

PROCEEDINGS

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

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

The company is registered as "Outdoor Caterers" under the GST Act. It was also registered in the same category under service tax regime. The company is engaged in the business of supply, by way of and as a part of and in any other manner whatsoever of goods, being food and any other article for human consumption or drink. In nutshell it is providing snacks and food for breakfast, lunch, evening tea and dinner to the employees of various companies. The food is prepared at our own kitchen and it is distributed to various companies at different locations. There are 4 different situations mentioned below on the basis of which the company is carrying on the abovementioned business. These situations are based on the terms of contract entered by Merit Hospitality with various corporate clients.

Case I *The company (Merit Hospitality) has entered into a contract for supply of food to the employees of the company say 'A' Ltd. The contract is signed between Merit Hospitality and 'A' Ltd for supply of food. As per the terms of contract Merit Hospitality has to supply the food at 'A' Ltd.'s premises. The distribution of the food is directly done by the staff of 'A' Ltd. The menu and the material specifications are mentioned in the contract and also the rate for various items are pre-determined between Merit Hospitality and the company. The billing is done by Merit Hospitality directly to the company on monthly basis and payment is received from the company to Merit Hospitality directly as per the terms of payment mentioned in the contract.*

Question: *Whether on the facts and circumstances of abovementioned case can the above activity be called as canteen activity and the applicable rate of 5% be charged on our bills?*

Case II *The facts mentioned in Case I remains the same except that in addition to supply of food on the request of the client Merit Hospitality Services Pvt. Ltd. also undertake the services of distribution of food for which Merit Hospitality raises separate bill charging 18% GST/SGST*

Question : *Can both the activities put together i.e. supply and distribution of food to the employees of 'A' Ltd. be called as canteen services and applicable rate of 5% be charged on our bills?*



Case III) The employees of 'A' Ltd. have formed "Employees Co-op. Society" which is registered under The Societies Registration Act. The Employees Co-op. Society is running a canteen for the employees of 'A' Ltd. The contract of supply of food of Merit Hospitality is now with "Employees Co-op. Society" and not with "A" Ltd.

Question : Under such circumstances can it still be claimed that Merit Hospitality is running a canteen and the applicable rate of 5% be charged on our bills ?

Case IV) The Merit Hospitality has entered into a contract with a company called say "B" Ltd. "B" Ltd. is having its unit in SEZ area (Special Export Zone). The supply of food is done by Merit Hospitality to the employees of "B" Ltd. and payment for the same is made by the employees of "B" Ltd. directly to Merit Hospitality.

Questions : a) Can Merit Hospitality claim that since the food is supplied directly to SEZ area hence no GST is applicable ? or

b) Can Merit Hospitality claim that it is running a canteen in SEZ area hence no GST is applicable? Or

c) Can Merit Hospitality claim that it is running a restaurant in SEZ area and hence applicable GST rate is 5% only?

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

02. FACTS AND CONTENTION - AS PER THE APPLICANT

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

"Provisions of law, applicants view point & submissions on issues on which advance ruling is sought.

The services under discussion fall under SAC classification No 996333 Where under notification no [Serial No. 7(i) of **notification No. 11/2017-CT (Rate)** as amended vide **notification No. 46/2017-CT (Rate)** dated 14.11.2017 the rate of GST is stated at 2.5% as applicable to supply of food and beverages by a 'canteen'. The rates applicable in case of 'outdoor caterer' are defined separately at 9% under (v) in column of serial no 7 in same notification no 46 under 7(v).

A latest GST circular no.08/01/2018 in the matter of supply of food by hostel mess in colleges has clarified that 'The educational institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/ students themselves or is outsourced to a third person. Supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit [Serial No. 7(i) of **notification No. 11/2017-CT (Rate)** as amended vide **notification No. 46/2017-CT (Rate)** dated 14.11.2017 refers]. It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor.

It is our contention that the issue of running a canteen for its employees by a company either by itself or through an outside caterer is on the same line and hence should be considered under the same principles where it is clarified that tax rate will be 5% without input tax credit as such services fall under category (i) under column 3 of serial no 7 **notification No. 46/2017-CT (Rate)** dated 14.11.2017."

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

"1. Case 1) Question: Whether on the facts and circumstances of above mentioned case can the above activity be called as canteen activity and the applicable rate of 5% be charged on our bills?

