeds from the sale of the beer would be remitted in a joint account. This account will be used to service the operational costs (raw material, PM, other consumables, bottle cost and retention for energy and fixed costs by brewer). The surplus will be transferred to UBL.
(ix) representational rights in terms of use of the trademark are also earmarked allowing the brewer to only affix the marks and labels and sell the beer. The rights over the trademark remain UBL.
(x) UBL shall be responsible for physical/financial injury, loss or damage arising out of consumption of the beer attributable to the manufacture of the beer. The brewer will be responsible for the physical or financial injury, loss or damage arising out of consumption of beer which may be attributable to bottling and packaging operations and shall indemnify UBL in that regard.
(xi) upon termination or expiration of the contract Master(India) would dispose of unsold stock of UBL beer in its possession at ex-brewery price and make payment to UBL in terms of the contract. Further they will sell at cost raw materials, labels, packing material etc to UBL.

8.3 The brewing and distribution agreements between UBL as brand owner on one hand and brewers CMJ Breweries Private Ltd., Mount Everest Breweries Ltd and Denzong Albrew Private Ltd on the other hand are identical to the agreement between UBL and Master (India) Brewing Company and have the same salient features as enumerated above in para 8.2(i) to (xi). However the agreement between UBL and Mount Everest Breweries Ltd has a different clause (Clause 7.4) which stipulates that UBL will provide working capital finance for the operations of Mount Everest Breweries Ltd. Further the capital is controlled by UBL through the operation of a 'Collection Account' to be opened by Mount Everest Breweries Ltd. but operated exclusively by the nominees of UBL. Further collections from the sale of beer and all payments under the agreement would be made out of this account.

9. A fine reading of the various agreements cited above brings out the following points for consideration.

9.1 UBL, being the brand owner, has the technical knowhow to manufacture beer to certain specifications typical of their brands. They are thus in possession of the intellectual property associated with their brands of beer.

9.2 The breweries, like Master (India), CMJ Breweries etc, are entities which have the licences and infrastructure to manufacture beer.

9.3 The scheme of the agreements provides that UBL would provide the technical knowhow to the breweries, including close supervision of procuring and manufacturing processes, and the breweries in turn would endeavour to manufacture beer of the requisite standards and sell the same as regulated by the State laws.

9.4 The revenue sharing agreement stipulates that apart from the cost of the raw material, cost related to energy consumption, fixed costs etc, the brewery would be entitled to a fixed sum. The balance left over after deducting all the costs, including statutory dues and taxes, shall pass on to UBL. UBL provides for this inflow of revenue as (i) brand fee at the rate of Rs 5 per case and (ii) balance as surplus income.

9.5 The agreements provide that the brewery shall be procuring the raw materials required, even if it was under the close supervision of UBL. This is also evident from the provisions related to 'obligations and rights of parties upon termination or expiration'. It is provided that in the eventuality that the agreement suffers termination or expiry then UBL would be entitled to take over all the unused labels, unfinished goods, semi finished goods in process at landed cost. Further unsold finished goods would be lifted by UBL at ex-brewery price and UBL shall make payment to the brewery as per the agreement.

Discussions and Rulings

10. The first question for discussion and Ruling in the matter is:

Whether beer bearing brand/s owned by M/s United Breweries Limited (Brand Owner/UBL) manufactured by Contract Brewing Units (CBUs) out of the raw materials, packaging materials and other input materials procured by it and accounted by it and thereafter selling such beer to various parties under its invoicing would be considered as supply of services and whether GST is payable by the CBUs on the profit earned out of such manufacturing activity?

10.1 Section 9(1) of the CGST Act, 2017, and Section 9(1) of the Karnataka GST Act, 2017 and Section 5(1) of the IGST Act, 2017 provide for levy of CGST, SGST and IGST respectively on all intra-state and interstate supplies of goods and services or both except on the supply of alcoholic liquor for human consumption. The end product, i.e. beer,

whether manufactured by the applicant or the CBUs, is thus not exigible to CGST,SGST or IGST.

