

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:

Mr R. Srinivasa Naik, Member
Mr Khalid Aizaz Anwar, Member

In the matter of

Appeal Case No. 02/WBAAAR/APPEAL/2026

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by M/s Indian Wire Products Company (19AAAFI7075H2Z5) against the Ruling passed by the West Bengal Authority for Advance Ruling vide Advance Ruling Order No. 33/WBAAR/2025-26 dated 27.02.2026.

Present for the Appellant: Mr. Vikram Khaitan, CA.

Present for the Respondent: None.

Matter heard on: 07.07.2026

Date of Order: 10.07.2026

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'SGST Act, 2017') are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the SGST Act, 2017.

1. This appeal has been filed by M/s Indian Wire Products Company (19AAAFI7075H2Z5) (hereinafter referred to as the 'Appellant') against the Ruling passed by the West Bengal Advance Ruling Authority (hereinafter referred to as WBAAR) vide Advance Ruling Order No. 33/WBAAR/2025-26 dated 27.02.2026.

2. The Appellant submitted that it is a partnership firm duly incorporated under the provisions of the Indian Partnership Act, 1932, and having its registered office at 38EM, Sanjeeva Garden, Thakdari Road, Dhapa Manpur, North Twenty-Four Parganas, New Town, West Bengal, 700156. It runs a restaurant under the name of "Pappu Chaiwala", situated at MB690, Mahishbhatan, North Twenty-Four Parganas, Kolkata- 700102. In the course of operating the said restaurant, the applicant also proposes to serve hookah, whether herbal or tobacco based, to customers within the restaurant premises as part of the overall dining experience. In this background, the Appellant sought a ruling from the WBAAR by filing an application under sub-section (1) of Section 97 of the Central Goods and Services Tax Act, 2017 and the West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively referred to as "the GST Act"), seeking an advance ruling on the following questions:

- i. Whether or not serving of non-tobacco hookah / tobacco-based hookah in the restaurant along with food will be termed as supply of goods or services within the ambit of Clause 6(b) of Schedule II to the CGST Act?
- ii. If yes, what will be the rate of tax applicable on herbal (non-tobacco-based) flavours and tobacco-based flavours?

Submission of the Appellant before the WBAAR

3. In their application made before the WBAAR, the Appellant submitted inter alia the following:

- i. The Appellant submitted that the principal issue involved in the present appeal is whether serving herbal (non-tobacco-based) and tobacco-based hookah in a restaurant, along with food and/or beverages, constitutes a supply of restaurant service within the ambit of Clause 6(b) of Schedule II to the CGST Act, 2017 and, consequently, whether such supply is liable to GST at the rate applicable to restaurant services.
- ii. The Appellant submitted that Clause 6(b) of Schedule II provides that supply, by way of or as part of any service, of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption) shall be treated as a supply of service. It was contended that the provision is broadly worded and intended to cover all articles for human consumption supplied in a restaurant environment. Reliance was also placed

upon Notification No. 11/2017-Central Tax (Rate), wherein restaurant service has been defined to include supply of food or any other article for human consumption or drink by a restaurant.

- iii. The Appellant submitted that preparation of hookah flavours is not a mere trading activity but involves an elaborate in-house process akin to preparation of food or beverages. It was explained that herbal hookah flavours are prepared from food-grade ingredients such as dried herbal leaves, fruit pulp or fibres, vegetable glycerine, molasses or honey and food-grade flavour concentrates through a systematic process of blending, curing and preparation by trained personnel in hygienic conditions. It was further submitted that, upon receipt of a customer's order, the hookah apparatus is sanitised, assembled, charcoal is ignited and disposable mouthpieces are provided. In the case of tobacco-based hookah, nicotine is added without altering the essential preparation process. The hookah apparatus remains the property of the restaurant and is not transferred to the customer. According to the Appellant, what is supplied is the overall experience of preparation, presentation and service within the restaurant premises.
- iv. The Appellant relied upon CBIC Circular No. 164/20/2021-GST dated 06.10.2021 to contend that a distinction has been drawn between preparation of food by restaurants and mere sale of manufactured goods by ice cream parlours. It was submitted that hookah flavours are prepared and assembled in-house in response to customers' orders and, therefore, the activity is comparable to preparation of food rather than sale of pre-manufactured goods.
- v. Reliance was further placed upon the judgment of the Hon'ble Karnataka High Court in Sri R. Bharath v. State of Karnataka, wherein, according to the Appellant, the Court recognised that hookah consumption inherently involves rendering of service since it cannot be consumed without specialised apparatus, preparation and active assistance of service personnel. The Appellant also relied upon the ruling of the West Bengal Authority for Advance Ruling in Summit Hotels & Resorts Private Limited to contend that beverages served within a restaurant using the establishment's infrastructure were held to constitute a composite supply of restaurant service, and that hookah served in the same ambience and infrastructure deserves identical treatment.

- vi. The Appellant further contended that the expression "any other article for human consumption" occurring in Clause 6(b) is of wide import and is not restricted to articles possessing nutritional value. It was argued that the Legislature has consciously excluded only alcoholic liquor for human consumption and no further exclusion can be read into the provision.
- vii. In support of the aforesaid contention, reliance was placed upon the judgment of the Hon'ble Calcutta High Court in *Sanjay Anjay Stores v. Union of India & Others*. Referring to the observations made therein, the Appellant submitted that while flavoured tobacco hookah was held not to be "food" under the Food Safety and Standards Act, flavoured non-tobacco hookah would be treated as food under the said enactment and the regulations framed thereunder. It was further contended that flavoured tobacco hookah would nevertheless fall within the expression "any other article for human consumption" occurring in Clause 6(b) of Schedule II. The Appellant also invoked the settled principle that a taxing statute has to be interpreted strictly and nothing can be added to or implied into the statutory provision beyond its express language.
- viii. The Appellant further submitted that hookah is never supplied independently but only along with food and/or beverages as part of the overall hospitality experience comprising seating, ambience, air-conditioning and service. Referring to the definition of "composite supply" under Section 2(30) of the CGST Act and the provisions of Section 8(a) thereof, it was contended that restaurant service constitutes the principal supply while service of hookah is merely ancillary and naturally bundled with such principal supply in the ordinary course of business. Accordingly, the entire bundle assumes the character of restaurant service.
- ix. Based on the aforesaid submissions, the Appellant contended that serving herbal as well as tobacco-based hookah within the restaurant premises, along with food and/or beverages, constitutes a composite supply of restaurant service falling within the ambit of Clause 6(b) of Schedule II to the CGST Act, 2017 and is liable to GST at the rate prescribed for restaurant services, namely 5%, subject to the conditions specified in Notification No. 11/2017-Central Tax (Rate), as amended from time to time.

Submission of the Revenue before the WBAAR

4. The Revenue, in their submissions made before the WBAAR, inter alia, highlighted the following issues:
- i. The Revenue submitted that several restaurants operating as "hookah bars" are predominantly engaged in supplying hookah services in addition to ancillary food items while discharging GST at the concessional rate of 5% applicable to restaurant services. According to the Revenue, such practice warrants strict scrutiny since the principal supply in such establishments is not food or beverages but the supply of assorted hookah flavours.
 - ii. It was submitted that hookah flavours, commonly packed in tins or jars, are classifiable under Heading 2403 11 10 and attract GST at the applicable rate together with Compensation Cess at the time of supply by manufacturers or importers. According to the Revenue, such products generally contain flavoured tobacco (shisha/maassel), molasses, glycerine, honey, nicotine, flavouring substances and colours and are treated as tobacco products under the Customs Tariff.
 - iii. The Revenue contended that the goods supplied by such establishments are, in substance, assorted hookah flavours classifiable under Heading 2403 11 10. It was further submitted that the consideration charged from customers for hookah sessions, ranging approximately from ₹550/- to ₹1,200/- depending upon the duration and category of the restaurant, indicates that the dominant element of the transaction is the supply of hookah flavours rather than supply of food.
 - iv. It was further submitted that restaurants are misclassifying the supply of hookah flavours as restaurant service and thereby availing the concessional rate of GST applicable exclusively to the supply of food or drink for human consumption under Clause 6(b) of Schedule II read with the relevant rate notification. According to the Revenue, the concessional rate was intended only for digestible food or beverages and not for tobacco-based products such as hookah, cigarettes or pan masala.

