

TAX INFO

Dated 26/11/2021

Latest update on GST Law: Information regarding **Bakeries cannot be treated as Restaurant** as given in **Judgement by Appellate Authority for Advance Ruling-Odisha.**

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Name of Case	Pioneer Bakers
Court	Appellate Authority for Advance Ruling-Odisha
Date of Judgement	27/07/2021
Appeal No.	01 /Odisha-AAAR/2021-2022

Facts of the Case:

M/s. Pioneer Bakers are operating under the Brand name of "Go-Cool". They have several outlets operating in the State of Odisha and their principal business is producing and selling of bakery products viz cakes, artisan cakes, pastries, pizza, patties, sandwich, self-manufactured ice-creams, handmade chocolates, cookies, beverages etc. The outlets are equipped with all the facilities to dine such as table and chairs, air conditioner, drinking water, stylish lights for providing a nice ambience which provide an overall good experience to the customers. The customers are provided with the option of either enjoying their food in the outlets itself by utilizing the facilities present in the outlets or they are at the liberty to take away their food.

The ruling was given by the Advance Ruling Authority vide their order No.06/Odisha-AAR/2020-21 dated 09.03.2021 that the applicant's service falls under "Restaurant Service, which will attract 5% duty (2.5% CGST & 2.5% SGST) without input tax credit."

An appeal was preferred by the Department before the Appellate Authority for Advance Ruling (AAAR) against such order of AAR.

Findings and Decision of AAAR:

The supply, by way of or as part of any services of goods, being food or any other article for human consumption or any drink, provided by a restaurant will be considered as Restaurant Service. The nature of establishment/premises/outlets owned by the applicant M/s. Pioneer Bakers, whether can be treated as Restaurant or not, is the main question?. But the ambiguity persists on the subject issue because the Restaurant Service is defined under CGST Act, 2017/SGST Act, 2017 but what is restaurant is not defined under CGST/SGST Act, 2017.

The meaning of the restaurant is provided in the Cambridge Dictionary, where it is defined as, a restaurant is a place where meals are prepared & served to the customer. The applicant is running a bakery business where different items are sold on take away basis. Most of the items are not prepared in their premises. The serving of the items to the customer for taking the food in the premises is done to very few customers. Therefore, the establishment run by the applicant M/s. Pioneer Bakers cannot be considered as Restaurant. The applicant has only prepared birthday cakes, as per order for take away service and they do not prepare birthday cakes immediately from the customer's order. They do not serve food to the Customer table & in most cases sold the items from the counter. Therefore, the applicant should not be considered as Restaurant Services.

The establishments/outlets/premises of the applicant cannot be treated as restaurant. Consequently, the activities carried out by the applicant from their premises/outlets cannot be considered as "Restaurant Service."

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