10.2 The point to be determined here is whether the CBUs are supplying any service to the applicant by undertaking to manufacture beer according to their specifications thereby rendering them liable to pay GST on the profit earned by them by virtue of supply of service to the applicant.

10.3 The CBUs undertake the manufacture of goods for or on behalf of the applicant, apparently in the nature of a job work. 'Job work' is defined under Section 2 (68) of the CGST Act, 2017 and Section 2(68) of the KSGST Act, 2017 as follows:

Job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression" job worker" shall be construed accordingly.

10.4 Further Section 7 of the CGST Act and KSGST Act define the scope of 'supply'. Section (1)(d) of the said Act provides that 'Supply' includes activities referred to in Schedule II to the Act. As the activity undertaken by the CBUs is the manufacture of goods the entry at Serial number 3 of Schedule II is the relevant entry in the matter. The entry reads as follows

Any treatment or process which is applied to another persons' goods is a supply of service.

Therefore in the realm of undertaking any manufacturing activity under an agreement, the manufacturer would supply service to the other registered person only in the event of the said registered person supplying goods to the manufacturer to work upon them. In other words the manufacturer would not be purchasing and accounting the goods in their account books.

10.5 Furthermore it would be relevant in this context to examine the provisions of Notification 11/2017 Central Tax (Rate) dated 28.06.2017 as well as the scheme of classification of services enumerated in the Annexure to the Notification. The Annexure providing the Scheme of classification of services indicates that all the services have been divided into various Sections and further into headings. Services related to manufacture appear in Section 8 under Heading 9988. The Notification, at serial number 26, also requires that Heading 9988 is applicable when the physical inputs are owned by person other than the manufacturer. Further Heading 9989 also provides for classification of other manufacturing services apart from those under Heading 9988. There are four groups of services under heading 9989, ranging from group 99891 to 99894. The

manufacturing activity undertaken by the CBUs does not appear in any of the services listed in the aforesaid groups from 99891 to 99894.

Therefore it is evident that the manufacturing activity carried out by the CBUs does not fall under the Heading 9989. In order that a manufacturing activity be covered under Heading 9988 it is necessary that the goods worked upon should be supplied by a registered person to the manufacturer. Therefore to determine whether the activity undertaken by the CBUs falls under Heading 9988 or not we need to see whether the raw material is supplied by the applicant or not.

10.6 In this regard we once again visit the observation made in Para 8 and 9 above. The agreement between the applicant and the CBUs indicate that the CBUs shall engage in purchase and handling of the raw materials. It is agreed upon between the applicant and the CBUs that the purchase and quality of the raw material shall be supervised by the applicant. Nevertheless the purchase is made and accounted in their books by the applicant. This is further demonstrated by several clauses of the agreements. The clause in respect of 'Reimbursement' shows that the CBU shall retain the cost of the raw materials amongst other things. This shows that the material was purchased by the CBUs. Further under the clause related to 'Termination' of the agreement it is provided that in case the agreement stands terminated then the applicant will buy all the raw material at cost. Further any finished goods in stock would also be purchased by the applicant at ex-factory price. All these clauses indicate that the ownership of the raw material required to manufacture beer rests with the manufacturer and not with the applicant. Therefore the applicant had not supplied any goods used in the manufacturing activity undertaken by the CBUs. Consequently the manufacturing activity undertaken by the CBUs does not qualify classification under Heading 9988. As a result the CBUs are not engaged in supply of any service to the applicant.

10.7 On the basis of discussions above the Authority has come to the considered conclusion that the CBUs are not engaged in supply of service to the applicant and therefore there does not arise any liability to pay GST on the amount retained by the CBUs as their profit.

11. The second question for discussion and Ruling in the matter is:

Whether GST is payable by the Brand owner on the "Surplus Profit" transferred by the CBU to the Brand Owner out of such manufacturing activity?