Reply: No

Comments: The activity of canteen is to supply services to beneficial members. In this case it is agreement of supply of Food and Beverages to another company. This activity falls under the outdoor catering. The notification Dt. 28.06.2017 vide entry No.7 under Heading 9963 (Accommodation food and beverage services) vide sub entry V specifically mentions "Supply by way of or as part of any service or in any other manner whatsoever in outdoor catering wherein goods, being food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), as a part of such outdoor catering and such supply or service is for cash, deferred payment or other valuable consideration.

The dictionary meaning of canteen is "a restaurant provided by an organization such as a college, factory, or company for its students or staff whereas Dictionary meaning of Outdoor catering is "a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services". Considering the above meaning the activity of the dealer cannot be considered as canteen activity as the dealer is in the business of supplying food and beverages to the company on the basis of agreement and hence it is purely outdoor catering service. Further the notification dt. 14.11.2017 has not changed the position of the supply by outdoor caterers given in original



notification dt. 28.06.2017 in Clause V. Hence, the activity of the dealer cannot be called as canteen activity and liable to pay tax @ 9% as outdoor caterer.

2. Case 2) Question : Can both the activities put together i.e. supply and distribution of food to the employees of 'A' Ltd. be called as canteen services and applicable rate of 5% be charged on our bills ?

Reply: No

Comment : As above

3. Case 3) Question : Can such circumstances can it still be claimed that Merit Hospitality is running a canteen and the applicable rate of 5% be charged on our bills ?

Reply: No

Comment : As above

4. Case 4) Question :

(a) Can Merit Hospitality claim that since the food is supplied directly to SEZ area hence no GST is applicable ? or

(b) Can Merit Hospitality claim that it is running a canteen in SEZ area hence no GST is applicable? or

(c) Can Merit Hospitality claim that it is running a restaurant in SEZ area and hence applicable GST rate is 5% only?

Reply: No

Comment : As above

Additional submissions

Sr. No.	Merit Hospitality Case No.	Agreement submitted by the dealers	Remark
1	Case 1) Question: Whether on the facts and circumstances of above mentioned case can the above activity be called as canteen activity and the applicable rate of 5% be charged on our bills ?	M/s Colgate Global Business services Pvt. Ltd.	As per entry No. 7(i) of notification No. 46/2017- CT (Rate) Dt.14.11.2017. (i) Supply, by way of or as part of any services or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, 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, The agreement made with Colgate Global Business services Pvt. Ltd. clearly mentions that the arrangement is on principal to principal basis and payment to be made by company directly to the contractor as per annexure B of the agreement. Further it mentions that contractor has agreed to provide catering services to the company at the canteen premises of L & T business park. Further there is no relevance of employees (who are ultimate beneficiary of the catering services) with the contractor as per the terms and conditions of the agreement as supply made by the contractor for valuable consideration is to the company. Hence catering service of the contractor can not to be treated as supply by canteen and GST will be applicable at the rate 9% each under CGST & SGST.
2	2. Case 2) Question : Can both the activities put together i.e. supply and distribution of food to the employees of 'A' Ltd. be called as canteen services and applicable rate of 5% be charged on our bills?	a) M/s Larsen & Toubro Limited. (Realty Division) b) M/s J. P. Morgan services India Pvt. Ltd.	In this case as the agreement is made with the company and consideration is paid by company to the contractor directly, catering service provided by contractor can not be treated as supply by canteen and hence applicable rate will be 9% each under CGST % SGST Full copy of agreement is not submitted by the dealer and only amendment to the agreement for dining and catering services is submitted. Hence comment can not be made.
3	3. Case 3) Question : Can such circumstances can it still be claimed that Merit Hospitality is running a canteen and the applicable rate of 5% be charged on our bills?	M/s Larsen & Toubro Grahak Sahakari Saunstha Maryadit.	In this arrangement, though the agreement is made with M/s Larsen & Toubro Grahak Sahakari Saunstha Maryadit., the benefit of the circular No. 28/02/2018 – GST can not be given as same is available if the catering service is provided to the educational institution which runs canteen or mess for its students, faculty and staff. Hence applicable rate will be 9% each under CGST & SGST.
4	4. Case 4) Question : (a) Can Merit Hospitality claim that since the food is supplied directly to SEZ area hence no GST is applicable? or (b) Can Merit Hospitality claim that it is running a canteen in SEZ area hence no GST is applicable? or (C) Can Merit Hospitality claim that it is running a restaurant in SEZ area and hence applicable GST rate is 5% only?	M/s.UBS Business Solutions (India) Pvt. Ltd.	As per the terms and condition of the agreement, the supplier has to provide catering service and staff cafeteria in the office premises of UBS. Though the supply is made to the SEZ area, same is not relevant with the purpose of the SEZ. Further it can not be treated as restaurant in SEZ area. Hence, the GST will be applicable at rate of 9% each under CGST & SGST.



