

## MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

### BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax (Member)

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax (Member)

GSTIN Number, if any/ User-id	27AACCC9946QIZ5
Legal Name of Applicant	Crown Beers India Private Limited
Registered Address/Address provided while obtaining user id	Unit No. 301-302, Dynasty Business Park B Wing, Andheri Kurla Road Andheri (East), Mumbai 400 059
Details of application	GST-ARA, Application No. 31 Dated 29.05.2018
Concerned officer	State Tax Officer (C-704) Nodal Division - 7, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory / Manufacturing
B Description (in brief)	Crown Beers India Private Limited ('Applicant' or 'Crown') has entered into a Tie-up Agreement ('Agreement') with Privilege Industries Limited ('PIL') under which the Applicant has entered into an agreement with PIL, whereby PIL brew / manufacture, package and supply beer ('Products') from its bottling unit, located at Plot No. B1, Lonand MIDC, Satara, Maharashtra - 415 508 ('Bottling Unit'), to buyers / distributors in the territory identified by Applicant.
Issue/s on which advance ruling required	(ii) applicability of a notification issued under the provisions of the Act (iii) determination of time and value of supply of goods or services or both (v) determination of the liability to pay tax on any goods or services or both (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

### PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Crown Beers India Private Limited, the applicant, seeking an advance ruling in respect of the following questions.

The applicant incurs to the PIL a fixed fee and costs specified in Schedule II to the Agreement as a consideration for supply of Products. Supply of Products, being in the nature of alcoholic liquor for human consumption, is excluded from the ambit of Central Goods and Services Tax Act, 2017 ('CGST Act') / Maharashtra Goods and Service Tax Act, 2017 (MGST Act) / Integrated Goods and Service Tax Act, 2017 ('IGST Act'). Whether Central Goods and Services Tax (hereinafter referred to as the 'CGST') under Section 9(1) of the CGST Act / Maharashtra Goods and Service Tax (hereinafter referred to as the 'MGST') under Section 9(1) of the MGST Act / Integrated Goods and Service Tax (hereinafter referred to as the 'IGST') under Section 5 (1) of the IGST Act can be levied on the above mentioned consideration paid for supply of alcoholic liquor for human consumption?



ii. Without prejudice to the submissions made elsewhere, if the supply of Beer is held to be a service by way of job work in relation to Beer, what shall be the rate of CGST/UTGST/IGST that shall be levied on the said taxable supply?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

## 02 FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

### STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS:

1. Crown Beers India Private Limited ("Applicant") is a company incorporated under the provisions of the Companies Act, 1956. The applicant has entered into a Tie-up Agreement ("Agreement") with Privilege Industries Limited ("PIL") whereby PIL to brew / manufacture, package and supply beer ("Products"), as specified under the Agreement, from the Bottling Unit to buyers / distributors in the territory identified by Crown. PIL has surplus manufacturing and licensed capacity at its bottling unit, located at Plot No. B1, Lonand MIDC, Satara, Maharashtra - 415 508 (Bottling Unit), and Beer would be supplied therefrom. The Agreement is annexed hereto and marked as Annexure-1. The PIL holds valid licenses, permits and permissions necessary under the applicable laws for manufacture of Products at the Bottling Unit. Copies of the said licenses are annexed hereto and marked as Annexure-2.

2. In order to understand the transactions being undertaken under the Agreement, the Applicant has summarized the relevant terms of the Agreement below:

a. In accordance with the instructions received from Crown during the term of the Agreement, the PIL undertakes to manufacture the Products at its Bottling Unit and perform Certain other allied activities, including the following (Clause 2.1 of the Agreement):

i. Purchasing the required materials, arranging labour and all other facilities and inputs, in compliance with the standards prescribed under the Agreement, for the purpose of manufacturing the Products;

ii. Carrying out all the processes required for brewing / manufacturing, Bottling and packing of the Products;

iv. Maintaining physical stock of Products in the Bottling Unit or in bonded or other warehouses; and Preparation of sales invoices, ensuring timely dispatches and delivery of the Products to buyers/distributors in the territory identified by the Crown.

b. The PIL would be responsible for carrying out its obligations under this Agreement in a timely manner and in accordance with the directions and instructions of Crown (Clause 2.2 of the Agreement).

c. The PIL shall manufacture the Products in terms of the Agreement in strict compliance with the policies, operating procedures and quality and performance Parameters and standards prescribed by Crown (Clause 5.1 of the Agreement). Crown Would be entitled to specify, inter alia, as part of the above mentioned parameters and Standards, the quality, specific varieties, sources and terms for procurement of raw Materials used in the manufacture of Products, the design, content and manner of Affixation of labels, marks and trademarks to the Products, the manner of production and Quality control procedures to be maintained in the manufacture of Products by the PIL (Clause 5.2 of the Agreement).

d. The PIL shall maintain in force, at all times during the term of the Agreement, full and complete insurance cover for Products, raw materials and ingredients used in the Manufacture of Products and work in process in relation thereto by nominating Crown as the beneficiary. Cost of aforesaid insurance shall be to the Account of Crown (Clause 4.11 of the Agreement).

In consideration for fulfilment of the above mentioned obligations by the PIL to manufacture the Products in terms of the Agreement, the PIL shall be entitled to a fixed fee for the Products so manufactured, calculated and payable in accordance with this Agreement (Clause 2.3 of the Agreement). The aforesaid fixed fee is calculated after considering the following costs / incurred by PIL:

i. Cost of all raw materials and ingredients used to manufacture the Products, based upon parameters agreed under the Agreement on actual price basis;

ii. Labor and manpower cost upon actual cost, based upon parameters Agreed under the Agreement;

iii. Cost of consumables towards boiler fuel, cost (initially furnace oil and Later rice husk/briquette), demineralised water, carbon dioxide, effluent treatment plant, Water treatment plant, laboratory supplies, inkjet printers, ink and any other consumables which is consumed in routine working of the Bottling Unit;

iv. Power cost based upon parameters agreed under the Agreement on Actual price basis;

v. Bottling fee (including without limitation franchise fee and label Registration charges) that may be levied by the excise department of the State of Maharashtra;

vi. Other duties, taxes and fees levied by the State Government or Central Government payable in relation to the dispatch of Products as applicable on the date of Agreement;

vii. Cost for taking insurance as contemplated under Clause 4.11 of the Agreement;