11.1 The applicant is the owner of brands of beer. Under the afore-discussed agreements the applicant permits the CBUs to manufacture beer according to their specifications, label them with the brands of the

applicant and then sell them as per the State excise laws. The clause related to 'Reimbursement' at Para 8 of the agreement provides as follows:

8. Reimbursement

Balance due towards reimbursement of expenses incurred by the brand owner is arrived at as under

	Amount (Rs/case)
Turnover of the brewer	*(X)*
Less:Variable cost incurred(Raw material, PM & other consumables)	*(Y)*
Less: Bottle cost (at prevailing market rates)	*(Z)*
Less: Retention for energy & fixed cost by brewer	*(73)*
Balance payable to UBL as Brand Fee	*(5)*
Remaining as reimbursement to UBL	*(W)*

The retention on account of energy and other utilities will be Rs 18/case and the remainder, on account of fixed cost and ROI on investments.

……..

This provision in the agreement indicates that the applicant gets a brand fee in lieu of the permission granted to the CBU to utilize their brand. Further the surplus amount over and above the brand fee is taken as reimbursement or business surplus by the applicant. The question relates to the liability or otherwise of GST on this amount in the hands of the applicant received from the CBU after the deduction of all costs related to CBU.

11.2 The applicant has drawn extensively from the disputes related to the tax liability on the aforesaid amount in their hands during the Service Tax regime. The applicant submits that although the then CBEC had clarified through various circulars that there was no service provided by the applicant to the CBUs by way of permitting the use of brand name, the service tax field formations were of the view that the activity of brand owner permitting the CBUs to use their brand names amounted to provision of intellectual property service. The applicant further states that

the description of service liable to tax has not been changed under GST compared to the provisions of Section 66E of Finance Act. The applicant has further drawn reference to various judgments of Tribunals in this regard, more so on the basis of decision by Tribunal in the case of BDA Pvt. Ltd reported in 2014(35) STR 570(Del) upheld by the Supreme Court as reported in 2016(42) STR J143 SC. UBL has also discussed an adjudication order passed in their own case. The adjudicating authority held that service tax was payable on the amount accounted by them as 'brand fee' under intellectual property service. UBL has challenged this Order before the Tribunal. The matter is sub-judice.

11.3 The applicant has further contended in this regard that the CBUs are permitted to use their brand name to enable them to manufacture beer on their behalf and that the CBUs are not allowed to exploit the brand name or trademark. Section 48(2) of the Trademark Act recognizes such usage of trademark as 'use by brand name owner'. It is further contended that the activity per se does not amount to transfer of right to use. The applicant has also drawn attention to decisions of Tribunal in the cases of M/s Skol Breweries Ltd reported in 2013(29) STR 9 (Tri), Radico Khaitan Ltd reported in 2016(44) STR 133 (Tri) and BDA Pvt Ltd reported in 2014 (35) STR 570 (Tri).The decision in the case of BDA Pvt Ltd was maintained by the Supreme Court as reported in 2016 (42) STR J143 (SC) where it was ruled by the Supreme Court that the activity of permitting the CBUs to manufacture alcoholic beverages on behalf of the principal does not amount to rendering of taxable service under the category of IPR service.

11.4 The concept of service under the erstwhile Finance Act, 1994, was defined under Section 65B (44) of the said Act. Accordingly *'service' means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include ……'.* Declared Services were defined under Section 66E. The service relevant to the present issue is further described under sub-section (c) of Section 66E as '*temporary transfer or permitting the use or enjoyment of any intellectual property right'.*

11.5 The formations in Service Tax had held that the applicant, and identically placed other beer/alcoholic beverages brand owners, were providing intellectual property services to the CBUs by virtue of permitting them to affix their brands on the products manufactured by the CBUs. The various orders to this effect were agitated before the Tribunals and it was finally held by the Tribunals that the brand owners were not providing any intellectual property right services to the CBUs. The amount accruing into the hands of the brand owners was held as business surplus or profit. The applicant discussed the orders of the Tribunal at length in their

application as well as during the hearing. We have gone through all the Orders of the Tribunals and they support the contention of the applicant.