04. HEARING

The case was taken up for hearing on dt.28.02.2018 when Sh. Vijay Kulkarni, Consultant along with Sh. Vivek Tamhane, Chartered Accountant, appeared and reiterated the contention as made in the written submission. They were requested to provide specific copies of contracts under which they were undertaking the activities of supply of goods and services. During final hearing on dt.27.03.2018, both the aforementioned persons attended and made further submissions and requested that the issue be decided on the basis of the written submissions. They were again requested to submit specific copies in respect of different agreements as referred to in the questions in their application. Jurisdictional Officer, Sh. J. P. Sakore, Dy. Commissioner GST(E-639) , LTU 4, Mumbai was present during both the hearings and has furnished a written submission in the matter.

05. OBSERVATIONS

We have gone through the facts of the case. Four situations have been presented before us. We shall study each of these in the sequence as presented. However, the fact common to all, as informed, is that the food is prepared at the applicant's own kitchen and is distributed to various companies at different locations. The situations could be seen thus -

Case I

The company (Merit Hospitality) has entered into a contract for supply of food to the employees of the company say 'A' Ltd. The contract is signed between Merit Hospitality and 'A' Ltd for supply of food. As per the terms of contract Merit Hospitality has to supply the food at 'A' Ltd.'s premises. The distribution of the food is directly done by the staff of 'A' Ltd. The menu and the material specifications are mentioned in the contract and also the rate for various items are pre-determined between Merit Hospitality and the company. The billing is done by Merit Hospitality directly to the company on monthly basis and payment is received from the company to Merit Hospitality directly as per the terms of payment mentioned in the contract.

Question:

Whether on the facts and circumstances of abovementioned case can the above activity be called as canteen activity and the applicable rate of 5% be charged on our bills?

We find that the applicant desires to know whether his services as stated in the details as per Case I above would fall under canteen services and taxable @ 5%.

We find that under Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017, under Serial No. 7 Heading 9963(i) covers accommodation, food and beverages services. The nature of services and the applicable tax rate on the same is as under:-

7	Heading 9963 (Accommodation, food and beverage services)	(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, neither having the facility of air-conditioning or central air-heating in any	6	-
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	part of the establishment, at any time during the year nor having licence or permit or by whatever name called to serve alcoholic liquor for human consumption.		
	(ii) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of one thousand rupees and above but less than two thousand five hundred rupees per unit per day or equivalent. <i>Explanation.- "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.</i>	6	-
	(iii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, having licence or permit or by whatever name called to serve alcoholic liquor for human consumption.	9	-
	(iv) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.	9	-
	(v) Supply, by way of or as part of any service or in any other manner whatsoever in outdoor catering wherein goods, being food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), as a part of such outdoor catering and such supply or service is for cash, deferred payment or other valuable consideration.	9	-
	(vi) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of two thousand five hundred rupees and above but less than seven thousand five hundred rupees per unit per day or equivalent.	9	-



	<i>Explanation.-</i> "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.		
	(vii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, including but not limited to food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) together with renting of such premises.	9	-
	(viii) Accommodation in hotels including five star hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of seven thousand and five hundred rupees and above per unit per day or equivalent. <i>Explanation.-</i>"declared tariff " includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.	14	-
	(ix) Accommodation, food and beverage services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above.	9	-

We find that under this Notification after amendments uptill now GST @ 5% is chargeable in case of services by a restaurant, eating joint including mess and canteen as per relevant entry produced above.

In order to ascertain whether the activities of the applicant would fall under Sr. No. 7, Heading 9963(i) of the above referred Notification, we would be required to examine as to what a restaurant, eating joint, mess and canteen are.

We find that "restaurant", as per Cambridge English Dictionary is :

"a place where meals are prepared and served to customers".

"A place of business where people can choose a meal to be prepared and served to them at a table, and for which they pay, usually after eating.