- v. The Revenue further contended that there is no provision under the GST law permitting a registered person to procure goods taxable at the higher applicable rate along with Compensation Cess and thereafter re-supply the same goods at the concessional rate applicable to restaurant services by clubbing them with such services. According to the Revenue, such treatment is contrary to the tariff classification and the applicable rate notifications.
- vi. The Revenue also referred to the provisions of the Food Safety and Standards framework as well as the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA). It was submitted that restaurants constitute "public places" within the meaning of the said enactment and that supply and distribution of tobacco products are governed by statutory restrictions, including mandatory declarations regarding nicotine and tar content.
- vii. The Revenue expressed apprehension that extending the concessional rate applicable to restaurant services to hookah supplied in restaurants would result in misuse of the notification and consequent loss of revenue. It was argued that if hookah were treated as an article for human consumption eligible for concessional taxation, similar claims could be advanced in respect of other tobacco products such as cigarettes, pan masala and gutka, which, according to the Revenue, could not have been the legislative intent.
- viii. On the aforesaid basis, the Revenue submitted that the principal supply in the present case is the supply of hookah flavours classifiable under HSN 2403 11 10 attracting GST at 28% along with Compensation Cess at 72%, and not restaurant service taxable at 5%.

Observation of the WBAAR and its Order

- 5.** The WBAAR, upon consideration of the facts of the case, the submissions of the applicant, the views of the Revenue and the applicable legal provisions, arrived at the following observations and findings while passing the impugned ruling:

- i. The WBAAR noted that the Appellant is engaged in providing restaurant services and proposes to serve herbal as well as tobacco-based hookah to its customers within the restaurant premises. It further noted that hookah would not be supplied on a standalone basis but only along with food and/or non-alcoholic beverages, with separate prices being reflected in the à la carte menu.
- ii. The WBAAR also took note of the Appellant's contention that serving hookah forms part of a composite supply of restaurant service under Clause 6(b) of Schedule II to the CGST Act, since the preparation of hookah is akin to preparation of food and the expression "any other article for human consumption" is of wide amplitude. It also noticed the Appellant's plea that hookah service is incidental to and naturally bundled with restaurant service.
- iii. The WBAAR recorded the submissions advanced by the Revenue that the principal supply in such establishments is the supply of hookah flavours classifiable under Heading 2403 and not restaurant service. It further noticed the Revenue's contention that there is no provision under the GST law permitting goods taxable at the applicable rate together with Compensation Cess to be supplied at the concessional rate applicable to restaurant services.
- iv. Proceeding to examine the issue, the WBAAR observed that the controversy essentially turns upon the interpretation of Clause 6(b) of Schedule II to the CGST Act read with the definition of "composite supply" contained in Section 2(30) thereof. According to the WBAAR, Clause 6(b) creates a legal fiction by treating specified composite supplies involving food or other articles for human consumption or drinks as supplies of service.
- v. While interpreting the expression "any other article for human consumption", the WBAAR applied the principle of *ejusdem generis* and held that the expression must be construed in the context of the accompanying expressions "food" and "any drink". It was, therefore, concluded that the said expression is referable only to articles which are ingested and digested by the human body.
- vi. On the above reasoning, the WBAAR observed that smoke generated from either tobacco-based or non-tobacco-based hookah is inhaled through the respiratory tract and not ingested through the digestive system. It further observed that the purpose of food and beverages is distinct from that of hookah and, therefore, tobacco as well as non-tobacco hookah cannot be equated with food, drink or any

other article for human consumption within the meaning of Clause 6(b) of Schedule II.

- vii. The impugned ruling rejected the Appellant's contention that service of hookah is merely incidental to restaurant service. It was held that, notwithstanding the condition that hookah would be supplied only along with food or beverages, both supplies retain their independent identity. The WBAAR further observed that restaurants are generally smoke-free establishments under the Cigarettes and Other Tobacco Products Act, 2003, except where designated smoking areas are permitted, and consequently service of hookah cannot be regarded as naturally incidental to the service of food and beverages.
- viii. The WBAAR further held that the expression "any other article for human consumption" covers edible accompaniments or consumable articles ordinarily supplied with meals and does not extend to tobacco or non-tobacco products intended for smoking. On that basis, it concluded that supply of hookah falls outside the ambit of Clause 6(b) of Schedule II and cannot be treated as restaurant service.
- ix. The WBAAR observed that the supply of hookah comprises both goods and service elements, namely, supply of tobacco or non-tobacco products together with provision of infrastructure, ambience, preparation and serving of hookah. It, therefore, held that the transaction constitutes a composite supply, albeit not one falling within Clause 6(b) of Schedule II.
- x. Referring to the definition of "composite supply" under Section 2(30), the WBAAR held that preparation and serving of hookah merely facilitate consumption of the tobacco or non-tobacco products placed in the hookah apparatus and are incidental thereto. Consequently, the principal supply was held to be the supply of tobacco or non-tobacco products, while the service element remained ancillary.
- xi. Applying Section 8(a) of the CGST Act, the WBAAR concluded that the entire composite supply is liable to be taxed as the principal supply, namely, supply of goods. Accordingly, it held that tobacco-based hookah is taxable as supply of goods under Heading 2403 at the applicable rate together with other applicable levies, whereas non-tobacco hookah is likewise taxable as supply of goods at the rate applicable to such goods under the relevant rate notification.

xii. Ultimately, the WBAAR concluded that the supply of food and the supply of tobacco-based/non-tobacco-based hookah constitute two separate composite supplies. While the supply of food was held to be a supply of service falling within Clause 6(b) of Schedule II and liable to GST at 2.5% CGST + 2.5% SGST, the supply of hookah was held to be a composite supply of goods, the principal supply being the tobacco or non-tobacco products used for smoking. Accordingly, tobacco-based hookah was held taxable at 20% CGST + 20% SGST under Heading 2403, together with other applicable levies, whereas non-tobacco-based hookah was held taxable at 9% CGST + 9% SGST under the relevant rate notification.

Submission of the Appellant before the West Bengal Appellate Authority for Advance Ruling

6. In their Grounds of Appeal, the Appellant has substantially reiterated the submissions made before the WBAAR. However, the appeal also contains certain additional legal submissions and elaboration of the grounds already urged before the WBAAR. Without reproducing the submissions already made before the Advance Ruling Authority, the additional submissions, insofar as they are relevant for the disposal of the present appeal, are summarised below:

- i. The Appellant has urged that the WBAAR has failed to appreciate the true nature of the impugned transaction by treating the supply as one of goods. According to the Appellant, serving hookah is predominantly an experience-based, labour-intensive and skill-driven activity involving preparation, assembly, customisation, continuous monitoring, assistance by trained personnel and post-consumption cleaning and sanitisation, all of which impart to the transaction the essential character of a service rather than a sale of goods.
- ii. The Appellant has further submitted that the various ingredients used in preparing hookah merely constitute raw inputs and are never supplied as such to the customer. It has been argued that, in the same manner as vegetables, spices and other ingredients used in preparation of food do not constitute independent supplies of goods, the ingredients used for preparing hookah merely facilitate rendering of the final service and are transformed through a systematic process involving skill, labour, hygiene and timing.

