

File No.CT/8821/2019-C3

Kerala Goods & Services Tax Department
Proceedings of the Authority for clarification under Section 59(A) of the
Kerala General Sales Tax Act 1963

Present : Tinku Biswal I A S

Sub:- KGST Act 1963- clarification U/s 59(A) - Tax rate applicable on the supply of FMFL, beer and wine to customers in 30ml / 60ml/bottles procured from foreign liquor suppliers on payment of customs duty in cash and by utilizing SFIS scrips- orders issued- reg.

Read:- 1. Application dated 10-06-2019 put in by M/s. Taj Malabar Resort & Spa , Willindon Island, Kochi.
2. Amendment in Schedule of the KGST Act 1963 vide Kerala Finance Act 2019.

Order No. CT/8821/2019- C3- dated : 17.08.2019

M/s. Taj Malabar Resort & Spa , Willinton Island, Kochi is a hotelier operating in the State of Kerala and engaged in the business of rendering hospitality services in the name and Style 'Taj Malabar Resort & Spa' (a unit of M/s. Oriental Hotels Ltd). The resort provides luxury stay, premium dining and recreation facilities to its customers. They have preferred an application under section 59(A) of the KGST Act 1963 seeking clarification of the following points.

(i) What is the rate of tax applicable on supply of FMFL excluding beer and wine by the applicant in the resort of the applicant to customers in 30 ml / 60 ml measures which are procured by the applicant from foreign liquor suppliers who imported the said FMFL and cleared the same on payment of Customs duty in cash?

(ii) What is the rate of tax applicable on supply of FMFL excluding beer and wine by the applicant in resort of the applicant to customers in 30 ml / 60 ml measures which are procured by the applicant from foreign liquor suppliers who imported the said FMFL and cleared the same on payment of Customs duty by utilizing SFIS scrips provided by the applicant?

(iii) What is the rate of tax applicable on supply of imported beer in bottles by the applicant in the resort of the applicant to customers which are procured by the applicant from foreign liquor suppliers who imported the said imported beer and cleared the same on payment of Customs duty in cash?

(iv) What is the rate of tax applicable on supply of imported beer in bottles by the applicant in the resort of the applicant to customers which are procured by the applicant from foreign liquor suppliers who imported the said imported beer and cleared the same on payment of Customs duty by utilizing SFIS scrips provided by the applicant?

(v) What is the rate of tax applicable on supply of imported wine either in 150ml measures or in bottles by the applicant in the resort of the applicant to customers which are procured by the applicant from foreign liquor suppliers who imported the said imported wine and cleared the same on payment of Customs duty in cash?

(vi) What is the rate of tax applicable on supply of imported wine either in 150ml measures or in bottles by the applicant in the resort of the applicant to customers which are procured by the applicant from foreign liquor suppliers who imported the said imported wine and cleared the same on payment of Customs duty by utilizing SFIS scrips provided by the applicant?

The applicant holds excise license No. 3-E 24/2019-20 with right to sell IMFL, FMFL, beer and wine. With respect to Foreign Made Foreign Liquor, the applicant procures the commodity from foreign liquor suppliers located outside the state, mainly from New Delhi. The foreign Liquor suppliers clear the bottled FMFL either on payment of Customs Duty in cash or by payment of customs duty by utilizing Served Form India Scheme (SFIS) scrips obtained by the applicant and provided to such foreign liquor suppliers. They have also produced a few sample of the invoices issued by the foreign liquor suppliers.