- viii. Cost of any permit fees or levies to be submitted under any applicable rule, regulation or law towards supply of Products pursuant to the Agreement;
- ix. Cost of loading and unloading of raw materials and ingredients used to manufacture Products and the Products;
- x. Approved cost of running and operating a bonded or other warehouse as advised by Crown; and
- xi. Cost of inwards freight charges in relation to the Material and Products.

f. Any costs other than as specified in Schedule II shall be borne by the Applicant (Clause 7.3 of the Agreement).

g. PIL shall open a separate bank account ('Account') wherein all proceeds from Sale of Products made to buyers / distributors under the Agreement shall be Deposited (Clause 7. 1 of the Agreement). Fixed fee (including all costs specified in Schedule II to the Agreement) shall be paid or incurred from the Account (Clause 7.2 & 7.3 of the Agreement). The proceeds from the sale of Products shall be credited into the Account (Clause 7.4 of the Agreement).

h. Any credits, subsidies, benefits, refunds, whether monetary or otherwise, received by PIL in relation to costs or amounts receivable by Products pursuant to Schedule II ('Cost Subsidies') shall be to Applicant's benefit and the Applicant may elect, at its sole discretion, to deduct or adjust the same from the amounts payable by the Applicant to PIL under the Agreement (Clause 3.5 of the Agreement).

3. The Applicant is filing the instant application for advance ruling under Section 97 (1) of the Maharashtra Goods and Services Tax Act (hereinafter referred to as the 'MGST Act') Read with Section 96 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') and Section 20 (xviii) of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as the 'IGST Act'). In accordance with the above mentioned Provisions, the Applicant is desirous of obtaining an advance ruling on certain questions Arising out of the Agreement. The said questions have been detailed in S. No. 14 of this Application. The Applicant's submissions in relation to the said questions are enumerated below in response to S. No. 16 of this application for advance ruling.

#### STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTIONS RAISED

*The Applicant pays to PIL a fixed fee (calculated by including all the cost incurred as specified in Schedule II to the Agreement by PIL and its profit margin) as a consideration for brewing/ Manufacturing, packing and supply of Products. Supply of Products, being in the nature of Alcoholic liquor for human consumption, is excluded from the ambit of CGST Act / MGST Act / IGST Act. Whether Central Goods and Services Tax (hereinafter referred to as the 'CGST') under Section 9(1) of the CGST Act / Maharashtra Goods and Service Tax (hereinafter referred to as the 'MGST') under Section (1) of the MGST Act / Integrated Goods and Service Tax (Hereinafter referred to as the 'IGST') under Section 5 (1) of the IGST Act can be levied on the above mentioned consideration paid for supply of alcoholic liquor for human consumption?*

1. In this question, the Applicant has sought an advance ruling on whether CGST / MGST / IGST can be levied on the payment of aforesaid fixed fee received by the PIL as a consideration for brewing / manufacturing, packing and supply of Products i.e. alcoholic liquor for human consumption

2. In this regard, reference may first be made to the amendments introduced by the Constitution (One Hundred and First Amendment) Act, 2016. By way of this constitutional amendment, Article 246A and Article 269A were introduced in the Constitution of India to authorize the Parliament and the Legislature of every State to make laws with respect to Goods and Services Tax (hereinafter referred to as 'GST'). Furthermore, Article 366 (12A) was inserted in the Constitution of India which defined goods and services tax to mean "any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption". Moreover, Entry 54 in List II of Seventh Schedule (State List) to the Constitution of India, which authorizes the State Government to levy taxes

on certain subject matters, was amended as follows:

*54.-Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or Commerce or sale in the course of international trade or commerce of such goods."*

*(Emphasis Supplied)*

3. Thereafter, relevant legislations for levy and collection of GST were introduced by the Central Government as well as the respective State Governments, including by the State Government of Maharashtra. In the instant case, the Applicant is concerned with the provisions of the CGST Act, the IGST Act and the MGST Act. The CGST Act provides for provisions for levy and collection of GST on intra-State supply of goods and services or both by the Central Government. Under the CGST Act, Section 9 (1) specifically provides for the levy of CGST on "all intra- State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption". Similarly, the MGST Act provides for provisions for levy and collection of GST on intra-State supply of goods or services or both by the State Government of Maharashtra. Under the MGST Act, Section 9 (1) specifically provides for the levy of MGST on "all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption". As far as the IGST Act is concerned, the same provides for provisions for levy and collection of tax on inter-State supply of goods and services or both by the Central Government. Under the IGST Act, Section 5 (1) specifically provides for the levy of IGST on "all inter- State supplies of goods or services or both, except on the supply of alcoholic liquor of human consumption".

4. Based on a plain reading of Article 366 (12A) of the Constitution of India, Section 9 (1) of the CGST Act / MGST Act and Section 5 (1) of the IGST Act, it is respectfully submitted that 'supply of alcoholic liquor for human consumption' has been expressly excluded from the ambit of levy of CGST / MGST/IGST. It may further be noted from the amendment in Entry 54 in List II of Seventh Schedule (State List) to the Constitution of India that the power to impose tax on alcoholic liquor for human consumption has been separately prescribed to the State Government.



5. It is further submitted by the Applicant that under the CGST Act / MGST Act /IGST Act, the levy of CGST/MGST/IGST respectively is on the 'supply' of goods or services or both. The expression 'supply' is defined under Section 7 of the CGST Act / MGST Act to include, inter alia, "all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course of furtherance of business". Section 2 (21) of the IGST Act has specified that the expression 'supply' shall have the same meaning as assigned to it in Section 7 of the CGST Act. Therefore, for the purposes this application for advance ruling, reference to 'supply' in terms of the CGST Act should henceforth be read to be reference to 'supply' in terms of the IGST Act as well.

6. Based on a reading of the scope of supply under the CGST Act/MGST Act/IGST Act provided above, it is not disputed by the Applicant that the transaction undertaken by PIL falls within the definition of supply under the respective legislations. This is clear from the fact that there is a transfer or a disposal of Products by the PIL for a consideration (i.e. fixed fee and costs specified in Schedule II to the Agreement) in the course of or in furtherance of their business. Therefore, the PIL's activities would be squarely covered under the definition of 'supply' under the CGST Act/MGST Act / IGST Act.