However we find that with the progress of time and civilization and further increasing demands and expectations from restaurants by customers and also the restaurants with intent to further grow their businesses have started providing "take away" or even "home delivery" services to customers as per their instant order out of the items that are there in the menu of the restaurants. However a special feature to be noted is that in such cases there is no pre-entered agreement or contract between the restaurant or customers except for the expectations which the customer has as per reputation about food and services of the restaurant.

From the above broad essentialities of a restaurant we can easily see that the services being provided by the applicant as per details given in Case-I would not fall under restaurant service. Now we go to the definition of the word "canteen" as given in Sr. No. 7, Heading 9963(i) of Notification No. 11/2017 referred above.

We find that "canteen" as per Cambridge English Dictionary is "a place in factory, office, etc. where food and meals are sold often at a lower than usual price".

"A place in a factory, office, etc. where employees can buy food and meals at a lower price".

Further as per general understanding we see while differentiating with a restaurant, that "canteen" is a small cafeteria or snack bar, especially one in a military establishment, school or place of work while "restaurant" is an eating establishment in which diners are served food at a table and it is outside the premises of military establishment, school or place of work.

Thus broadly we find that "a canteen is mostly referred to as an eating place provided by an organization, college, university, military, police, government, for the staff/students workforce. In the present application we find that the applicant has clearly stated that they are not providing services to any college, university, military, police or government but to only business organizations or companies or their employees as per different situations mentioned by the applicant in his application.

Thus in view of their question in regard to Case-I, we are required to check if their services as per Case-I can fall under providing of canteen services in a company or industrial establishment. We find that every industrial establishment aims to gain maximum profit at minimum costs through a loyal and cooperative workforce and for this it tries to provide a comfortable, convenient and pleasant environment to its employees. For this the employer under "Staff Welfare" provides various benefits and facilities to the employees. One of such facilities



provided is "canteen facilities", which is also a statutory requirement as per Factories Act, if the total number of employees is more than as given under statutory rules and provisions.

We find that as per general understanding, the core activity in an industrial canteen is cooking of items of food in kitchen and serving them fresh and hot to the consumers in the dining hall or its service area.

The main features that are generally seen in the industrial canteen are as under:-

- (1) Industrial canteen is inside the premises of the establishment.
- (2) Generally the canteen building have cooking facilities inside it and mostly facilities such as empty LPG cylinder, furniture, refrigerator, water cooler, cooking and serving utensils etc. being all or some of these items are provided by the company on returnable basis in good and proper condition.
- (3) Generally water and electricity is also provided by the company on chargeable or maybe non chargeable basis.
- (4) Most of the food, snacks or tea and coffee are generally cooked or prepared in the canteen itself.
- (5) The items are sold to the employees directly by the contractor at agreed prices which are mostly subsidized and the sale amounts are collected by the contractor themselves. However prepaid meal vouchers may also be given to employees by the company which are to be accepted by the contractor.
- (6) The contractor may be required to serve to employees by counter service or even table service in respect of senior officials of the company.
- (7) The company communicates to the contractor only approximate estimated quantity consumption and it does not guarantee any quantity which may vary on a daily basis.
- (8) The contractor can generally sell additional items with the approval of canteen management, company management and rates of all items are to be displayed.
- (9) The contractor may be required to make special arrangement for lunch, breakfast, dinner or refreshment when required by the management, at mutually agreed rates.
- (10) The contractor cannot assign or sublet the contract signed by him to any other parties.
- (11) The menu is decided by the company from time to time.
- (12) The service of contractor are generally to be monitored by designated officials of the company and they have full right to inspection of eatables, beverages, food prepared to ensure quality.
- (13) The contractor is required to engage his own employees and is required to follow statutory provisions as applicable.



Further in reference to eating joint we find that an eating joint is a quick service restaurant within the industry and is a specific type of restaurant that mainly serves fast food cuisine and has minimal table service.

In the same way we find that in common parlance a “mess” is a place where soldiers/police or any other organized force persons eat their food.

On going through the situation as per submissions made by the applicant as per Case-I and corresponding details in respect of this situation claimed to be represented and submitted by the applicant as per copy of submitted agreement between Colgate Global Business P. Ltd. and Merit Hospitality Services P Ltd dated 01.12.2017, we find that the details as per Case-I submitted by the applicant in his Advance Ruling application are not in complete congruence with the details as visible in the agreement referred above and in view of this we will take up the issue for decision taking into consideration the facts and details as submitted by the applicant as per Case-I in the application and not as per claimed representative contract as submitted.