The FMFL so procured by the applicant is then served to the customers by the applicant at the resort of the applicant in 30ml/60ml measures, beer in bottles, and wine either in 150ml measures or in bottles. The applicant, being the first seller in the State in respect of the FMFL so purchased, is discharging KGST at the applicable rates mentioned in the schedule to KGST Act 1963. The rates of tax thereof, as amended vide Kerala Finance Act 2019 are as follows:

2. Foreign Liquor:

(i) *Bottled Wine, imported from outside the country and has suffered duty under the customs Act, 1962*

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(ii) Bottled Foreign Liquor other than wine, imported from outside the country and has suffered duty under the Customs Act, 1962	80
(iii) Beer not covered under sub-entry (ii) above	102
(iv) Wine not covered under sub-entry (i) above	72
(v) Foreign liquor not covered under sub-entries (i), (ii), (iii) and (iv) above	
(a) for which purchase value incurred is above Rupees 400 per case	212
(b) for which purchase value incurred is up to Rupees 200 per case	202

In view of the above amendment, the applicant has sought for classification as to the rate of tax of FMFL supplied to the customers in 30ml/60ml measures, beer in bottles, and wine either in 150ml measures or in bottles which are procured by the applicant from foreign liquor suppliers who imported the FMFL and cleared the same on payment of customs duty (i) in cash and (ii) by utilizing SFIS scrips provided by the applicant.

The authorized representative of the applicant was heard. As to the rate of tax, the wordings in the relevant provision in Kerala Finance Act, 2019 is clear and the commodity attracts tax @ 27% for bottled Wine, imported from outside the country and has suffered duty under the customs Act, 1962 and 80% for bottled Foreign Liquor other than wine, imported from outside the country and has suffered duty under the Customs Act, 1962 . The clarification sought is specifically with regard to points (ii), (iv) and (vi) above i.e, with regard to the rate of tax of Foreign Made Foreign Liquor, beer and wine where customs duty has been paid not in cash, but in SFIS scrips accruing to the applicant.

The definition of 'Scrip' in Business Dictionary as follows;

" Signed Certificate or receipt or an IOU note that may serve as a private currency because (although it does not have any intrinsic value) it represents value recognized both by the issuer and the holder"

As such SFIS scrips are, logically like credits accruing to the dealer and are to be treated on par with cash payment and the mode of payment of customs duty in cash or by utilizing SFIS scrips, does not make any difference with regard to the tax rate applicable on the retail sale of the Foreign Made Foreign Liquor.

In the circumstances it is clarified that the supply of Foreign Made Foreign Liquor, beer and Wine which are procured by the applicant from foreign liquor suppliers

who imported the said Foreign Made Foreign Liquor, and clear the same on payment of customs duty in either in (i) cash or (ii) by utilizing SFIS scrips provided by the applicant, and served in the resort of the applicant to their customers in 30ml/60ml measures, beer in bottles, and wine either in 150ml measures or in bottles would attract tax under Kerala General Sales Tax Act, 1963 with effect from 01-04-2019 is as follows;

(i) The rate of tax applicable on supply of FMFL excluding beer and wine by the applicant in the resort of the applicant to customers in 30 ml / 60 ml measures, which are procured by the applicant from foreign liquor suppliers who imported the said FMFL and cleared the same on payment of Customs duty under the Customs Act, 1962 either in cash or by utilizing SFIS scrips is @ 80%

(ii) The rate of tax applicable on supply of imported beer in bottles by the applicant in the resort of the applicant to customers, which are procured by the applicant from foreign liquor suppliers who imported the said beer and cleared the same on payment of Customs duty under the customs Act, 1962 either in cash or by utilizing SFIS scrips is @ 80%

(iii) the rate of tax applicable on supply of imported wine either in 150ml measures or in bottles by the applicant in the resort of the applicant to customers, which are procured by the applicant from foreign liquor suppliers who imported the said wine and cleared the same on payment of Customs duty under the customs Act, 1962 by utilizing SFIS scrips is @ 27%.

The issue raised is clarified accordingly.

**Sd/-
COMMISSIONER**

To

Adv. Jose Jacob,
JRS Associates
41/3787, 1st floor, Carmel Centre,
Banerji Road, Kochi- 682 018.
File/ Stock file.

//By Order//


Joint Commissioner (General)