7. However, the Applicant would humbly like to bring forth that the supply being made by PIL is of alcoholic liquor for human consumption. As mentioned in the terms and conditions of the Agreement, the first part of the consideration in question here is the amount of fixed fee which depends on the supply of Products by the PIL in terms of the Agreement. Clearly, the fixed fee received by PIL from the Applicant is directly in relation to brewing /manufacturing, packing and supplying Products i.e. alcoholic liquor for human consumption. The second part of the consideration is the amount representing the costs specified in Schedule II to the Agreement, which includes, inter alia, the cost of procuring raw materials and ingredients, power cost and manpower cost, required for brewing/ manufacturing, packing and supplying Products. The said costs are essentially a consideration charged by the PIL on Applicant for supplying Products i.e. alcoholic liquor for human consumption.

8. Based on a conjoint reading of the provisions relating to levy of CGST/MGST/IGST and the provisions relating to scope of 'supply' under the CGST Act/MGST Act / IGST Act, it is humbly reiterated by the Applicant that supply of alcoholic liquor for human consumption is excluded from the very purview of taxability at the threshold itself. Furthermore, it is submitted that there is no Constitutional authority at all to levy GST on any form of supply of alcoholic liquor for human consumption in terms of Article 366 (12A) of the Constitution of India.

9. In addition to the above mentioned submissions, the Applicant would like to point out that prior to the Constitution (One Hundred and First Amendment) Act, 2016. Entry 84 to List I (Union List) of Schedule 7 to the Constitution of India excluded manufacture' or production' of alcoholic liquors for human consumption' from duties of excise levied by the Central Government. However, with the passing of the above mentioned constitutional amendment and the consequent GST legislations, what is excluded from the levy of GST is the supply of alcoholic liquor for human consumption'. In this regard, it is humbly submitted that 'supply', as defined in the CGST Act / MGST Act / IGST Act, is a much wider concept which includes all forms of supply of goods or services or both' within its ambit. As far as GST on supply of alcoholic liquor for human consumption' is concerned, the same has been excluded from the overall incidence of 'supply', which includes the supply of goods as well as supply for services. Therefore, it is clear that the intention of the concerned legislatures has been to exclude every aspect of supply of alcoholic liquor for human consumption from tax under the GST legislations, be it supply of goods or supply of services.

10. Reliance in this regard is placed on the settled position in law that taxing statutes are to be strictly construed i.e. a taxing statute has to be looked at merely in terms of its language and there is no room for any intendment. The reasoning behind such construction of taxing statutes is that there is no concept of equity in taxation law. This principle has been upheld by the Hon'ble Supreme Court in a series of judgments, including by Constitutional Bench of the Hon'ble Supreme Court in *Hansraj Gordhandas v. HH Dave*, (1969) 2 SCR 253 as well as in *Sales Tax Commissioner v. Madi Sugar Mills*, AIR 1961 SC 1047.

In light of the above mentioned rule of construction relating to taxing statutes, it is humbly submitted that the language of Article 366 (12A) of the Constitution of India, Section 9 (1) of the CGST Act / MGST Act and Section 5 (1) of the IGST Act have to be strictly construed, without considering the consequences that it may have. Once the said provisions are interpreted strictly in terms of their language, it can be concluded that the 'supply of alcoholic liquor for human consumption' in all forms, either as a supply of goods or a supply of services, is excluded from the levy of CGST / MGST / IGST. Accordingly, it is the Applicant's contention that there shall be no levy of CGST/MGST / IGST on the fixed fee and costs specified in Schedule II to the Agreement paid by the Applicant to PIL as the same are in relation to supply of alcoholic liquor for human consumption'.

Without prejudice to the submissions made above, the Applicant pre-empts that the Revenue may contend that S. No. 3 of Schedule II to the CGST Act/MGST Act provides that "any treatment or process which is applied to another person's goods is deemed to be a supply of services" and, therefore, the activities carried out by PIL on goods obtained from suppliers nominated by the Applicant shall be leviable to CGST/MGST/IGST as a 'supply of service'. In this regard, it is firstly submitted that in the instant facts, the PIL is not working on another person's goods. This is a case where the PIL purchases the required materials on their own and then manufactures and packs Products out of such goods. Therefore, it cannot be said to be "any treatment or process which is applied to another person's goods". In any case, it is humbly submitted by the Applicant that merely because any treatment/process applied to another person's goods is deemed to be a service under CGST Act / MGST Act/ IGST Act, it cannot be implied that the process of brewing / manufacturing, packing and supplying of Products using the raw materials from suppliers specified by



the Applicant shall be covered within the scope of 'supply' under CGST Act/MGST Act/IGST Act. In this regard, it is humbly submitted that the levy of CGST/MGST/IGST is authorized only under Section 9 (1) of the CGST Act/MGST Act and Section 5 (1) of the IGST Act. Under these provisions, tax is levied on the supply of goods or services or both but excludes such a levy on supply of alcoholic liquor for human consumption. It is pertinent to point out that there is no mention of any specific category of supply (i.e. either supply of goods or services or both) which is excluded. Therefore, it is respectfully contended that all categories of supply of alcoholic liquor for human consumption, whether of goods or services or both, stand excluded from the ambit of levy of CGST/MGST/IGST. Besides the lack of statutory authority to levy CGST/MGST/IGST on supply of alcoholic liquor for human consumption, it is further contended that there is, in any case, a specific exclusion under the Constitution of India to levy GST on the supply of alcoholic liquor for human consumption. In light of the above mentioned provisions, it is summarized that even if activity undertaken by the PIL can be deemed to be a 'supply of services' under the concerned statutes, there shall be no levy of GST on the same as not only is there is no statutory backing to the said levy in the first place, the Constitution of India specifically excludes taxes on alcoholic liquor for human consumption from the definition of GST.