- iii. It has been contended that the WBAAR has erred in identifying the principal supply as the supply of tobacco or non-tobacco hookah flavours. According to the Appellant, the customer neither purchases the hookah apparatus nor the flavour mixture as goods, but merely avails a hospitality experience comprising ambience, infrastructure, specialised equipment and continuous assistance by restaurant staff. Consequently, the WBAAR has incorrectly applied the provisions relating to composite supply.
- iv. The Appellant has challenged the interpretation placed by the WBAAR on the expression "any other article for human consumption" occurring in Clause 6(b) of Schedule II. It has been argued that the CGST Act does not define the expression "consumption" and that, in its ordinary and legal sense, consumption includes inhalation, absorption and other recognised modes by which a substance enters or is utilised by the human body. According to the Appellant, the WBAAR has erroneously imported the requirement of ingestion and digestion into the statutory provision. Reliance has also been placed upon the provisions of the Cigarettes and Other Tobacco Products Act, 2003 (COTPA) to contend that the statute itself recognises smoking as a form of consumption.
- v. The Appellant has submitted that the WBAAR has misapplied the principle of *ejusdem generis* while interpreting Clause 6(b) of Schedule II. It has been argued that where the statutory language is plain and unambiguous, no limitation can be introduced by implication. In support thereof, reliance has been placed upon the judgments of the Hon'ble Supreme Court in *M/s. Hiralal Ratanlal v. State of Uttar Pradesh*, *Shiv Shakti Co-operative Housing Society v. Swaraj Developers*, and *Union of India v. Hansoli Devi*.
- vi. The Appellant has also contended that no independent supply of goods takes place in the present transaction. It has been submitted that neither the hookah apparatus nor the tobacco/non-tobacco flavour is transferred to the customer. The customer merely avails the facility of consuming hookah within the restaurant premises, while the apparatus always remains under the ownership and control of the restaurant. According to the Appellant, the tobacco or herbal flavour merely constitutes an input in rendering the overall service and does not amount to an independent outward supply of goods.

- vii. The Appellant has further submitted that neither Clause 6(b) of Schedule II nor Notification No. 11/2017-Central Tax (Rate), as amended by Notification No. 46/2017-Central Tax (Rate), expressly excludes hookah from the ambit of restaurant service. It has been argued that the WBAAR has impermissibly introduced an exclusion not contemplated by the Legislature. Reliance has also been placed upon the principles governing strict interpretation of taxing statutes and harmonious construction, as explained in *Union of India v. Hansoli Devi*, *Sultana Begum v. Prem Chand Jain*, *CIT v. Hindustan Bulk Carriers*, *Cape Brandy Syndicate v. IRC* and *Ajmera Housing Corporation v. CIT*.
- viii. The Appellant has additionally contended that the WBAAR has overlooked the legislative intent underlying the concessional 5% GST scheme applicable to restaurant services. According to the Appellant, the object of Notification No. 46/2017-Central Tax (Rate) was to provide a simplified and uniform tax treatment for the composite hospitality experience ordinarily provided by restaurants. It has been argued that segregating hookah from the restaurant service defeats the very object of the notification and reintroduces the complexity which the concessional scheme sought to remove. In support thereof, reliance has been placed upon *Union of India v. Deoki Nandan Aggarwal and Gwalior Rayons Silk Manufacturing Co. Ltd. v. Custodian of Vested Forests*.
- ix. The Appellant has further submitted that the WBAAR has failed to correctly appreciate the scope of Notification No. 11/2017-Central Tax (Rate), as amended. According to the Appellant, the language of the notification is sufficiently wide to encompass goods supplied as part of restaurant service, which lose their independent identity and become subsumed within the composite restaurant service.
- x. The Appellant has also challenged the observation in the impugned ruling regarding preparation of hookah outside the kitchen. It has been argued that the GST law nowhere requires that an article must necessarily be prepared in the kitchen to qualify as restaurant service. Reference has been made to other restaurant facilities such as mocktail counters, beverage stations, dessert counters, live kitchens and similar preparation areas to

contend that the place of preparation is legally irrelevant so long as the article is prepared and supplied as part of the restaurant service.

- xi. It has further been contended that the WBAAR has committed an error in artificially splitting a single transaction into two separate composite supplies, namely restaurant service and hookah service. According to the Appellant, where hookah is supplied only along with food and beverages as part of the overall hospitality experience, the transaction constitutes only one naturally bundled composite supply, the principal supply being restaurant service. It has also been argued that the impugned ruling is contrary to Sections 2(30) and 8 of the CGST Act, inasmuch as the entire composite supply ought to have been taxed according to its principal supply.
- xii. Lastly, the Appellant has contended that the WBAAR has failed to adequately consider the binding effect and applicability of the judicial precedents relied upon by it, particularly the judgment of the Hon'ble Karnataka High Court in Sri R. Bharath v. State of Karnataka and that of the Hon'ble Calcutta High Court in Sanjay Anjay Stores v. Union of India & Others, despite the same having been specifically cited before the WBAAR.
- xiii. Accordingly, the Appellant urged that that the supply of hookah forms part of a naturally bundled composite supply of restaurant service, and must be treated and taxed accordingly.

Submission of the Revenue made before the WBAAR

- 7. The Revenue has not filed any written submission or advanced any additional contention before this Appellate Authority in response to the present appeal controverting the grounds urged by the Appellant. Consequently, its stand in the present appeal proceedings remains confined to the submissions recorded by the WBAAR in the impugned ruling.

Personal Hearing

- 8. The present appeal was initially listed for personal hearing on **15.06.2026** and **30.06.2026**. On both occasions, the Appellant sought adjournment citing certain reasons and, accordingly, the personal hearing could not be conducted. Although the provisions of Section 75 of the CGST Act, 2017 relate to adjudication proceedings

before the proper officer and are not strictly applicable to proceedings before this Appellate Authority, the legislative intent reflected in sub-section (5) thereof, which limits the grant of adjournments to not more than three occasions where sufficient cause is shown, is indicative of the legislative policy that proceedings under the Act should not be prolonged indefinitely. Keeping in view the principles of natural justice, and considering that the Appellant had sought only two adjournments, a final opportunity of personal hearing was afforded by listing the matter on **07.07.2026** and the personal hearing was accordingly held on the said date.

9. During the course of the personal hearing, the Appellant made additional submissions and placed reliance upon certain judicial pronouncements to contend that tobacco-based as well as non-tobacco-based hookah flavours fall within the expression “food” or “any other article for human consumption”. Reliance was placed, inter alia, on the following decisions:

- i. S. Harichandran vs. Commissioner of Police, Chennai & Harikrishna N.V. vs. Commissioner of Police [Madras High Court, Crl. O.P. No. 23188 of 2025 and connected petition, decided 26 August 2025 (Sathish Kumar, J.)]
- ii. FFL Cuisines Private Limited vs. The Assistant Commissioner of Police, Nungambakkam Range, Chennai [CrI. OP. No.2863 of 2026 dated 09-02-2026]

and argued that the Hon’ble Courts have held that “the inhalation of smoke derived from any product other than Tobacco containing Nicotine, would also fall within the definition of “food” under Section 2(za) of the Food Safety and Standards Act.”