We find that in Case-I, the applicant has given the case details as under:-

“The company is registered as “Outdoor Caterers” under the GST Act. It was also registered in the same category under service tax regime. The company is engaged in the business of supply, by way of and as a part of and in any other manner whatsoever of goods, being food and any other article for human consumption or drink. In nutshell it is providing snacks and food for breakfast, lunch, evening tea and dinner to the employees of various companies. The food is prepared at our own kitchen and it is distributed to various companies at different locations. There are 4 different situations mentioned below on the basis of which the company is carrying on the abovementioned business. These situations are based on the terms of contract entered by Merit Hospitality with various corporate clients.

Case I) *The company (Merit Hospitality) has entered into a contract for supply of food to the employees of the company say ‘A’ Ltd. The contract is signed between Merit Hospitality and ‘A’ Ltd for supply of food. As per the terms of contract Merit Hospitality has to supply the food at ‘A’ Ltd.’s premises. The distribution of the food is directly done by the staff of ‘A’ Ltd. The menu and the material specifications are mentioned in the contract and also the rate for various items are pre-determined between Merit Hospitality and the company. The billing is done by Merit Hospitality directly to the company on monthly basis and payment is received from the company to Merit Hospitality directly as per the terms of payment mentioned in the contract.*

Question: *Whether on the facts and circumstances of abovementioned case can the above activity be called as canteen activity and the applicable rate of 5% be charged on our bills ?”.*

From the detailed facts as given by the applicant in Case-I and our detailed discussions above in respect of restaurant, canteen, eating joint and mess we find in respect of the facts put before us by the applicant that

- (i) The company is registered as an outdoor caterer under the GST Act.
- (ii) They were registered as an outdoor caterer under the service tax regime also.



- (iii) The food is prepared at the applicants own kitchen which is not inside the premises of recipient units and is carried and distributed to the various companies at their different locations.

The above are the common provisions in respect of supply by the company. The other details are as per different situations given as Case-I, Case-II, Case-III and Case-IV.

In respect of Case-I we find that details of supply are as under:-

- (i) The contract is for supply of food between the applicant and a company 'A Ltd'. It is not for running a canteen.
- (ii) Food is to be supplied at 'A Ltd.'s premises.
- (iii) The distribution of food is done by the staff of 'A Ltd'. Applicant is only supplying food.
- (iv) The menu, specifications and rate are as per contract of supply of food entered into between the applicant and M/s A Ltd.
- (v) The billing is done by the applicant directly to M/s A Ltd. on monthly basis and the payment is received from M/s A Ltd. as per contract.

Thus as per the above details and discussions it is clearly visible that the service being provided by the applicant would not be covered under Serial No. 7 Heading 9963(i) of Notification No. 11/2017 as amended.

Now as we find that the services of the applicant are not covered under the above entry of Notification No. 11/2017 where the applicable rate of tax is 5%, therefore we are required to ascertain as to where the service being provided by the applicant would fall and what would be the tax rate applicable to them. In view of this now we examine the definition of "caterer" and "outdoor caterer" and see if the services being provided by the applicant merit classification under this service and would be liable to tax accordingly.

We find that under the service tax law the definition of 'caterer' and 'outdoor caterer' was given and the same can be construed to be the definition of 'caterer' and 'outdoor caterer' as per general perception as well and can accordingly be discussed and deliberated upon in respect of GST provisions.

We find that under the Finance Act, 1994, caterer was defined as "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion Further under the Finance Act, 1994 outdoor caterer was defined as "outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own



but including a place provided by way of tenancy or otherwise by the person receiving such services.

From the case details as submitted by the applicant in his application before us, the applicant himself has stated that they are registered as outdoor caterers under the GST Act and that the company is engaged in the business of supply, by way of and as a part of and in any other manner whatsoever of goods, being food and any other article for human consumption or drink. In nutshell that it is providing snacks and food for breakfast, lunch, evening tea and dinner to the employees of various companies and that the food is prepared at their own kitchen and it is distributed to various companies at different locations and it is also visible that the applicant is providing the services at a place which is not his own and is neither provided to him by way of tenancy and nor in any other way.