13. In this regard, the Applicant places reliance on the well-settled position of law that a thing which cannot be done directly cannot be done indirectly. Accordingly, it is respectfully contended by the Applicant that something which is not constitutionally / statutorily permissible, the same cannot be justified by relying on the language of the Schedule to the relevant statute. To explain the said submission in the context of the instant factual scenario, it is submitted by the Applicant that levy of GST on supply of alcoholic liquor for human consumption is expressly excluded under the Constitution of India as well as the CGST Act / MGST Act / IGST Act. Once that is the case, the Revenue cannot place reliance on the scope of supply provided within the CGST Act/MGST Act / IGST Act to argue that GST can be levied on supply of alcoholic liquor for human consumption if the same amounts to a treatment/process on another person's goods. To substantiate this contention, reference may be made to the judgment of the 7-judge Bench of the Hon'ble Supreme Court in *Re Kerala Education Bill, 1957* Reference under Article 143 (1) of the Constitution of India, AIR 1958 SC 956 wherein it was held that "Even the legislature cannot do indirectly what it certainly cannot do directly". Similarly, a Constitution Bench of the Hon'ble Supreme Court in *State of Punjab v. Devans Modern Breweries Ltd, (2004) 11 SCC 26* held that "It is a well-settled principle of law that a thing which cannot be done directly cannot be done indirectly". Relying on these judgments, it is humbly contended by the Applicant that once the supply of alcoholic liquor is excluded from the very definition of GST under the Constitution of India as well as from the charging provisions levying CGST / MGST / IGST under the CGST Act/MGST Act/IGST Act, there is a total bar on imposing GST on such a supply in any form, including by way of creating a deeming fiction.

14. In view of the above mentioned submissions, the Applicant humbly submits that the consideration received by PIL as fixed fee and costs specified in Schedule II to the Agreement is in the nature of consideration for supply of alcoholic liquor for human consumption' which is excluded from the ambit of GST by virtue of the specific exclusion provided for in the Constitution of India as well the charging provisions under the CGST Act, MGST Act and the IGST Act. Therefore, it is the Applicant's contention that there shall be no levy of CGST/MGST/IGST on the amount of such consideration received by PIL from the Applicant under the Agreement.

#### Submissions in relation to Applicant's Question (ii) in S. No. 14

*Without prejudice to the submissions made elsewhere, if the supply of Beer is held to be service by way of job wok in relation to Beer, what shall be the rate of CGST /MGST /IGST hat shall be levied on the said taxable supply?*

15. If the supply of Beer is held to be a service by way of job wok in relation to beer, the Applicant has sought an advance ruling on the rate of CGST/MGST / IGST that shall be levied on the said taxable supply. It is respectfully reiterated that this is without prejudice to the Applicant's submission that the activities under contention are not being carried out on another person's goods and that said activities are in the nature of supply of alcoholic liquor of human consumption which is entirely outside the ambit of GST.

16. Without prejudice to the submissions made elsewhere, it is humbly submitted that if brewing, bottling and supplying Beer i.e. alcoholic liquor for human consumption is considered to be a taxable supply, it could potentially fall within the ambit of manufacturing services on physical inputs owned by others i.e. services by way of job work. In the present case, all the activities under consideration i.e. brewing, bottling and supplying Beer are in relation to Beer which is classifiable under Customs Tariff Item 2203 00 00 of the First Schedule to the Customs Tariff Act, 1975. Therefore, the said taxable supply squarely falls within the scope of S. No. 26 (i) (f) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017 i.e. 'Services by way of job work in relation to all food and food products falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975'. Accordingly, if brewing, bottling and supplying Beer i.e. alcoholic liquor for human consumption is considered to be a taxable supply, the same shall be levied CGST at the rate of 2.5% in terms of Notification No. 11 / 2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017. Similarly, there shall be a levy of UTGST at a rate of 2.5% on the said taxable supply in terms of Notification No. 11/2017-State Tax (Rate) dated 29.06.2017, as amended by Notification No. 31/2017- State Tax (Rate) dated 13.10.2017. Also, there shall be a levy of IGST at the rate of 5% on the said taxable supply in terms of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017, as amended by Notification No. 39/2017-Integrated Tax (Rate) dated 13.10.2017.

#### Additional submissions of applicant

WRITTEN SUBMISSIONS ON BEHALF OF CROWN BEERS INDIA PRIVATE LIMITED

1. Crown Beers India Private Limited (Applicant) has entered into a Tie-Up Agreement (Agreement) with Privilege Industries Limited ("PIL") under which PIL has agreed to brew / manufacture, package and supply beer (Products), as specified under the Agreement. In this regard, the Applicant filed the present application for advance ruling (Application), bearing Reference No. 31 dated 29.05.2018, seeking an advance ruling on the following questions:

i. The Applicant incurs to the PIL a fixed fee and costs specified in Schedule II to the Agreement as a consideration for supply of Products. Supply of Products, being in the nature of alcoholic liquor for human consumption, is excluded from the ambit of Central Goods and Services Tax Act, 2017 (CGST Act) / Maharashtra Goods and Services Tax Act, 2017 (MGST Act) / Integrated Goods and Services Tax Act, 2017 (IGST Act). Whether Central Goods and Services Tax (CGST) under Section 9 (1) of the CGST Act / Maharashtra Goods and Services Tax (MGST) under Section 9 (1) of the MGST Act / Integrated Goods and Services Tax (IGST) under Section 5 (1) of the IGST Act can be levied on the above mentioned consideration paid for supply of alcoholic liquor for human consumption?

ii. Without prejudice to the submissions made elsewhere, if the supply of beer is held to be services by way of job work in relation to beer, what shall be the rate of CGST / MGST/IGST that shall be levied on the said taxable supply?

2. In pursuance of the Application, a hearing for admission / rejection of the Application was scheduled on 25.07.2018. After considering the submissions made by the Applicant, the Application was admitted for final hearing (vide Final Hearing Notice dated 25.07.2018). A copy of the Final Hearing Notice is enclosed herewith and marked as Annexure-1. Subsequently, the Applicant has also received Submissions dated 24.07.2018 (Revenue Submissions) made by the office of Joint Commissioner of State Tax, Nodal-7, Mumbai. A copy of the said submissions is enclosed herewith and marked as Annexure-2. In this regard, the Applicant makes the following submissions, without prejudice to each other:

**Supply of alcoholic liquor for human consumption, including the supply of goods as well as supply for services, has been excluded from the ambit of GST regime**