10. The above-mentioned case judgments primarily relate to “*any product other than Tobacco*”. The appellant has further relied upon the following decisions relating to tobacco products:

- i. Khedan Lal & Sons vs. State of UP [Alahabad HC, Cr. Misc. Appln. No. 164 of 1969 (1970): Full bench resolution 1980]
- ii. Godawat Pan Masala Products I.P. Ltd. vs. Union of India [Supreme Court of India, (2004) 7 SCC 68 / MR 2004 SC 4057]
- iii. Dhariwal industries Ltd. vs. State of Maharashtra [Bombay High Court, decided 15 September 2012 W.P. Nos. 1631, 2001, 2002, 20240 2251 of 2012]

and has argued that the Hon'ble Courts have held that – (a) Any substance used in the composition or preparation of an article that is itself eaten (such as tobacco/zarda taken with paan) remains “food” as defined by the Prevention of Food Adulteration Act. (b) A manufactured preparation combining tobacco with other ingredients, intended for oral human use, is "food, and (c) “even if gutka or pan masala were not to be ingested inside the digestive system, any substance which goes into the mouth for human consumption is sufficient to be covered by definition of food just as chewing gum may be kept in the mouth for some time."

11. In order to justify his argument that hookah is served in a restaurant and hence should be treated as a part of the restaurant services, the appellant has further cited the Rulings pronounced by various Advance Ruling and Appellate Advance Ruling Authorities namely,

- i. HRPL Restaurants Pvt. Ltd. [GUJ/GAAR/R/2023/08 dt 22.02.2023; Order date 22-02-23]
- ii. Summit Hotels & Resorts Private Limited [WBAAR 10 of 2025-26 vide Order dated 31-07-2025]
- iii. Kundan Misthan Bhandar [Order No, 4 2018-19 dated Feb 27. 2019, UPAAAR]
- iv. Gangaur Sweets (2023) 2 Centax 280 (AAR GST Chh.)
- v. MFAR Hotels & Resorts (AAR, Tamil Nadu 2020 42 G.S.T.L. 470(AAR - GST - T.N.)

where it has been held that when an item is billed under the restaurant sales head and has a direct nexus with the restaurant service, it forms a composite supply with restaurant service as the principal supply and hence, supply of cold drinks and food items in restaurant is part of restaurant service.

12. Citing these case judgments and Rulings, the appellant has further submitted that 'Any other Article for Human Consumption, has not been defined anywhere. The WBAAR applying the interpretive canon of *ejusdem generis* held that the general words 'any other article for human consumption' must take colour from the specific words that precede and follow them - 'food' and 'drink', on this reading, the residuary clause is confined to items of the same genus as food and drink, i.e., items consumed for nourishment, taste, or refreshment in the ordinary dietary sense, and does not

extend to articles that are consumed by the body but are not, in common or commercial parlance, thought of as food". *Ejusdem generis* ('of the same kind or nature') is a facet of the broader principle of *noscitur a sociis* under which the meaning of a word is coloured by the words with which it is associated. As per the case, *Amar Chandra Chakraborty vs. Collector of Excise, Govt. of Tripura* [AIR 1972 SC 1863], this doctrine is applicable only where (a) The statute contains an enumeration of specific words; (b) the subjects of the enumeration constitute a class or category; (c) that class or category is not exhausted by the enumeration; (d) the general term follows the enumeration; and (e) there is no indication of a different legislative intent.

Discussions and Findings

- 13.** We have examined the submissions advanced by the Appellant, in the grounds of appeal. We have also taken into consideration the submissions of the Revenue as recorded in the impugned ruling as no separate submission was made on its behalf in the present appellate proceedings. We have further examined the impugned ruling passed by the WBAAR, the judicial precedents relied upon by the Appellant, and the relevant provisions of the CGST/WBGST Act, the applicable notifications, circulars, tariff headings, HSN Explanatory Notes and other materials available on record.
- 14.** Without reiterating the detailed submissions recorded hereinabove, the principal contention of the Appellant is that the activity of preparing and serving tobacco-based as well as non-tobacco-based hookah within a restaurant forms an integral and naturally bundled component of restaurant service and, therefore, constitutes a composite supply falling within the ambit of Clause 6(b) of Schedule II to the CGST Act, with restaurant service being the principal supply liable to tax at the rate applicable thereto.
- 15.** The Revenue, on the other hand, has contended that the predominant supply in the present case is the supply of hookah flavours classifiable under Tariff Item 2403 11 10 and not restaurant service. It has further submitted that restaurants operating as hookah bars are misclassifying such supplies as restaurant service so as to avail the concessional rate of GST, whereas hookah flavours are liable to tax in accordance with their applicable tariff classification and other applicable levies, and therefore cannot be taxed at the rate prescribed for restaurant services.

- 16.** We have carefully considered the Grounds of Appeal, the written submissions filed by the Appellant, the submissions of the Revenue as recorded before the West Bengal Authority for Advance Ruling (WBAAR), the impugned Advance Ruling, the records of the proceedings, the relevant provisions of the Central Goods and Services Tax Act, 2017 and the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as "the GST Acts"), the notifications and circulars issued thereunder, and the judicial authorities relied upon by the Appellant.
- 17.** The principal issue arising for determination is whether the activity of preparing and supplying tobacco-based and herbal (non-tobacco-based) hookah flavours through a hookah apparatus in a restaurant, together with the attendant facilities ordinarily provided therein, constitutes a supply of restaurant service within the meaning of paragraph 6(b) of Schedule II to the GST Acts, or whether such supplies are liable to be classified and taxed independently in accordance with the applicable statutory provisions.
- 18.** Before examining the rival submissions, it is necessary to notice the statutory framework. Section 7 of the CGST Act defines the scope of the expression "supply", while Section 7(1A) provides that activities constituting a supply under Section 7(1) shall thereafter be treated either as a supply of goods or a supply of services in accordance with Schedule II. Thus, while Section 7 determines the existence of a taxable supply, Schedule II merely determines its legal character as a supply of goods or of services.
- 19.** The controversy before us arises under paragraph 6(b) of Schedule II read with the definition of 'restaurant service' as appended to the Notification No.11/2017 Central Tax (Rate) dated 28.06.2017, as amended (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017) which speaks as follows:
- (i) supply, by way of or as part of any service, of goods being **food or any other article for human consumption or any drink** (other than alcoholic liquor for human consumption), for consideration, shall be treated as a supply of services.
- (ii) 'Restaurant service' means supply, by way of or as part of any service, of goods, being **food or any other article for human consumption or any drink, 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.

