

TAX JURISPRUDENCE

CASE LAW ALERT - OCTOBER 2026
VOL -1

Case & Citation	Issue Involved	Decision
Indirect Tax		
<u>M/s Indian Wire Products Company vs Authority for Advance Ruling. Appeal Case No. 02/WBAAAR/APPEAL/2026 dated 10.07.2026 [2026-TIOL-08-AAAR-GST]</u>	1. Whether serving tobacco-based or herbal hookah with food in a restaurant constitutes a supply of goods or services under paragraph 6(b) of Schedule II. 2. What are the applicable GST rates for tobacco-based flavours and herbal, non-tobacco-based flavours?	The West Bengal Appellate Authority for advance ruling upheld that Hookah is taxable as goods under the relevant classification and rate notifications. The WBAAR ruling was upheld and the appeal was dismissed
<u>IBM India Pvt Ltd vs Union of India (Writ Petition (L) No. 38052 of 2025) (2026-TIOL-1023-HC-MUM-GST)</u>	Whether tax authorities can reject the refund of pre deposit paid under appeal despite partial allowance of the petitioner's appeal.	The Hon'ble Bombay High Court held that once the demand is set aside by the appellate authority, the petitioner is eligible for a proportionate refund of pre-deposit along with interest under section 115 of CGST Act.

Case 1 – M/s Indian Wire Products Company vs Authority for Advance Ruling Appeal Case No. 02/WBAAAR/APPEAL/2026 dated 10.07.2026 [2026-TIOL-08-AAAR-GST]

Facts in brief & Issues Involved

- ◆ M/s Indian Wire Products Company ('Appellant') operates restaurant "Pappu Chaiwala" in Kolkata. The Appellant proposed to serve tobacco-based and herbal hookah only with food or non-alcoholic beverages.
- ◆ The Appellant approached the WBAAR seeking clarity on:
 - Whether serving hookah along with food/beverages constitutes restaurant service; and
 - The applicable GST rate on herbal and tobacco-based hookah flavours.
- ◆ The WBAAR held that hookah service itself contains both goods and service elements, including flavour, apparatus, preparation, ambience and serving assistance. The WBAAR regarded the tobacco or herbal flavour hookah as the principal supply and the preparation and serving activities as ancillary concluding that hookah flavours are goods supplied independently and do not become restaurant service merely because they are supplied within a restaurant.
- ◆ Aggrieved by the ruling of AAR, the appellant approached the West Bengal AAAR seeking correct classification of the entire transaction.

Contentions of the Appellant

- ◆ Serving hookah involves preparation, assembly, customisation, continuous monitoring, assistance of staff and cleaning/sanitisation, making it predominantly a service activity.
- ◆ Its preparation and service involve skill, specialized equipment, staff assistance, ambience and sanitization, giving the transaction the character of a service. Neither the hookah apparatus nor the flavor is transferred to the customer.

- ◆ The hookah ingredients/flavours are merely inputs used in providing the overall service and are not independently sold to the customer, just as ingredients used in preparing food do not retain a separate identity in the final restaurant supply.
- ◆ The customer does not purchase the hookah apparatus or the flavour as goods; rather, the customer pays for the overall experience and facilities provided by the restaurant.
- ◆ The expression “any other article for human consumption” in Schedule II should be interpreted broadly. According to the Applicant, consumption is not restricted to ingestion and can include inhalation/smoking.
- ◆ Hookah supplied along with food and beverages constitutes a naturally bundled composite supply, with restaurant service being the principal supply.
- ◆ Consequently, the entire transaction should be taxed according to the tax treatment applicable to restaurant service as neither paragraph 6(b) nor Notification No. 11/2017-Central Tax (Rate) expressly excludes hookah from restaurant service.
- ◆ Restaurant service should therefore be treated as the principal supply and the entire transaction taxed at 5% as restaurant service.

Contentions of Authority of Advance Ruling

- ◆ The dominant supply is hookah flavour, not food or beverages. Tobacco-based flavour is separately classifiable under Heading 2403 and attracts the applicable GST and Compensation Cess.
- ◆ Goods taxable at higher rates cannot obtain the concessional restaurant-service rate merely because they are served with restaurant facilities. Such treatment could lead to misuse of the concessional rate and loss of revenue.
- ◆ The concessional 5% rate was intended for digestible food and beverages and not for products such as hookah, cigarettes or pan masala. There is no provision permitting goods subject to a higher GST rate and Compensation Cess to be resupplied at the restaurant-service rate merely by clubbing them with service elements.

- ◆ Restaurants are “public places” under COTPA, and the supply and distribution of tobacco products are subject to statutory restrictions and prescribed disclosures. If hookah were treated as an article eligible for concessional restaurant taxation, similar claims could be made for cigarettes, gutka and other tobacco products, contrary to legislative intent.
- ◆ The deeming provision relating to restaurant service covers food, other articles for human consumption and drinks, but hookah flavours do not fall within that description.
- ◆ Accordingly, tobacco-based hookah to be taxed at 40% GST under Heading 2403, together with other applicable levies, whereas non-tobacco-based hookah to be held taxable at 18% GST under the relevant rate notification.