3. It is humbly submitted that the following facts are not in dispute:

- i. That PIL is a manufacturer of alcoholic liquor for human consumption and holds the requisite licences under the State excise laws (Recital (b), Clause 1.3.1(a) and (d) of the Agreement).
- ii. That the Products which are the subject matter of supply are alcoholic liquor for human consumption as is clear from the definition of Products under Clause 1 (u) of the Agreement which defines "Product (s)".
- iii. The raw materials for the manufacture of alcoholic liquor for human consumption are purchased by PIL and it shall arrange for labour and all other facilities for inputs for manufacturing alcoholic liquor for human consumption (Clause 2.1.1 of the Agreement).
- iv. The Applicant is the risk taker and is entitled to profits from the sale of alcoholic liquor for human consumption (Clause 3.1 and 3.5 of the Agreement).
- v. PIL is entitled to a fixed fee for manufacture and supply of alcoholic liquor for human consumption (Clause 2.3 and 7.3 of the Agreement).
- vi. Sales invoices are raised by PIL for delivery of alcoholic liquor for human consumption in favour of buyers/ distributors identified by the Applicant.
- vii. That the manufactured alcoholic liquor for human consumption is supplied

4. From the above features of the Agreement, it is clear that the transaction is one of supply of alcoholic liquor for human consumption alone. The physical transfer of alcoholic liquor for human consumption is made by PIL in favour of buyers/ distributors which are identified by the Applicant. The entire sale consideration for the supply of alcoholic liquor for human consumption is split into three parts viz., (1) fixed fee which is retained by PIL, (2) the surplus which belongs to the Applicant, and (3) costs for the manufacture of alcoholic liquor for human consumption which is reimbursed to PIL.

5. No part of the above sale consideration for alcoholic liquor for human consumption is subject to GST as the supply of alcoholic liquor for human consumption itself is outside the purview of the GST provisions. All the above components of the sale consideration, whether retained by the Applicant or by PIL, are only parts of sale consideration of alcoholic liquor for human consumption which is manufactured and supplied by PIL.

6. The power to levy of excise duty on manufacture of alcoholic liquor for human consumption continues to vest with the State Legislature under Entry 51 of List II. Equally, levy of taxes on the sale and purchase of alcoholic liquor for human consumption continues to be charged by the State Legislature under Entry 54 of the List II by the States. Therefore, any consideration which is charged by a manufacturer of alcoholic liquor for human consumption for the manufacture and sale of alcohol will be subject to taxes by the State Governments alone and is not part of the concurrent power of taxation given to the Union Government and State Governments as provided under Article 246A of the Constitution. The entire sale consideration which is split into three parts, as stated above, can therefore only be subjected to either State excise duty or VAT which is being levied and paid on such consideration.

7. It is humbly submitted that under the CGST Act, Section 9 (1) specifically provides for the levy of CGST on "all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption". Similarly, the MGST Act provides for provisions for levy and collection of GST on intra-State supply of goods or services or both by the State Government of Maharashtra. Under the MGST Act, Section 9 (1) specifically provides for the levy of MGST on "all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption". As far as the

IGST Act is concerned, the same provides for provisions for levy and collection of tax on inter-State supply of goods and services or both by the Central Government. Under the IGST Act, Section 5 (1) specifically provides for the levy of IGST on 'all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption'. Furthermore, Article 366 (12A) was inserted in the Constitution of India which defined goods and services tax to mean "any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption". Based on a plain reading of Article 366 (12A) of the Constitution of India, Section 9 (1) of the CGST Act / MGST Act and Section 5 (1) of the IGST Act, it is respectfully submitted that 'supply of alcoholic liquor for human consumption' has been expressly excluded from the ambit of levy of CGST / MGST / IGST.

8. It is humbly submitted that with the passing of the above mentioned constitutional amendment and the consequent GST legislations, what is excluded from the levy of GST is the 'supply of alcoholic liquor for human consumption'. In this regard, it is humbly submitted that 'supply', as defined in the CGST Act / MGST Act / IGST Act, is a much wider concept which includes 'all forms of supply of goods or services or both' within its ambit. As far as GST on 'supply of alcoholic liquor for human consumption' is concerned, the same has been excluded from the overall incidence of 'supply', which includes the supply of goods as well as supply for services. Therefore, it is clear that the intention of the concerned legislatures has been to exclude every aspect of supply of alcoholic liquor for human consumption from tax under the GST legislations, be it supply of goods or supply of services.

9. Without prejudice to the above submissions that there is no supply at all which can be brought under the GST net, it is submitted that, insofar as the fixed fee is concerned, it is intended for the supply of alcoholic liquor for human consumption. There is no independent service provided by PIL to the Applicant. The alleged service gets subsumed in the manufacture of alcoholic liquor for human consumption and finally what is supplied is only alcoholic liquor for human consumption. Therefore, it would be incorrect to sub-divide the transaction of alcoholic liquor for human consumption and attempt to tax the service portion, if any, which already stands subsumed in the final product which is alcoholic liquor for human consumption alone. For instance, if the manufacturer enters into an agreement to supply packaged pens, the activity of packaging pens gets subsumed in the manufacture and no separate service of packaging pens will be said to be undertaken.

10. It is further submitted that the State Legislature's powers to impose taxes on alcoholic liquor for human consumption has not changed under the GST regime, as explained above under Entry 51 and 54 of List II. As far as the Union Government's power to impose service tax is concerned, it is submitted that that the same was imposed in terms of the residuary powers under Entry 97 of List I of the Union List (Seventh Schedule) under the pre-GST regime. Under this residuary entry, the Union Government could make laws with respect to any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists. Under the GST regime, however, the Parliament and the State Legislatures have been specifically empowered under the Constitution to make laws with respect to GST. Further, Constitution itself defined goods and services tax' under Article 366 (12A) to specifically exclude taxes on the entire scope of supply of alcoholic liquor for human consumption, whether such supply is that of supply of goods or supply of services. Accordingly, it is submitted that no taxes in the nature of GST can be levied on the supply of alcoholic liquor for human consumption.

11. In this regard, reference may also be made to GST Council's Minutes of the 26th Meeting dated 10.03.2018 on GST on liquor license fee wherein the GST Council approved that GST was not leviable on licence fee and application fee, by whatever name it is called, for alcoholic liquor for human consumption and that *this would also apply mutatis mutandis to the demand raised by Service Tax/Excise authorities on licence fee for alcoholic liquor for human consumption in the pre-GST period.* The Central Government has subsequently accepted this decision of the GST Council. Reference may be made to Order dated 10.08.2018 of the Hon'ble Delhi High Court in Jagatjit Industries Limited v. Union of India [W.P.(C) No. 3277/2017] which mentions the above mentioned GST Council's Minutes of the Meeting and the approval of the same by the Central Government. A copy of the Order dated 10.08.2018 of the Hon'ble Delhi High Court is enclosed herewith and marked as Annexure-3.