11.6 In the written rejoinder submitted by the applicant it is stressed that the amount in their hands represents the business profit (sale price of UBL beer to State owned corporations minus price payable to CBUs) earned by UBL, out of sale of beer. It is further added that CBUs are manufacturing alcoholic liquor only for and on behalf of the brand owner and they are not exploiting the brand names owned by UBL and thus there is no service in the nature of permitting the use of intellectual property right by the applicant to the CBUs. Therefore in the absence of any service being provided by the applicant to CBUs, either in the form of permitting the use of their brand names by the CBUs or in any other manner, there cannot be any levy of GST on the amounts received by the applicant from the CBUs. The amount so received represents the part of the sale proceeds of beer after meeting the cost of procurement.

12. We now proceed to examine the scope of supply and concept of service under the CGST Act and the KSGST Act, 2017.

12.1 The 'Scope of Supply' is covered under Section 7 of the CGST Act, 2017, and corresponding Section of the KSGST Act, 2017. The said Section provides that the events mentioned therein from sub-section 1(a) to (d) constitute supply of goods or services or both. The events mentioned from sub-section 1(a) to (d) are not the only events that constitute 'Supply' as evident from the usage of the term 'includes' mentioned in sub-section 1. Further sub-section (d) provides that activities mentioned in Schedule II are to be treated as supply of goods or supply of services.

12.2 The activities mentioned at serial number 5(c) of Schedule II have been discussed by the applicant as the relevant services. This entry in the Schedule provides that '*temporary transfer or permitting the use or enjoyment of any intellectual property right*' constitutes supply of service. The applicant has argued that the erstwhile entry at Section 66E (c) of the Finance Act 1994 also reads exactly the same, meaning thereby that there has been no change in the GST regime on the issue.

12.3 Section 2(102) of the CGST Act, 2017 defines 'services' as *anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.* This provides that anything other than goods, money and securities constitutes a service.

12.4 We have also taken note of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 wherein the rate of central tax for supply of

various services has been prescribed. We also take into account the Annexure to the aforesaid Notification where the scheme of classification of the supply of all the services has been given.

13. The averments of the applicant that they are not liable to pay any GST on the amount received from the CBUs have already been discussed in Para 11 above.

14. We now proceed to answer the second question in the light of the above stated facts and legal provisions.

14.1 The applicant enters into a business agreement with the CBUs in the nature of a principal to principal arrangement. This arrangement calls upon the CBUs to manufacture beer/alcoholic beverages with certain peculiar/distinct specifications characterizing and denoting the brands owned by the applicant. The applicant provides the specifications to the manufacturer and also ensures that the CBUs buy raw materials as per their guidance and also manufacture the products under their supervision and to their exact specifications. The applicant then also gives the CBUs the authority to affix their brands on the products and then to sell them to the State Corporations.

14.2 The sale proceeds are utilized to first pay the CBUs the cost of the raw materials, bottling cost, energy charges and fixed retention charges. The balance amount accrues to the applicant as brand fee and business surplus/business profit.

14.3 There is a scope of supply of goods or services at three distinct places in this arrangement. The most evident scope of supply is the finished product sold by the CBUs. However as the product sold is alcoholic beverage for human consumption the same is beyond the scope of levy of GST as provided in Section 9(1) of the CGST Act,2017. The second event generating the scope for supply of service relates to the manufacturing activity undertaken by the CBUs. Here the CBUs undertake the manufacturing activity on behalf of the applicant. However the activity falls short of the scope of supply of service as discussed while answering the first question. The third and relevant event is the act of the applicant amounting to providing the specifications of the products to be manufactured by CBUs and also the right to the CBUs to affix their brands on the products so manufactured.