- 20.** It is well settled that, being a statutory deeming provision, the ambit of "restaurant service" must be ascertained from the language employed by the legislature and cannot be expanded beyond the object for which the legal fiction has been enacted. A conjoint reading of paragraph 6(b) of Schedule II and the definition of 'restaurant service' shows that Parliament has not declared every supply made in a restaurant to be a restaurant service. The deeming fiction is confined to supplies of goods answering the statutory description of **food or any other article for human consumption or drink**, where such supplies are made by way of or as part of a service. Thus, the provision contemplates the coexistence of two conditions, namely, the existence of a service element and the supply of goods falling within the specified statutory class i.e., **food or any other article for human consumption or drink**. Neither condition can be dispensed with while determining the applicability of paragraph 6(b).
- 21.** The present appeal, therefore, does not turn merely upon the extent of service involved in preparing or supplying hookah, nor upon the tariff classification or rate of tax applicable to the products supplied. The primary enquiry is whether the supplies in question fall within the class of supplies which Parliament has chosen to treat as a supply of services vide paragraph 6(b) of Schedule II and further qualify to be a 'restaurant service' as defined supra. The answer to the aforesaid issue necessarily requires an examination of the statutory provisions relating to composite supply, principal supply and the applicable rate notifications, which shall now be considered.
- 22.** The principal contention advanced by the Appellant is that the impugned transaction constitutes a composite supply within the meaning of Section 2(30) of the GST Acts. It has been submitted that the supply of hookah flavours, preparation thereof, use of hookah apparatus, waiter service, seating arrangements and the overall restaurant ambience are naturally bundled and supplied together in the ordinary course of business, of which restaurant service constitutes the principal supply. Consequently, by virtue of Sections 2(90) and 8 of the GST Acts, the entire transaction is liable to be taxed as restaurant service.
- 23.** We have perused the above submission. Sections 2(30), 2(90) and 8 constitute the statutory framework governing composite supplies and determination of the principal supply. These provisions undoubtedly govern the determination of tax liability in

respect of composite supplies. However, they cannot be construed in isolation from the other provisions of the GST Acts and must operate harmoniously with the statutory classification envisaged under Schedule II.

- 24.** Section 8 merely prescribes the manner in which the tax liability of a composite supply is to be determined. It does not enlarge or modify the scope of any category of supply recognised under the Act. Consequently, the concept of composite supply cannot, by itself, determine whether a transaction constitutes restaurant service. The applicability of Section 8 necessarily depends upon the transaction first answering the statutory requirements governing the particular category of supply under consideration.
- 25.** The same principle equally applies to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, which prescribes the rate of tax applicable to restaurant service. The notification, including the Explanation defining "Restaurant Service", is intended to identify the class of services covered by the notification for rate purposes. It cannot be viewed in isolation from paragraph 6(b) of Schedule II, nor can it enlarge the statutory scope of restaurant service beyond what Parliament has enacted. The said notification, being subordinate legislation, neither creates a new category of taxable supply nor enlarges the scope of paragraph 6(b) of Schedule II.
- 26.** We are, therefore, unable to accept the proposition that the existence of a naturally bundled transaction or the presence of substantial service elements is, by itself, determinative of the controversy before us. The statutory provisions relating to composite supply undoubtedly govern the consequences flowing from a transaction which otherwise falls within the relevant statutory category. They do not, however, dispense with the necessity of first determining whether the transaction answers the statutory description of the category in question.
- 27.** The Appellant's submissions thus necessitate an examination of the true scope and ambit of paragraph 6(b) of Schedule II to the GST Acts. It is, therefore, appropriate to consider the meaning of the expression "food or any other article for human consumption or any drink", occurring therein, before examining the remaining submissions advanced in the appeal.
- 28.** The controversy in the present appeal essentially turns upon the interpretation of the expression "**food or any other article for human consumption or any drink**" occurring in paragraph 6(b) of Schedule II to the GST Acts. The legislature has not defined the aforesaid expressions under the GST Acts. Their scope must, therefore, be

gathered from the language of the provision itself, read in the context in which it occurs and keeping in view the legislative scheme governing restaurant service.

29. The Appellant has submitted that the expression "**any other article for human consumption**" is of the widest amplitude and would include every substance capable of being consumed by a human being, irrespective of the mode of consumption. It has accordingly been argued that both tobacco-based and herbal hookah fall within the said expression since the flavoured smoke is ultimately inhaled by the customer and enters the human body.
30. We are unable to accept the aforesaid construction. The expression "**any other article for human consumption**" cannot be read in isolation by divorcing it from the statutory context in which it appears. Paragraph 6(b) employs the composite expression "**food or any other article for human consumption or any drink**". The three expressions constitute a single statutory description and must be construed harmoniously so that each expression is given its due meaning. An interpretation which isolates one expression from the others or renders the accompanying words redundant cannot be accepted.
31. It is also significant that Parliament has expressly excluded "**alcoholic liquor for human consumption**" from the expression "**drink**". Such exclusion demonstrates that the legislature was conscious of the class of goods to which the deeming provision was intended to apply and deliberately carved out a specific exception therefrom. This reinforces the conclusion that paragraph 6(b) does not extend to every substance capable of being introduced into the human body but only to the class of goods contemplated by the provision itself.
32. The Appellant has also laid considerable emphasis on the elaborate process involved in preparing and supplying hookah, including the mixing of flavours, charging of the hookah bowl, ignition of charcoal, assembly of the apparatus and continuous supervision during its use. These facts are not in dispute. However, the degree of preparation, skill or human intervention involved in effecting a supply is not the test prescribed under paragraph 6(b) of Schedule II. The provision classifies the supply with reference to the nature of the goods supplied and not with reference to the complexity of the process adopted for preparing or serving them.
33. It is equally well settled that where an expression employed in a taxing statute is not specifically defined, it must ordinarily be understood in the sense in which it is commonly understood in trade, commerce and by persons dealing with the subject,

unless the statute indicates a different intention. Applying this well-established principle, the expressions "**food**", "**drink**" and "**hookah**" possess distinct and well-recognised meanings in common parlance. A person visiting a restaurant would ordinarily understand food to be eaten, drink to be consumed by drinking and hookah to be smoked. Likewise, a person ordering hookah would not ordinarily understand himself as ordering food or drink merely because both are supplied in the same establishment. In the absence of any statutory indication requiring a departure from their ordinary meaning, the expressions employed in paragraph 6(b) of Schedule II must receive their popular and commercial meaning. The common parlance test, therefore, also supports the conclusion that hookah, whether tobacco-based or herbal, cannot ordinarily be regarded as "**food or any other article for human consumption or any drink**" within the meaning of paragraph 6(b) of Schedule II.

- 34.** Considerable emphasis has been laid by the Appellant on the words "**human consumption**", contending that the expression is sufficiently wide to include every product intended to be consumed by a human being irrespective of the manner of such consumption. We are unable to subscribe to such an interpretation. The expression "**human consumption**" cannot be read in isolation or divorced from the statutory context in which it occurs. Parliament has employed the composite expression "**food or any other article for human consumption or any drink**", thereby indicating that the expression "human consumption" qualifies the class of articles akin to food and drink contemplated by the provision. To construe the expression as embracing every substance capable of entering the human body, irrespective of its nature or mode of consumption, would render the accompanying expressions "food" and "drink" otiose and confer upon paragraph 6(b) a scope far wider than the language employed by Parliament admits.
- 35.** Likewise, the circumstance that hookah is supplied within a restaurant, consumed along with food and beverages, or forms part of the overall dining experience cannot by itself determine its classification under the GST Acts. Those factors may establish that the transaction involves service elements or that multiple supplies are made in conjunction with each other. They do not, however, answer the anterior statutory requirement that the goods supplied must themselves fall within the class of goods contemplated under paragraph 6(b).
- 36.** On a plain and harmonious construction of paragraph 6(b) of Schedule II to the GST Acts, the expression "food or any other article for human consumption or any

drink" does not, in our considered view, readily admit of an interpretation sufficiently wide to include tobacco-based hookah flavours or herbal (non-tobacco-based) hookah flavours supplied through a hookah apparatus in a restaurant. The mere fact that such hookah flavours are intended to be consumed through inhalation using a hookah apparatus does not, by itself, bring them within the ambit of the aforesaid statutory expression. Likewise, the elaborate process involved in preparing the hookah, including mixing of flavours, charging the hookah bowl, igniting charcoal, assembling the apparatus and rendering attendant services, cannot, by itself, determine the applicability of paragraph 6(b). The statutory enquiry remains directed to the nature of the goods supplied and not merely to the mode of their consumption, the place where they are supplied or the extent of the service element involved.