12. It has been contended in the Revenue Submissions that as per Section 9 (1) of the CGST Act / Section 9 (1) of the MGST Act and Section 5 (1) of the IGST Act, supply of alcoholic liquor for human consumption is excluded from the ambit of levy of CGST / MGST / IGST but supply of services related to liquor for human consumption is not excluded from the ambit of levy of CGST / MGST / IGST. Accordingly, it has been submitted in the Revenue Submissions that services rendered by PIL to the Applicant are taxable. In this regard, it is humbly submitted that the above mentioned contention in the Revenue Submissions is an incorrect interpretation of law and is liable to be rejected.

13. It is submitted that it is well settled that taxing statutes are to be strictly construed i.e. a taxing statute has to be looked at merely in terms of its language and there is no room for any intendment. The reasoning behind such construction of taxing statutes is that there is no concept of equity in taxation law. This principle has been upheld by the Hon'ble Supreme Court in a series of judgments, including by a Constitutional Bench of the Hon'ble Supreme Court in *Hansraj Girdhardas v. HH Dave*, (1969) 2 SCR 253 as well as in *Sales Tax Commissioner v. Modi Sugar Mills*, AIR 1961 SC 1047. In light of the above mentioned rule of construction relating to taxing statutes, it is humbly submitted that the language of Article 366 (12A) of the Constitution of India, Section 9 (1) of the CGST Act / MGST Act and Section 5 (1) of the IGST Act have to be strictly construed, without considering the consequences that it may have. Once the said provisions are interpreted strictly in terms of their language, it is respectfully contended that the 'supply of alcoholic liquor for human consumption' in all forms, either as a supply of goods or a supply of services, is excluded from the levy of CGST / MGST / IGST. Therefore, it is the Applicant's contention that there shall be no levy of CGST / MGST / IGST on the consideration paid by the Applicant as the same are in relation to 'supply of alcoholic liquor for human consumption'. Accordingly, insofar as the above mentioned contention in the Revenue Submissions

is concerned, it is humbly submitted that the same is an incorrect interpretation of the statutory provisions and liable to be rejected.

**Advance Ruling No. KAR ADRG 9/2018 dated 29.06.2018 referred to in the Revenue Submissions supports the Applicant's contention that the manufacturing activity undertaken by PIL is not in the nature of supply of services and, therefore, no GST is liable to be paid on the same**

14. In the Revenue Submissions, reliance has been placed on the Advance Ruling No. KAR ADRG 9/2018 dated 29.06.2018 given by the Authority for Advance Ruling, Karnataka (Karnataka Advance Ruling) in the case of M/s. United Breweries Limited ('UBL'). The facts of the Karnataka Advance Ruling are similar to the facts of the present case insofar as UBL, apart from manufacturing beer on its own, also has manufacturing arrangement with Contract Bottling Units ('CBUs') who manufacture beer under brand names belonging to the applicant and supplies such beer to market. As per the agreements under consideration in the Karnataka Advance Ruling, CBUs were entitled to a fixed sum and the cost of the raw material, cost related to energy consumption, fixed costs etc. Similar to the present case, the said agreements provided that the CBUs shall be procuring the raw materials required, even if it was under the close supervision of UBL.

15. With respect to the question of levy of GST on the profit earned by the CBUs out of their manufacturing activity, it was noted in the Karnataka Advance Ruling that UBL had not supplied any goods used in the manufacturing activity undertaken by the CBUs and, therefore, the CBUs are not engaged in supply of any service to UBL. Accordingly, it was decided that there is no liability of GST on the amount retained by the CBU.

16. In view of the decision in the Karnataka Advance Ruling, it is humbly submitted that the said decision is directly contrary to the position taken in the Revenue Submissions. The said decision, in fact, supports the interpretation adopted by the Applicant. It is humbly submitted that in the instant facts, PIL is not working on another person's goods. This is a case where PIL purchases the required materials on their own and then manufactures and packs Products out of such goods. Therefore, it is respectfully submitted that the present case cannot be said to be one of 'any treatment or process which is applied to another person's goods'. Accordingly, relying on the Karnataka Advance Ruling, it is humbly submitted that PIL is not engaged in supply of any service to the Applicant and, therefore, no GST is liable to be paid. Merely because the cost of raw materials and ingredients used in the manufacture of Products is reimbursed by the Applicant to PIL, it cannot be concluded that PIL is engaged in job work or supply of services.

17. It is humbly submitted that as per Section 2 (68) of the CGST Act, 'job work' is defined as 'any treatment or process undertaken by a person on goods belonging to another registered person' and the expression 'job worker' has to be construed accordingly. An identical definition of 'job work' is provided under Section 2 (68) of the MGST Act. In terms of Section 2 (24) of the IGST Act, the above mentioned definition of 'job work' under the CGST Act shall also apply to the IGST Act. In this regard, it is humbly submitted in terms of the above mentioned definition of 'job work', an activity can be said to be 'job work' only if such treatment or process is undertaken by a person on 'goods belonging to another registered person'.

18. Further, S. No. 3 of Schedule II to the CGST Act / MGST Act provides that 'any treatment or process which is applied to another person's goods is deemed to be a supply of services'. Therefore, an activity can be said to be supply of service in terms of S. No. 3 of Schedule II of the CGST Act / MGST Act only if such treatment or process is applied to another person's goods.

19. In the present case, PIL is undertaking the manufacturing activity on its goods procured and paid for on its own. In this regard, sample invoices have already been filed to demonstrate that PIL is purchasing the raw materials by itself and is the owner of the raw materials. The said invoices are enclosed herewith and marked as Annexure-4. Therefore, it cannot be said that PIL is undertaking any treatment or process on another person's goods. Accordingly, it is humbly submitted that the manufacturing activity undertaken by PIL can neither be said to be in the nature of job work, as defined under the CGST Act / MGST Act, nor said to be within the scope of 'supply of services' in terms of S. No. 3 of Schedule II of the CGST Act / MGST Act.