14.4 We proceed to examine the third event mentioned in para 14.3 in further detail. The applicant provides the technical know-how and supervision of various activities to enable the CBUs to achieve the desired results. It has been admitted by the applicant that they do not supply any raw material or otherwise required to manufacture goods. Thus they have

not undertaken any supply of goods. However the fact remains that the applicant still receives money from the CBU. This amount has to be for an act. This act can be either of the two, supply of goods or supply of service. Since there is evidently no supply of goods from the applicant to the CBUs it is beyond doubt that the amount received is on account of supply of service. Moreover 'service' means anything other than goods (as per Section 2(102) of the CGST Act, 2017). It is thus beyond doubt that the applicant is engaged in supply of service to the CBUs. for which money is received and called as brand fee and business surplus. The terminology employed apart, the fact remains that the applicant receives an amount on account of supply of a certain service. This amount can thus rightly be termed as a consideration. The nomenclature of the amount received as brand fee or business surplus or business profit does not alter the fact that it is a consideration that flows to the applicant.

14.5 The applicant has consistently held that their act of allowing the CBUs to affix their brand names on the products manufactured by them does not amount to supply of service of providing intellectual property rights , as provided in serial number 5 (c) of Schedule II of the CGST Act, 2017. They have cited various case laws which make it evident that since the CBUs are bound to only manufacture and sell beer and are not permitted to commercially exploit the intellectual property related to the brand, the applicant is neither transferring nor permitting the use or enjoyment of any intellectual property right. Thus they are not supplying any service. In essence the applicant draws a conclusion that if their activity is not covered under Schedule II then that activity does not amount to supply of service. This averment of the applicant is misplaced and falls short of the law. Therefore we are not inclined to accept this viewpoint of the applicant.

14.6 The origin of Schedule II and the categorisation of the activities mentioned therein as supply of goods or supply of services lies in Section 7 of the CGST Act,2017. However the activities mentioned in Section 7 from (a) to (d) are not exhaustive. The applicant has failed to observe the expression '(1) For the purpose of this Act, the expression "supply" **includes- .....** . The word 'includes' signifies that activities beyond those mentioned from (a) to (d) may also constitute supply a supply. Therefore the scope of supply of service is not restricted to just those mentioned in Schedule II. The applicant concentrated their attention only on Schedule II. When the facts in this para are read in harmony with those of Para 14.5 it becomes evident that the applicant is engaged in supply of service which is not covered under Schedule II. The fact that the supply of service is not covered under Schedule II does not imply that there is no supply of service and that GST is not chargeable thereupon. In this regard we examine the

provisions of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the Annexure to the Notification.

14.7 The Notification applies 'All Services'. It therefore applies to the present context because it has been held that the applicant is indeed engaged in supply of service to the CBUs. Now the question is the classification of the Service under appropriate Chapter or Heading. The Annexure to the Notification provides the scheme of services. This classification of various services provides an entry at Group 99979 and Service Code 999799 reading 'other services nowhere else classified'. Since it is beyond doubt that the applicant is engaged in supply of service and the service does not find mention at any other entry in the Classification table it has to be placed in the residual entry. The applicable rate of Central Tax is as at serial number 35 of the Notification.

14.8 Therefore, we answer the second question in the affirmative that the applicant is engaged in supply of service classified under Service Code (Tariff) 999799 and liable to pay GST at 18% (CGST-9%, SGST-9%) on the amount received from the CBUs.

14.9 Based on the aforementioned discussion we Rule as under:

R U L I N G

Question No. 1: The CBUs are not engaged in supply of service to the applicant and therefore there does not arise any liability to pay GST on the amount retained by the CBUs as their profit.

Question No. 2: Yes, GST is payable by the Brand owner (UBL) on 'Surplus Profit" transferred by the CBU to brand owner out of the manufacturing activity and the supply of service to the CBUs is classified under Service Code (Tariff) 999799 and liable to pay GST at 18% (CGST-9%, SGST-9%) on the amount received from the CBUs.

(Harish Dharnia)
Member

(Dr.Ravi Prasad M.P.)
Member

Place : Bengaluru,
Date : 28.06.2018

To,

The Applicant

Copy to :

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

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

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Asst. Commissioner, LVO- , Bengaluru-

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