- 37.** The above interpretation follows from the language employed by Parliament in paragraph 6(b) itself and, therefore, constitutes the primary basis of our understanding of the provision. However, since the Appellant has also relied upon the broader legislative framework governing tobacco products, the applicable GST rate notifications, tariff classifications and various judicial authorities in support of its contentions, it would be appropriate to examine whether those statutory and judicial materials warrant a construction different from that emerging from the plain language of the enactment. We now proceed to examine those aspects.
- 38.** The statutory interpretation emerging from paragraph 6(b) also merits examination in the context of the broader legislative framework governing restaurant services under the GST regime. Restaurant service is specifically dealt with by **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017**, issued under Section 9(1) of the CGST Act, which prescribes the rate of tax applicable to supplies qualifying as restaurant service. The Explanation appended to the notification defines the expression "Restaurant Service" for the purposes of the notification. However, neither the notification nor the Explanation creates an independent category of taxable supply. Their operation necessarily remains subject to the provisions of the GST Acts, including paragraph 6(b) of Schedule II. Consequently, the notification cannot be construed so as to enlarge the scope of the parent enactment.
- 39.** Conversely, supplies of goods are subjected to tax under a distinct legislative framework. Goods are classified in accordance with the First Schedule to the Customs Tariff Act, 1975, which has been adopted for classification of goods under the GST regime, and the applicable rates are prescribed under **Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017**. Parliament has thus consciously

maintained separate statutory mechanisms for taxation of supplies recognised as services and supplies recognised as goods.

- 40.** In this context, it is relevant to notice that **Chapter 24** of the Customs Tariff specifically deals with tobacco and manufactured tobacco substitutes. Heading **2401** covers unmanufactured tobacco and tobacco refuse, whereas Heading **2403** deals with other manufactured tobacco and manufactured tobacco substitutes falling within the descriptions specified therein. The relevance of the above statutory scheme lies in demonstrating that Parliament has consciously provided a distinct legislative framework governing tobacco and tobacco-related products under the GST regime.
- 41.** The legislative distinction becomes further evident from the Goods and Services Tax (Compensation to States) Act, 2017, under which specified tobacco products are also subjected to levy of Compensation Cess in accordance with the relevant notifications issued thereunder. The levy of such additional impost, wherever applicable, further demonstrates that Parliament has adopted a distinct fiscal treatment for tobacco products, separate from the statutory regime governing restaurant services.
- 42.** The legislative approach adopted under the GST regime is also broadly consistent with the regulatory framework enacted by Parliament under the **Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA)**. COTPA is a special enactment regulating the production, supply, distribution, sale and advertisement of tobacco products and proceeds on the legislative recognition that such products constitute a distinct category requiring a specialised statutory framework. Although the provisions of COTPA have no direct bearing on the classification of supplies under the GST Acts, the enactment nevertheless reflects a consistent legislative policy of treating tobacco products separately from other goods in matters of regulation and control.
- 43.** We are conscious that neither the tariff structure, the applicable rate notifications nor the provisions of COTPA can determine the true scope of paragraph 6(b) of Schedule II, which must necessarily be construed according to its own language. Nevertheless, where the interpretation emerging from the statutory provision is found to be in harmony with the broader legislative framework governing the same class of products, such legislative context legitimately reinforces that interpretation. The aforesaid statutory scheme, therefore, lends contextual support to the interpretation

emerging from paragraph 6(b), without constituting an independent source of classification.

- 44.** The Appellant has relied upon a number of judicial pronouncements in support of its contentions. On a careful examination of the authorities cited, we find that they broadly fall into four categories, namely: (i) decisions laying down general principles governing interpretation of statutes; (ii) decisions rendered under enactments regulating food safety and tobacco products; (iii) decisions relating to regulation of hookah bars under public health legislation; and (iv) advance rulings concerning restaurant services and supplies of food or beverages. The applicability of each category requires separate consideration.
- 45.** Reliance has been placed upon the decisions in *Hiralal Rattanlal v. State of Uttar Pradesh*, *Cape Brandy Syndicate v. Inland Revenue Commissioners*, *Union of India v. Hansoli Devi*, *Union of India v. Deoki Nandan Aggarwal*, *Shiv Shakti Co-operative Housing Society v. Swaraj Developers*, *Ajmera Housing Corporation v. Commissioner of Income Tax*, *CIT v. Hindustan Bulk Carriers*, *Sultana Begum v. Prem Chand Jain* and *Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. Custodian of Vested Forests*. These authorities reiterate well-established principles that a taxing statute must be interpreted according to the language employed by the legislature, that no words may ordinarily be added to or omitted from the statute, that a *casus omissus* cannot be supplied by judicial interpretation, and that effect should be given to every expression consciously employed by Parliament. We respectfully agree with these principles. Indeed, the interpretation independently arrived at by us proceeds upon the same settled canons of statutory construction. However, none of the aforesaid authorities deals with the interpretation of paragraph 6(b) of Schedule II to the GST Acts or with the taxability of hookah supplied in a restaurant. They, therefore, furnish the principles of interpretation but do not determine the controversy before us.
- 46.** The Appellant has also relied upon the judgment of the Hon'ble Calcutta High Court in *Sanjay Anjay Stores v. Union of India & Others*. The principal issue before the Hon'ble High Court was whether tobacco products could simultaneously be regulated under the Food Safety and Standards Act, 2006 despite the existence of the specialised regulatory framework enacted under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA). It was in that context that the Hon'ble High Court observed that, even if tobacco products were assumed to fall

within the wide definition of "food" contained in the Food Safety and Standards Act, it would be impermissible for two Central enactments to occupy the same legislative field and regulate the same products.

47. We are of the considered view that the ratio of the aforesaid decision does not govern the controversy before us. The Hon'ble High Court has neither interpreted paragraph 6(b) of Schedule II to the GST Acts nor determined the scope of the expression "**food or any other article for human consumption or any drink**" occurring therein. The observations relied upon by the Appellant were rendered in an entirely different statutory context. On the contrary, the judgment recognises the existence of a distinct legislative regime governing tobacco products under COTPA, which is broadly consistent with the separate fiscal treatment accorded to tobacco products under the GST framework. The decision, therefore, does not advance the Appellant's contention.
48. Reliance has further been placed upon the decision of the Hon'ble Karnataka High Court in *Sri R. Bharath v. State of Karnataka*. The controversy in that case concerned the legality of executive action regulating hookah bars under the applicable public health legislation. The Court examined the nature of hookah service only for the purpose of deciding the validity of the impugned regulatory action. The judgment does not examine the scope of paragraph 6(b) of Schedule II to the GST Acts or the principles governing classification of restaurant service under the GST regime. Consequently, the observations contained therein cannot be treated as determinative of the issue arising in the present appeal.
49. The Appellant has also relied upon the advance rulings in *Summit Hotels & Resorts Pvt. Ltd.*, *MFAR Hotels & Resorts Pvt. Ltd.*, *Gangaur Sweets* and *Kundan Misthan Bhandar*. Those rulings dealt with supplies of beverages or other edible articles by restaurants and considered whether such supplies formed part of restaurant service. The subject matter of those rulings admittedly comprised goods falling within the statutory description contemplated by paragraph 6(b) of Schedule II. None of the authorities was concerned with the taxability of hookah flavours supplied through a hookah apparatus or the interpretation of the expression "**food or any other article for human consumption or any drink**" in that context. They are, therefore, distinguishable on both facts and law.
50. We have carefully examined all the judicial authorities relied upon by the Appellant and have kept in view the settled principles of statutory interpretation

emerging therefrom, including the principles of strict interpretation of fiscal statutes, harmonious construction, giving effect to every word employed by the legislature and the settled rule that a Court cannot supply words which the legislature has consciously not used. The divergence between the parties lies not in these well-settled principles but in their application to paragraph 6(b) of Schedule II. Having considered the aforesaid authorities in the statutory context of the present case, we find that they do not warrant acceptance of the interpretation advanced by the Appellant.