20. In this regard, it is humbly submitted that merely the fact that the cost of raw materials and ingredients used to make the Products is reimbursed by the Applicant does not change the fact that such raw materials and ingredients are procured by and owned by PIL. It is respectfully contended that in any case of supply of goods or services, the consideration charged for supplying such goods or services can be broadly split into (1) the cost incurred for supplying such goods or services; and (2) the amount of profit. The fact that the cost of raw materials used for supplying such goods or services is recovered from the recipient of goods or services at the time of supply does not imply that the raw materials always belonged to the said recipient (i.e. even before the time of supply). Relying on the same reasoning, it is humbly submitted that merely because the cost of raw materials and ingredients used in manufacture of Products is recovered from the Applicant, it cannot be concluded that the said raw materials and ingredients always belonged to the Applicant and PIL was undertaking the manufacturing activity on goods owned by the Applicant.

**Without prejudice to the above mentioned submissions, if supply of Products is held to be a supply of service by way of job work, the same shall be levied CGST at the rate of 2.5%, MGST at the rate of 2.5% and IGST at the rate of 5%.**

21. In the Revenue Submissions, it has been contended that the activity undertaken by PIL for the Applicant would fall in the tax net, fastening tax burden of 18% (9% CGST + 9% MGST) under Service Tariff Heading No. 9997 (Residuary Entry) of other services (washing, cleaning and dyeing services; beauty and physical well being services, and other miscellaneous services including services nowhere else specified).





22. In this regard, without prejudice to the submission that no CGST / MGST / IGST is leviable on the amount of consideration received by PIL (including the fixed fee and costs specified in Schedule II of the Agreement), it is humbly submitted that if brewing, bottling and supplying Products is considered to be a taxable supply, it could potentially fall within the ambit of manufacturing services on physical inputs owned by others. In the present case, all the activities under consideration i.e. brewing, bottling and supplying Products are in relation to beer which is classifiable as Customs Tariff Item 2203 00 00 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the said taxable supply will specifically fall within the scope of S. No. 26 (1) (f) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017 (Services by way of job work in relation to all food and food products falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975).

23. It is humbly submitted that under the notifications prescribing rate of CGST / MGST / IGST on prescribed services, it has been specified that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of heading 9988. Rule 3 of the General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 provides that the heading which provides the most specific description shall be preferred to headings providing a more general description.

24. In the present case, description of S. No. 26 (1) (f) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 31/2017 Central Tax (Rate) dated 13.10.2017 is more specific than the residuary entry referred to in the Revenue submissions. Accordingly, if brewing, bottling and supplying Products is considered to be a taxable supply, the same shall be levied CGST (in case of intra-State supply) at the rate of 2.5% in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017. Similarly, there shall be a levy of MGST (in case of intra-State supply) at the rate of 2.5% on the said taxable supply in terms of Notification No. 11/2017-State Tax (Rate) dated 29.06.2017, as amended by Notification No. 31/2017-State Tax (Rate) dated 13.10.2017. In case of an inter-State supply, IGST shall be levied at the rate of 5% on the said taxable supply in terms of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017, as amended by Notification No. 39/2017- Integrated Tax (Rate) dated 13.10.2017.

**03. CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-  
**Submission in case of Crown Beers India Pvt Ltd**

M/s. Crown Beer India Pvt Ltd is registered under GST Act with GSTIN 27AACCC994601ZS. The dealer has applied under Advance Ruling for clarification in respect of the following questions

1) The applicant incurs to the PIL a fixed fee and costs specified in Schedule II to the agreement as a consideration for supply of products. Supply of products, being in the nature of alcoholic liquor for human consumption is excluded from the ambit of Central Goods and Services Tax Act, 2017 (CGST Act) / Maharashtra Goods and Services Tax Act, 2017 (MGST Act) / Integrated Goods and Services Tax Act, 2017 ('IGST Act'). Whether Central Goods and Services Tax Act, 2017 (hereinafter referred as 'CGST') under section 9(1) of the CGST Act / Maharashtra Goods and Services Tax (hereinafter referred as MGST) under section 9(1) of the MGST Act / Integrated Goods and Services Tax (hereinafter referred as 'IGST') under section 5(1) of the IGST Act can be levied on the above mentioned consideration paid for supply of alcoholic liquor for human consumption?

2) Without prejudice to the submissions made elsewhere, if the supply of Beer is held to be a service by way of job work in relation to Beer, what shall be the rate of CGST/UTGST/IGST that shall be levied on the said taxable supply?

In this connection, I am submitting my submission as under:

M/s Crown Beer India Pvt Ltd has entered into a Tie-up Agreement with M/s. Privilege Industries Limited (PIL) whereby PIL undertakes to manufacture the products at its Bottling unit and perform certain allied activities like

- 1) Purchasing the required raw materials, arranging labour and all other facilities and inputs, in compliance with the standards prescribed under the agreement, for the purpose of manufacturing the product i.e. Beer.
- 2) Maintaining physical stock of products in the bottling unit or in bonded or other warehouses and
- 3) Preparation of sales invoices, ensuring timely dispatches and delivery of the products to buyers/ distributors in the territory identified by the M/s. Crown Beer India Pvt Ltd.

It means PIL is rendering services in relation to supply of liquor and in consideration PIL gets a fixed fee as evidence by the agreement submitted by the dealer. As per Section 9 (1) of CGST Act, 2017 & MGST Act, 2017 and Section 5(1) of IGST Act, 2017, supply of alcoholic liquor for human consumption is excluded



from the ambit of levy of CGST/MGST/IGST. Supply of services related to liquor for human consumption is not excluded from the ambit of levy of CGST/MGST/IGST which means services rendered by PIL 10 M/s. Crown Beer India Pvt Ltd. Are taxable.

Hence, the supply of services by PIL to M/s. Crown Beer India Pvt Ltd. would fall in the GST tax-net, fastening tax burden of 18% (9% CGST + 9% SGST) under Services Tariff heading No.9997 (Residuary Entry) of Other Services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).

This view is confirmed by the judgment given by The Authority on Advance Rulings Karnataka GST in the Advance Ruling no. KAR ADRG 9/2018 Dated 29 June, 2018.

#### 04. HEARING

The case was taken up for Preliminary hearing on dt. 25.07.2018 with respect to admission or rejection of present application when Sh. Tarun Gulati, Advocate along with Sh. Vasu Nigam, Advocate and Sh. Ashish Jain, Senior Manager Tax appeared and contented for admission of application as per submissions made in their ARA. Jurisdictional Officer, Ms. Sheetal Gajane, State Tax Officer (C-704), Nodal Division - 7, Mumbai appeared and stated that they have already made written submissions.