Further in respect of details as given in Case-I we find that the company in its contract with "A Ltd", they have to supply the food at A Ltd.'s premises and the distribution of food is directly done by the staff of A Ltd,. The menu and the material specifications are mentioned in the contract and also the rates for various items are predetermined between the applicant and M/s A Ltd. Further the billing is also done by the applicant to M/s A Ltd. on monthly basis and payment is also received by the applicant directly from M/s A Ltd.

Thus as per the case details the service being provided by the company would clearly fall under **Group 99633 - Food, edible preparations, alcoholic and non-alcoholic beverages serving services and further under service code 996337 - Other Contract Food Services which are in the nature of outdoor caterer services** [food preparation and/or supply services based on contractual arrangements with the customer, at institutional, governmental, commercial or industrial location/s specified by the customer other than for transportation companies, on an ongoing basis; food service concession services, i.e. the provision of operating services by operators of eating facilities such as canteens and cafeterias].

In view of the above classification of the services being provided by the applicant as per Case-I details would be taxable under Serial No. 7 Heading 9963 (v) @ 18% under GST as applicable.

Case II)

The facts mentioned in Case I remains the same except that in addition to supply of food on the request of the client Merit Hospitality Services Pvt. Ltd. also undertake the services of distribution of food for which Merit Hospitality raises separate bill charging 18% GST/SGST

Question :

Can both the activities put together i.e. supply and distribution of food to the employees of 'A' Ltd. be called as canteen services and applicable rate of 5% be charged on our bills?



In view of the detailed discussions in respect of Case-I above, the undertaking of additional responsibility of services of distribution of food by the applicant would in no way impact the classification or taxability of the services being provided by the applicant as per discussions in respect of Case-I above.

Case III)

The employees of 'A' Ltd. have formed "Employees Co-op. Society " which is registered under The Societies Registration Act. The Employees Co-op. Society is running a canteen for the employees of 'A' Ltd. The contract of supply of food of Merit Hospitality is now with "Employees Co-op. Society " and not with "A" Ltd.

Question :

Under such circumstances can it still be claimed that Merit Hospitality is running a canteen and the applicable rate of 5% be charged on our bills?

The Employees Cooperative Society running the canteen themselves would in no way impact the catering transaction with the applicant.

In respect of details given of Case-III the essence of transaction between the applicant and the Employees Cooperative Society is not changing. Now instead of the company A Ltd., the outdoor catering services are being provided to the Employees Cooperative Society which would be taxable @ 18% only as already discussed in respect of Case-I and Case-II above.

Case IV)

The Merit Hospitality has entered into a contract with a company called say "B" Ltd. "B" Ltd. is having its unit in SEZ area (Special Export Zone). The supply of food is done by Merit Hospitality to the employees of "B" Ltd. and payment for the same is made by the employees of "B" Ltd. directly to Merit Hospitality.

Case IV - Question a)

a) Can Merit Hospitality claim that since the food is supplied directly to SEZ area hence no GST is applicable?

In view of the details given in Case-IV above we would be required to examine the provisions of IGST Act, 2017 and SEZ Act, 2005. We find that Section 16 (1) of the IGST Act relating to 'zero rated supply' reads as under;-

"zero rated supply" means any of the following supplies of goods or services or both, namely:-

- (a) Export of goods or services or both; or*
- (b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*



We find that the benefit of zero rated supply as per Section 16(1)(b) would be allowed only when supply is to SEZ developer or a SEZ unit.

We find that the definition of SEZ developer and SEZ unit as given in the SEZ Act, 2005 is as under:-

SEZ DEVELOPER :- "Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and a Co-Developer. A "Co-Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (12) of section 3.

SEZ UNIT :- "Unit" means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after commencement of this Act.

Further we find that apart from an existing unit, a unit established in compliance of procedure prescribed in Section 15 of the SEZ Act, 2015 can be called a SEZ unit. Section 15 of the SEZ Act, 2005 is reproduced as under:-

15. (1) Any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned in such form and manner containing such particulars as may be prescribed:

Provided that an existing Unit shall be deemed to have been set up in accordance with the provisions of this Act and such Units shall not require approval under this Act.

15. (2) On receipt of the proposal under sub-section (1), the Development Commissioner shall submit the same to the Approval Committee for its approval.

15. (3) The Approval Committee may, either approve the proposal without modification, or approve the proposal with modifications subject to such terms and conditions as it may deem fit to impose, or reject the proposal in accordance with the provisions of sub-section (8): Provided that in case of modification or rejection of a proposal, the Approval Committee shall afford a reasonable opportunity of being heard to the person concerned and after recording the reasons, either modify or reject the proposal.