51. Before recording our final conclusions, we consider it appropriate to examine one further aspect arising from the additional submissions advanced by the Appellant during the course of the personal hearing. Besides reiterating the submissions contained in the Memorandum of Appeal, the Appellant placed reliance upon several additional judicial pronouncements in support of the contention that tobacco-based as well as non-tobacco-based hookah flavours constitute "**food**" or "**any other article for human consumption**" within the meaning of paragraph 6(b) of Schedule II to the GST Acts. Although the principal judicial authorities relied upon by the Appellant have already been discussed hereinbefore, the additional judicial pronouncements cited during the personal hearing also merit consideration. We, therefore, consider it appropriate to examine the legal principles emerging from those decisions, together with the concept of "**food**" under the GST enactments, the common parlance test and the settled principles governing the interpretation of taxing statutes, before recording our final conclusions. The aforesaid aspects are accordingly examined hereinafter.

52. In this context, we hereby draw reference to the case Uppara Veerendra, vs State Of Andhra Pradesh, where the Hon'ble Andhra Pradesh High Court in the judgment dated 28th December, 2021 stated that:

"16. It is axiomatic that tobacco is not meant for human consumption as a food. It is not used as food. It is self evident and needs no evidence to hold that tobacco is not used as food and that it is also not intended for human consumption as food. Indubitably, therefore, tobacco cannot be considered as a substance of food. People do not eat tobacco either for their sustenance or for any other purpose of like nature. It is only a substance which is used as a stimulant to have a sort of thrill by a person chewing it. Therefore, chewing tobacco cannot be construed as a food as defined under Section 3(1)(j) of the FSS Act."

53. The afore-said judgment also referred to a previous judgment of the Calcutta High Court rendered in the case of Sanjay Anjay Stores vs. The Union of India [2017 SCC

Online Cal 16323 CMR, J.] where at para.40 of the judgment, it was held that *"Although the definition of 'food' in FSSA is very wide and apparently includes any product that can be consumed by human beings, tobacco products, in my opinion, cannot be understood to be covered by the definition. Food as we have always understood means edibles including liquid food that is drunk rather than eaten, which has nutritional value. Food is a source of energy to human beings and indeed to all living creatures, to sustain life. Food cannot be meant to include stimulant like zarda or other tobacco products which temporarily stimulate the human body without infusing any nutrient. Such tobacco products appear to provide stimulant which is more psychological in my opinion rather than real. People who are used to taking such tobacco products experience a sudden surge of energy which is more psychological than real. Nobody in his right senses would say that cigarette or other tobacco products are food."* [emphasis added]

- 54.** Thus, it is evident that a tobacco based hookah does not qualify as a food in the strictest terms. However, the instant case deals with hookah which can be either a tobacco based type or a non-tobacco type based on flavours. The issue in this case being whether hookah (both tobacco type and non-tobacco type) can be treated as a 'food' or not, the submissions advanced by the Appellant have been carefully considered. We observe that and is observed that the citations regarding the inclusive definitions of 'food' pertain to the Food Safety and Standards Act and the Prevention of Food Adulteration Act. The expression "food" has not been assigned an exhaustive or universal definition under the GST enactments. Consequently, while determining whether a particular commodity falls within the ambit of the expression "food", the settled principle of interpretation consistently adopted by the constitutional courts and tax adjudicatory forums is the common parlance test (also referred to as the popular meaning test).
- 55.** It is a well-established principle that, in the absence of a statutory definition, words employed in a taxing statute are ordinarily to be construed in the sense in which they are understood in common trade and by persons dealing with or consuming the goods, and not in their scientific, technical or dictionary sense. Accordingly, the expression "food" must receive the meaning which an ordinary person of average intelligence would attribute to it in common usage.
- 56.** The Courts have consistently observed that the true character of an article is to be determined by considering its primary identity, its common understanding in the

market, the purpose for which it is ordinarily purchased and consumed, and the perception of consumers and persons engaged in the trade. Thus, while deciding whether a particular commodity constitutes "food", the enquiry is not whether the article is theoretically capable of being consumed, but whether, in common parlance, it is recognised and understood as an article of food intended for human consumption.

- 57.** In **Ramavatar Budhaiprasad Etc v. Assistant Sales Tax Officer [1961 AIR 1325]** the Hon'ble Supreme Court held that the words used in a taxing statute, being words of everyday use, must be construed not in their scientific or technical sense but in the sense in which they are understood in common language. The Hon'ble Apex Court, while deciding the issue whether the item 'betel leaves' would qualify to be 'vegetable' or not, has observed that 'The word "vegetable" must be interpreted not in a technical sense but in its popular sense as understood in common language i.e., denoting a class of vegetables which are grown in a kitchen garden or on a farm and are used for the table'. The Hon'ble Court thus held that 'betel leaves' are not considered as 'vegetables'.
- 58.** Similarly, in **Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh [1967 AIR 1454]**, the Hon'ble Supreme Court observed that "A sales tax statute is being one levying a tax on goods must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed 'to it in common parlance'.
- 59.** Accordingly, the determination of whether a particular commodity qualifies as "food" must necessarily be guided by the common understanding of consumers and the commercial community, viewed in the context of the relevant statutory entry and the object sought to be achieved by the legislation.
- 60.** The Supreme Court in the case of **Collector of Central Excise v. Parle Exports (P.) Ltd. [1989] 75 STC 105 ; 1989 UPTC 173** a case under the Central Excise Act, has held that the word "food" has no definition of universal application and be varied from the statute to statute. In this very case Supreme Court has given various shades of "foodstuff" as defined in Oxford English Dictionary and in Webster's English Dictionary. In light of such judgment, food as defined by various reputed dictionaries are found to be as follows:

- Oxford English Dictionary: Any nutritious substance that people or animals eat or drink in order to maintain life and growth; nourishment, provisions. [https://www.oed.com/dictionary/food_n?tl=true];
- Merriam-Webster Dictionary: material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy.[<https://www.merriam-webster.com/dictionary/food?>];
- Cambridge Dictionary: something that people and animals eat, or plants absorb, to keep them alive. [<https://dictionary.cambridge.org/dictionary/english/food>] ;

61. World Health Organization (WHO) evaluates food strictly through the lens of nutrition, food safety, and physiological function, whereas The World Bank (adopting the 1996 World Food Summit definition) defines food primarily through the lens of food security. It views food as any safe, nutritious substance that meets dietary needs and preferences for an active, healthy life.

62. Thus, the essential aspect to define food is its ‘nutritional’ value in the form of protein, carbohydrate, lipid, vitamin & mineral. As in this case, the appellant has submitted that the basic ingredients required for preparing the hookah flavour are – molasses (for sweetening/binding), dried herbal leaves, fruit pulp, flavouring agents, herbs (for flavouring) and glycerin (for smoke) which clarifies that such elements only add to the flavour to the hookah experience and do not produce any ‘nutrition’ whatsoever.