Observations & Decision of the Appellate Authority of Advance Ruling (AAAR)

- ◆ Not every supply made in a restaurant automatically becomes restaurant service. Paragraph 6(b) of Schedule II of CGST Act, 2017 applies only to food, drink or a similar article for human consumption supplied as part of a service.
- ◆ In common parlance, hookah is smoked, not eaten or drunk; therefore, neither tobacco-based nor herbal hookah falls within that statutory description. In particular, the AAAR did not accept the argument that inhalation/smoking should be treated as “consumption” for purposes of the restaurant-service deeming provision.
- ◆ Preparation, equipment, staff assistance and ambience may add service elements but cannot enlarge the statutory category. Composite-supply provisions apply only after the supply satisfies paragraph 6(b) of Schedule II of CGST Act, 2017.
- ◆ The WBAAR ruling was upheld and the appeal was dismissed concluding Hookah (tobacco based on non-tobacco based) is taxable as goods under the relevant classification and rate notifications.

NASA Comments

- ◆ This ruling is particularly relevant for restaurants, cafés, lounges and hospitality establishments providing ancillary products/services along with food and beverages, since it indicates that the restaurant-service treatment cannot automatically be extended to every item supplied within the restaurant premises.
- ◆ The ruling applies a threshold test: the product must first fall within paragraph 6(b) before restaurant-service or composite-supply treatment can be considered. Mere service, ambience or bundling cannot convert a non-food product into restaurant service.
- ◆ Although binding only within the statutory scope of an advance ruling, the reasoning may influence similar GST disputes.

Case 2 – IBM India Pvt Ltd vs Union of India (Writ Petition (L) No. 38052 of 2025)

Facts in brief & Issues Involved

- ◆ IBM India Pvt. Ltd. was subjected to an adjudication order dated 21 February 2024, confirming a GST demand of approximately Rs. 48,96,54,949/-.
- ◆ The order of the Adjudicating Authority was challenged before the First Appellate Authority (Joint Commissioner of State Tax (Appeal-1), Mumbai) whereby demand was partly dropped amounting to Rs 31,45,84,219/ and balance Rs. 17,50,70,729/- was upheld.
- ◆ The petitioner therefore filed a refund application under Form GST RFD-01 seeking refund of Rs.3,14,58,422/- towards the pre-deposit paid at the time of filing First Appeal under Section 107 of the MGST Act, 2017, to the extent of demand dropped vide Order in Appeal.
- ◆ In response to the said application, a show cause notice was issued to the petitioner proposing rejection of the said refund application on the ground that the said refund application has not attained finality and that the petitioner has declared intention to challenge the same before GSTAT under section 112 of MGST Act, 2017.

- ◆ After going through the submissions of petitioner against the show cause notice issued, the said refund was rejected by the Deputy Commissioner of State Tax on grounds that no finality to the proceedings was attained as the petitioner has expressed an intention to challenge the appellate order before the GST Appellate Tribunal and subsequently petitioner filed a writ petition against the said rejection before the Honourable Bombay High Court.

Contentions of Petitioner

- ◆ The petitioner contended that its refund claim was restricted only to the portion of the demand which had been set aside by the First Appellate Authority.
- ◆ The First Appellate Authority had already dropped ₹31.45 crore of the demand and petitioner was seeking refund only of the 10% pre-deposit corresponding to this dropped demand, i.e. ₹3.14 crore.
- ◆ The fact that petitioner intended to challenge the remaining ₹17.50 crore demand could not affect its entitlement to refund of the pre-deposit relatable to the demand already set aside and Department had itself not challenged the appellate order to the extent the demand was dropped. Consequently, the portion of the appellate order favourable to petitioner had attained finality and the corresponding pre-deposit had become refundable.
- ◆ The petitioner contends that the refund claim only pertains to the portion of demand dropped and not portion under dispute. The petitioner relied upon the Circular dated 16th September 2014 as well as various jurisprudence and decisions.

Contention of the Respondent

- ◆ The learned officer contends that the appellant has specifically stated their intention to prefer an appeal against the balance demand and has paid a pre deposit against the same u/s 112(8) of MGST Act, 2017 on disputed portion.
- ◆ The learned officer also submitted that as per Circular No 125/44/2019-GST dated 18.11.2019 refund of pre deposit made under section 107(6) of CGST/MGST Act is admissible only when appeal proceedings have attained finality. Thus, until the proceedings reach finality, the refund claim is premature and not maintainable.

Observations & Decision of Hon'ble Bombay High Court

- ♦ The Hon'ble High Court states that what the petitioner wanted was a refund of 10% pre deposit paid against the demand that was dropped. As the department did not file any appeal against the demand dropped, to that extent the petitioner had succeeded in the appeal, and the petitioner was entitled to a refund to that extent. The Hon'ble High Court also observed that the department did preferred an appeal against the allowed amount,
- ♦ The refund rejection order for pre-deposit proceeds on an erroneous footing by stating that there is no finality in the proceedings as the petitioner expressed an intention to challenge the appellate order before GSTAT.
- ♦ The Hon'ble High court further observed that the petitioner is squarely covered by circular dated 18/11/2019 as refund of pre deposit u/s 107(6) of MGST Act as the appellate proceedings to the extent of Rs 31.45 crores have attained finality.
- ♦ The Hon'ble High Court also held that once the demand is stood set aside the continued retention of pre-deposit is unauthorized and offends Article 265 of the Constitution.
- ♦ Hence, the writ was agreed and the order was quashed. Additionally, the authority was required to process the application of proportionate refund expeditiously and be refunded within a period of six weeks from date of communication of order.

NASA Comments

- ♦ This judgement provides a relief to the taxpayers as firstly it provides a clear definition of what could be termed as conclusion of proceedings as well as prevents the unnecessary blocking of funds for a substantial period where the proceedings have already attained finality thereby also easing the refund process for the taxpayers.



The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

B 21-25, Paragon Centre,
Pandurang Budhakar Marg, Mumbai – 400013
Tel: 91-022-4073 3000.
E-mail Id: info@nashah.com

