

'Supply' not involved in contract manufacturing of Indian made foreign liquor: Maharashtra AAR

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Summary

The Maharashtra Authority for Advance Ruling (AAR) has in a recent decision¹ held that there is no supply of goods or services from the brand owner (BO) to the contract brewing/bottling units (CBUs) involved under the contract manufacturing of Indian made foreign liquor (IMFL) under the BO's name.

Facts of the case

- The applicant² is the BO of various brands in relation to the manufacture and sale of alcoholic beverages.
- The applicant has entered into a 'manufacturing agreement' with the CBU on a strictly non-exclusive basis in terms of which the CBU undertakes the manufacture, bottling and packing of the alcoholic beverages in return for a fixed 'bottling fee' paid by the applicant.
- As per the terms of the contract, to enable the manufacture of the alcoholic beverages under the applicant's brands, the applicant has permitted the CBU to affix the labels, etc., on the finished products and packaging.
- The CBU sells the alcoholic beverages to either a state corporation or a private buyer under the instructions of the applicant and at the price fixed by the applicant.

¹ Maharashtra AAR No. GST-ARA-67/2018-19/B-155 dated 15 December 2018

² Allied Blenders and Distillers Private Limited

- The sale price of the alcoholic beverages is received by the applicant, out of which it pays the bottling fee and other reimbursements to the CBU. The balance is retained by the applicant as its surplus or profit.

Issues and Maharashtra AAR's observations/ruling

Issues	Maharashtra AAR's ruling
<ul style="list-style-type: none"> • Whether the applicant is making a taxable supply to the CBU 	<ul style="list-style-type: none"> • The AAR held that from a perusal of the 'manufacturing agreement' submitted by the applicant, it can be observed that the agreement is on a principal-to-principal basis. Further, both the price at which the raw materials are to be procured and the selling price are fixed by the applicant. The risk, property and interest in the manufactured product pass from the CBU to the applicant and the amount left with the applicant after making the required payments is its profit. • The AAR observed that there is no supply of either goods or services from the applicant to the CBU. The applicant is only getting the products manufactured from the CBU by paying bottling charges, which are fixed on a per month basis. • Therefore, the AAR held that the BO is not receiving any consideration for allowing the CBU to use its brand/logo etc. on the IMFL and hence there cannot be any 'service' being rendered by the applicant to the CBU. • Hence, as per the GST laws, there is no supply³ of goods or services or both by the applicant.
<ul style="list-style-type: none"> • Whether the CBU is making a taxable supply to the applicant 	<ul style="list-style-type: none"> • The AAR refrained from answering by holding that it pertained to supply of goods/services/both by the CBU and not by the applicant.

³ Section 7 of CGST Act, 2017

<ul style="list-style-type: none"> Whether the CBU is paying consideration to the applicant by way of brand owner surplus 	<ul style="list-style-type: none"> The AAR further stated that it can only provide ruling in respect of supply of goods/services/both being undertaken or proposed to be undertaken by the applicant⁴.
<ul style="list-style-type: none"> Whether the applicant is paying consideration to the CBU by way of bottling fee 	<ul style="list-style-type: none"> The issue being beyond the jurisdiction of the AAR⁵ was not taken up.

Our comments

The Karnataka Appellate Authority for Advance Ruling (AAAR) had in a recent⁶ ruling, on a similar issue, held that the amount received by the brand owner from the CBU shall be regarded as 'brand fee' and it shall qualify as 'supply of service' chargeable to GST. On the other hand, in the present case, the Maharashtra AAR has ruled that the brand owner was not engaged in any activity that can be classified as supply of goods or services to CBUs and therefore the 'surplus profit' shall not attract GST.

Contradictory rulings on similar issues could raise the scope of litigation for alcohol manufacturers. Though the AAR's decision is applicable only to the applicant, it may have a widespread impact on other businesses engaged in providing similar services. A due clarification from the government on this issue will help reduce future litigations.

⁴ Section 95(a) of the CGST Act, 2017

⁵ Section 97(2) of the CGST Act, 2017

⁶ In case of M/s United Breweries Limited

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