63. Adding different elements to the hookah only changes the flavour. Flavour is nothing but a particular type of taste or smell (generally appealing) of any consumable enhancing the sensory perception, but that flavour cannot be categorized as ‘food’ itself. As for example, paddy/rice of different types have their individual and distinguishable flavours but it is the carbohydrate content of such rice and not its flavour that contributes to the nutritional factor. In the case of **Commissioner of Sales Tax v. V.L. Industries [1999] 112 STC 311 (Bom)** a question arose whether "Gulkand" mixture of rose petals and sugar (i.e. a flavour additive) can be regarded as "foodstuff or food provision". It was held that the food as ordinarily understood means : material consisting of carbohydrates, fats, proteins and supplementary substances such as minerals and vitamins that is taken or absorbed into the body of an organism

in order to sustain growth, repair and all vital process and to furnish energy for all activity of organism. The foodstuff in common parlance means those articles, which are eaten at the tea table. Thus "Gulkand" was not held as "foodstuff".

64. The interpretation independently arrived at herein is also supported by the well-settled principle of *ejusdem generis*, according to which, where general words follow specific words belonging to a distinct class or category, the general words are ordinarily construed as being limited to things of the same genus as those specifically mentioned. In paragraph 6(b) of Schedule II, the expression "**any other article for human consumption**" follows the specific expressions "**food**" and is immediately followed by "**drink**", both of which belong to a well-recognised class of articles ordinarily consumed by eating or drinking. The general expression, therefore, derives its meaning from the specific class indicated by the surrounding expressions and cannot be extended to include hookah, whether tobacco-based or herbal, which is consumed by inhalation through a hookah apparatus.
65. The above conclusion also finds support from the allied principle of *noscitur a sociis*, which postulates that the meaning of a word or expression is to be understood from the words with which it is associated. In paragraph 6(b) of Schedule II, the expression "**any other article for human consumption**" occurs in the company of the expressions "**food**" and "**drink**" and, therefore, cannot be interpreted in isolation or assigned an unrestricted meaning. The associated words indicate the legislative context in which the general expression has been employed and confine its scope to articles of the same nature and character as food and drink ordinarily supplied in the course of restaurant service. To construe the expression so as to include hookah merely because it is supplied in a restaurant would be to detach it from its statutory context and enlarge the scope of the provision beyond what the legislature has intended.
66. Having carefully examined the rival submissions, the statutory provisions, the legislative framework governing restaurant services and tobacco products, and the judicial authorities relied upon by the Appellant, we find no compelling reason to depart from the interpretation emerging from the plain language of paragraph 6(b) of Schedule II to the GST Acts. The expression "**food or any other article for human consumption or any drink**" occurring therein cannot, in our considered view, be construed so widely as to include tobacco-based hookah flavours or herbal (non-tobacco-based) hookah flavours supplied through a hookah apparatus merely

because they are supplied in a restaurant or in conjunction with food, beverages and other restaurant facilities.

- 67.** We are equally unable to accept the Appellant's contention that the elaborate preparation involved in supplying hookah, the use of specialised equipment, the service rendered by trained personnel, or the fact that such supplies are naturally bundled with restaurant facilities is, by itself, sufficient to attract paragraph 6(b) of Schedule II. Those circumstances may establish the existence of service elements or the presence of a composite supply. However, they do not dispense with the statutory requirement that the goods supplied must themselves fall within the category contemplated under paragraph 6(b). Sections 2(30), 2(90) and 8 of the GST Acts, as also Notification No. 11/2017-Central Tax (Rate), operate within the statutory framework of the Act and cannot enlarge the scope of the deeming provision contained in Schedule II. Moreover, the inability of a customer to independently prepare or consume hookah without the assistance of the restaurant does not alter the statutory character of the supply. Numerous commercial supplies necessarily require specialised skill or equipment for their enjoyment. Such factual dependence upon the supplier cannot substitute the statutory requirements prescribed under paragraph 6(b).
- 68.** We also find that the broader legislative framework governing tobacco products, including their separate treatment under Chapter 24 of the Customs Tariff, the applicable rate notifications, the levy of Compensation Cess wherever applicable and the specialised regulatory regime enacted under COTPA, is broadly consistent with the interpretation independently arrived at by us. While these enactments do not determine the scope of paragraph 6(b), they reinforce the conclusion that Parliament has consciously maintained a distinct statutory treatment for tobacco products and has not assimilated them into the statutory concept of restaurant service.
- 69.** The discussion in relation to COTPA is confined to tobacco-based hookah flavours and is relied upon only as contextual legislative support for that category. The conclusions reached in respect of herbal (non-tobacco-based) hookah flavours do not rest upon COTPA or the statutory framework governing tobacco products, but upon the independent interpretation of paragraph 6(b) of Schedule II discussed earlier.
- 70.** In view of the foregoing discussion, we find that the supply of tobacco-based hookah flavours or herbal (non-tobacco-based) hookah flavours through a hookah apparatus does not fall within the ambit of paragraph 6(b) of Schedule II to the GST

Acts merely because such supplies are made in a restaurant or along with food, beverages and other restaurant facilities. The taxability of such supplies is required to be determined in accordance with the applicable provisions of the GST Acts and the relevant rate notifications governing such supplies.

71. The controversy in the present appeal, in essence, stems from the Appellant's assumption that once a supply is made within a restaurant and is accompanied by substantial service elements, the entire transaction necessarily assumes the character of restaurant service. In our considered opinion, the statutory scheme adopted under the GST Acts does not support such an approach. The Act first requires determination of whether the goods supplied fall within the class of supplies contemplated under paragraph 6(b) of Schedule II. It is only thereafter that the provisions relating to composite supply, principal supply and the applicable rate notifications become relevant for determining the tax consequences. The Appellant's interpretation would have the effect of reversing the statutory sequence contemplated under the GST Acts. For the reasons discussed hereinbefore, we are unable to accept such an interpretation.

72. Before parting with the matter, we consider it appropriate to clarify that although tobacco-based hookah flavours and herbal (non-tobacco-based) hookah flavours may differ in their composition, tariff classification, applicable rate of tax and the statutory framework governing their manufacture or regulation, those distinctions do not affect the principal issue arising in the present appeal. The controversy before us was confined to the applicability of paragraph 6(b) of Schedule II to the GST Acts. For the reasons recorded hereinabove, neither category of products satisfies the statutory description of **"food or any other article for human consumption or any drink"** occurring therein. Consequently, both categories stand on the same footing for the limited purpose of deciding the questions referred in the present proceedings.

73. In view of the foregoing discussion and findings, we find no reason to interfere with the ruling pronounced by the WBAAR. We conclude that the supply of tobacco-based hookah flavours as well as herbal (non-tobacco-based) hookah flavours through a hookah apparatus in a restaurant does not fall within the ambit of paragraph 6(b) of Schedule II to the GST Acts merely because such supplies are made in conjunction with food, beverages and other restaurant facilities. Consequently, such supplies are not classifiable as restaurant service under Notification No. 11/2017-Central Tax (Rate). We further find no infirmity in the conclusions reached by the WBAAR that the impugned supplies are to be treated as supplies of goods and

taxed in accordance with the applicable classification and relevant rate notifications, as recorded in the impugned Advance Ruling

74. Accordingly, we pronounce our ruling as under:

Ruling:

The appeal filed by the Appellant is dismissed. The Advance Ruling passed by the WBAAR is confirmed, for the reasons recorded hereinabove.

Send a copy of this order to the Appellant and the Respondent for information.

Sd/-

(Khalid Aizaz Anwar)

Member, West Bengal Appellate
Authority for Advance Ruling

Sd/-

(R. Srinivasa Naik)

Member, West Bengal Appellate
Authority for Advance Ruling