
	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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**BEFORE THE AUTHORITY OF:** Smt. Gayathri P.G., IRS &  
: Shri. Abdul Latheef K.

Legal Name of the applicant	M/s. DEVALOKAM BAKERY
GSTIN	32AATFD1308H1ZO
ARN No.	AD321122001936M
Address	24/2147, B7, opp. Indus Motors service center Kunnumpuram - Civil Station Rd, Echamuku, Kunnumpuram, Thrikkakara, Kakkanad, Ernakulam-682030
Advance Ruling sought for	1. Whether Pani Puri, Masala Chat, Punjabi Lessi, Sev Puri, Samosa Chat, Vada Pav, Pav Dhaji cooked and sold out without a brand name falls under restaurant sales taxable @5% or not? 2. If it is restaurant service, what is the applicable rate of GST? 3. The above food items HSN code and tax rate done by the applicant is correct or not?
Date of Personal Hearing	21/06/2024
Authorized Representative	Sri. Muhammed Abdul Hakkim, Authorized representative

**ADVANCE RULING No.KER/16/2024 Dated 15/07/2024**

1. M/S Devalokam Bakery, 24/2147, B7, opp. Indus Motors service centre Kunnumpuram - Civil Station Rd, Echamuku, Kunnumpuram, Thrikkakara, Kakkanad-682030 (*hereinafter referred to as the applicant*) is in the business of food products and registered under GST Act 2017 bearing GSTIN 32AATFD1308H1ZO.



2. In this ruling, a reference to the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

3. The issues on which advance ruling are sought are stated above.

**4. Contentions of the Applicant**

4.1. The applicant is in the business of reselling bakery products. In addition, the above listed products are cooked at their premises and supplied through a separate counter in front of the shop to customers who consume at the counter. Hence the supplies of these items through separate counter qualify to be treated as restaurant services. The above listed products are sold in ready to eat condition and hence liable to be taxed @ 5% for both regular and composite registration.

**5. Comments of the Jurisdictional Officer**

The application was forwarded to the jurisdictional officer as per provisions of section 98 (1) of the CGST Act. The Jurisdictional officer has not submitted any remarks on the subject case. Hence it is construed that no proceedings are pending or finalized on the issue against the applicant.

**6. Personal hearing**

The applicant was granted opportunity for personal hearing on 21/06/2024 Sri.Muhammed Abdul Hakkim, Authorized representative represented the applicant for personal hearing, and reiterated the contentions made in the application.

**7. Discussion and conclusion.**

7.1. The application is admissible as per sub section 2(a) of section 97.

7.2. The issue was examined in detail. The applicant is engaged in reselling of bakery products and has a separate counter through which items such as Pani Puri, Masala Chat, Punjabi Lessi, Sev Puri, Samosa Chat, Vada Pav and Pav Bhaji cooked by them are supplied to customers in ready to eat fashion. They want clarity on whether these supplies attract GST rate at 5% or not, what is the



GST rate applicable if it is restaurant sale and whether the HSN and tax rate determined by them is correct. The last question cannot be answered since they have not provided the HSN and tax rate under which they have classified the items. Further, no comments can be offered on the relevance of composition scheme without information on the total turnover of the applicant.

7.3. To come to a conclusion, since the items mentioned above are goods, the first point to decide is whether the supply constitutes supply of goods or services. Clause 6 (b) of Schedule II to CGST Act, 2017, states that Composite supply, "*by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration*" shall be supply of services. Hence, we are of the opinion that the supply in question constitutes a service. From the details provided by the taxpayer, we find that they are engaged in counter sales of the above listed items in ready to eat condition to customers who consume at the counter. We also find that the supplied items carry no brand name. As per Annexure to Notification No 11/2017- Central Tax (Rate) dated 28-06-2017, "*Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food*" falls under HSN 996331. We therefore find that the apt classification for the service of serving of cooked items across the counter, which is provided by the applicant, is 996331.

As per Notification No 11/2017- Central Tax (Rate) dated 28-06-2017, as amended by notification No.46/2017-Central Tax(Rate) dated 14-11-2017, supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared



tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent is 5%, provided no ITC is taken on goods and services used in supplying the service.

7.4. From the above discussions, we are of the view that if the applicant falls within the above category, the rate of tax is 5%, without the option of availing input tax credit. However, in case the services are supplied from the premises of hotels, inns, guest houses, clubs, camp sites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent, then, the rate of GST applicable is 9% each towards both CGST and SGST.

Given the observations stated above, the following rulings are issued;

### **RULING**

**Question No. 1.** Whether Pani Puri, Masala Chat, Punjabi Lessi, Sev Puri, Samosa Chat, Vada Pav, Pav Bhaji cooked and sold out without a brand name falls under restaurant sales taxable @5% or not?

**Ruling-** The sales as mentioned above falls under "Services provided by restaurants, cafes and similar eating facilities including takeaway services, room services and door delivery of food" falling under HSN 996331. However, the rate of tax can be 18% or 5% depending on the following conditions.

a- If the applicant is located in the premises of hotels, inns, guest houses, clubs, camp sites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent, the rate of GST shall be 18%.

b- If the above conditions are not applicable, the rate of CGST and SGST is 2.5% each only, provided that credit of input tax charged on goods and services used in supplying the service has not been taken.

**Question No.2** If it is restaurant service, what is the applicable rate of GST?



**RULING:** The rate of GST could be 5%, or 18% as above.

**Question No.3** The above food items HSN code and tax rate done by the applicant is correct or not?

**RULING:** There is no information on the HSN code and tax rate adopted by the applicant and therefore, no ruling can be given.

*PNayathu.*  
Gayathri P.O., IRS  
Joint Commissioner of Central Tax  
Member

*Abdul Latheef K*  
Abdul Latheef. K  
Joint Commissioner of State Tax  
Member

To,

M/s. Devalokam Bakery,  
24/2147, B7, opp. Indus motors service center  
Kunnumpuram - Civil Station Rd, Echamuku,  
Kunnumpuram, Thrikkakara, Kakkanad-682030

Copy submitted to:

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin- 682018. [E-mail ID: [cccocchin@nic.in](mailto:cccocchin@nic.in); [ccu-cexcok@nic.in](mailto:ccu-cexcok@nic.in)]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002. (email: [cst.sgst@kerala.gov.in](mailto:cst.sgst@kerala.gov.in)).
3. The Commissioner of Central GST and Central Excise, Cochin Commissionerate.

Copy to:

1. The Joint Commissioner, TPS, HQ, Thiruvananthapuram.
2. The Deputy Commissioner, ITMD, Typm. for uploading in the website
3. Tax payer services Circle, Kakkanad.
4. Supdt. Central Tax, Kakkanadu Range-4, Kakkanad Division.