The application was admitted and called for final hearing on 29.08.2018, Sh. Shanti Mathews, Advocate along with Sh. Vasu Nigam, Advocate and Sh. Sachin Agrawal Consultant appeared and made oral and written submissions. Jurisdictional Officer, Ms. Sheetal Gajane, State Tax Officer (C-704), Nodal Division - 7, Mumbai appeared and stated that they have already made written submissions.

#### 05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by the applicant. The submissions made have been reproduced verbatim.

The first question raised by the applicant is as follows:-

*"The applicant incurs to the PIL a fixed fee and costs specified in Schedule II to the Agreement as a consideration for supply of Products. Supply of Products, being in the nature of alcoholic liquor for human consumption, is excluded from the ambit of Central Goods and Services Tax Act, 2017 ('CGST Act') / Maharashtra Goods and Service Tax Act, 2017 (MGST Act) / Integrated Goods and Service Tax Act, 2017 ('IGST Act'). Whether Central Goods and Services Tax (hereinafter referred to as the 'CGST') under Section 9(1) of the CGST Act / Maharashtra Goods and Service Tax (hereinafter referred to as the 'MGST') under Section 9(1) of the MGST Act / Integrated Goods and Service Tax (hereinafter referred to as the 'IGST') under Section 5 (1) of the IGST Act can be levied on the above mentioned consideration paid for supply of alcoholic liquor for human consumption?"*

With respect to the costs incurred by the applicant, we find that the 'costs' are paid by the applicant to PIL as a consideration for purchasing the required materials, arranging labour and all other facilities and inputs by PIL on behalf of the applicant, so that as per the agreement entered into by them PIL would brew, manufacture, package and supply beer (Products), as specified under the Agreement. The applicant has entered into an agreement for brewing/manufacturing, packaging and supplying beer only because PIL has surplus manufacturing and licensed capacity at its bottling unit. As per the agreement the applicant would pay to PIL such costs for purchasing the goods mentioned above and therefore they are



effectively their own goods. In fact the agreement mentions that PIL shall maintain in force, at all times during the term of the Agreement, full and complete insurance cover for Products, raw materials and ingredients used in the Manufacture of Products and work in process in relation thereto by nominating Crown as the beneficiary. The cost of such insurance is also paid by the applicant. Since the applicant is paying costs to PIL for purchase of the said goods, there is no supply rendered by them to each other since as per the definition of supply of services. In the GST Law, the taxable event would be SUPPLY. Hence it is the most important part of the GST law, as it will determine the taxability or otherwise under the GST law. The definition of Supply in the CGST Act, is an inclusive one. It is contained in Section 7 of the CGST Act. Apart from Section 7, Schedules I to III are provided which explain various provisions related to supply.

"SUPPLY includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business."

From the transaction between the applicant and PIL, it is clear that in respect of the 'costs' paid and received there is no supply of goods/services in the form of sale, transfer, barter, exchange, etc. and therefore there is no requirement to pay GST on such costs paid by the applicant to PIL.

However in respect of the 'fixed costs' paid by the applicant to PIL, it is very clear that the said fixed costs are paid to PIL because they are providing job work services to the applicant. In this matter of payment of fixed costs there is a supply of service by PIL to the applicant in the form of brewing/manufacturing, packaging and supplying beer. For these services rendered there is a consideration which flows from the applicant to PIL in the form of 'fixed costs'. The entire services rendered by PIL and the consideration paid by the applicant for receiving such services is in the course of furtherance on business of both, the applicant and PIL. Hence this amount is liable to tax under the GST Laws and such tax is payable by the supplier of service i.e. PIL.

Now we examine the second question raised by the applicant which is as follows:-

*"Without prejudice to the submissions made elsewhere, if the supply of Beer is held to be a service by way of job work in relation to Beer, what shall be the rate of CGST/UTGST/IGST that shall be levied on the said taxable supply?"*

With regard to this question we may mention that supply of beer as such is not a service. What is service in this case is the entire gamut of brewing/manufacturing, packaging and supplying beer by PIL to the applicant for which they are receiving fixed costs for job work as discussed above. If the applicant had brewed/manufactured, packaged and supplied beer on their own account then their activity would not have been liable to tax under the GST laws since the supply of alcoholic liquor for human consumption is not taxable under the GST laws. In the discussions made above by us it is very clear that it is the job work which is a service provided by PIL that is required to be taxed.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 31/2018-19/B-

102

Mumbai, dt.

4/9/2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1:- The applicant incurs to the PIL a fixed fee and costs specified in Schedule II to the Agreement as a consideration for supply of Products. Supply of Products, being in the nature of alcoholic liquor for human consumption, is excluded from the ambit of Central Goods and Services Tax Act, 2017 ('CGST Act') / Maharashtra Goods and Service Tax Act, 2017 (MGST Act') / Integrated Goods and Service Tax Act, 2017 ('IGST Act'). Whether Central Goods and Services Tax (hereinafter referred to as the 'CGST') under Section 9(1) of the CGST Act / Maharashtra Goods and Service Tax (hereinafter referred to as the 'MGST') under Section 9(1) of the MGST Act / Integrated Goods and Service Tax (hereinafter referred to as the 'IGST') under Section 5 (1) of the IGST Act can be levied on the above mentioned consideration paid for supply of alcoholic liquor for human consumption?

Answer :- In view of the above discussions, the taxes have to be discharged by PIL on the fixed fee received and not on costs received.

Question 2:- Without prejudice to the submissions made elsewhere, if the supply of Beer is held to be a service by way of job work in relation to Beer, what shall be the rate of CGST/UTGST/IGST that shall be levied on the said taxable supply?

Answer :- In view of the discussions made above, supply of beer per se is not taxable under GST. What is taxable in the subject case is the job work which is a service provided by PIL to the applicant, which they are receiving consideration.



B. V. BORHADE  
(MEMBER)

PANKAJ KUMAR  
(MEMBER)

**CERTIFIED TRUE COPY**

- Copy to:-
1. The applicant
  2. The concerned Central / State officer
  3. The Commissioner of State Tax, Maharashtra State, Mumbai
  4. The Jurisdictional Commissioner of Central Tax.
  5. Joint commissioner of State tax , Mahavikas for Website.

**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021.