15. (4) Any person aggrieved, by an order of the Approval Committee, made under sub-section (3), may prefer an appeal to the Board within such time as may be prescribed.

15. (5) No appeal shall be admitted if it is preferred after the expiry of the time prescribed therefor: Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Board that he had sufficient cause for not preferring the appeal within the prescribed time.

15. (6) Every appeal made under sub-section (4) shall be in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

15. (7) The procedure for disposing of an appeal shall be such as may be prescribed: Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

15. (8) The Central Government may prescribe,-



(a) the requirements (including the period for which a Unit may be set up) subject to which the Approval Committee shall approve, modify or reject any proposal referred to in sub-section (3);
(b) the terms and conditions, subject to which the Unit shall undertake the authorised operations and its obligations and entitlements.

15. (9) The Development Commissioner may, after approval of the proposal referred to in sub-section (3), grant a letter of approval to the person concerned to set up a Unit and undertake such operations which the Development Commissioner may authorise and every such operation so authorised shall be mentioned in the letter of approval.

From the detailed provisions of Section 16 of the IGST Act and Section 15(1) to 15(9) of the SEZ Act, we find that the benefit of zero rated supply to domestic unit will be allowable only if the supply of goods or services are to a SEZ unit and the SEZ unit is granted a Letter of Approval by the Development Commissioner and the unit is undertaking only such operations which the Development Commissioner has authorized and every such authorized operations are to be mentioned in the letter of approval of the Development Commissioner as per the provisions of Section 15 (9) of the SEZ Act.

Thus it is clear that the benefit of zero rated supply would be allowed to a domestic unit only if supply of goods or services to a SEZ unit or developer is only in respect of authorized operations as mentioned in the Letter of Approval of the Development Commissioner as per Section 15(9) of the SEZ Act.

However in the case details provided by the applicant in Case IV, it is not forthcoming whether 'B Ltd' is an authorized unit in SEZ as per Section 15 (9) of the SEZ Act and as to what are the authorized operations of 'B Ltd' in SEZ and whether supply of food to B Ltd or its employees is covered under authorized operations as allowed/approved by the Development Commissioner. If it is not covered under authorized operations then this supply of food by the applicant to SEZ employees would not be eligible for the benefit of zero rated supply.

Case IV - Question b)

b) Can Merit Hospitality claim that it is running a canteen in SEZ area hence no GST is applicable?

In view of the detailed discussions in respect of situations of Case-I, Case-II and Case-III above, it is clear that the applicant cannot claim that they are running a canteen in SEZ. Rather their service would be in the nature of outdoor catering service as per discussions in detail above.

Case IV - Question c)

c) Can Merit Hospitality claim that it is running a restaurant in SEZ area and hence applicable GST rate is 5% only?

In view of the detailed discussions in respect of situations of Case-I, Case-II and Case-III above, the applicant cannot claim that they are running a restaurant in SEZ. Rather their service would fall under outdoor catering service as per discussions in details above.



As all the facts which are required for decision in respect of Case-IV have not been put before this authority, we are constrained to state that in view of the lack of complete facts before us, this question cannot be answered by this authority with limited facts before us.

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

ORDER

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

NO.GST-ARA- 22/2017-18/B-29

Mumbai, dt. 05/05/2018

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

Case I

Q. Whether on the facts and circumstances of abovementioned case can the above activity be called as canteen activity and the applicable rate of 5% be charged on our bills?

A. Answered in the negative.

Case II

Q. Can both the activities put together i.e. supply and distribution of food to the employees of 'A' Ltd. be called as canteen services and applicable rate of 5% be charged on our bills?

A. Answered in the negative.

Case III

Q. Under such circumstances can it still be claimed that Merit Hospitality is running a canteen and the applicable rate of 5% be charged on our bills?

A. Answered in the negative.

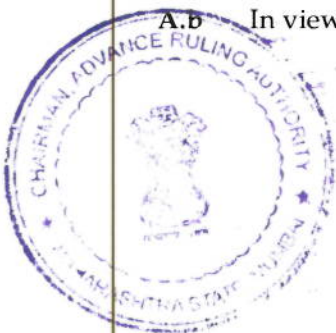
Case IV

Q.a Can Merit Hospitality claim that since the food is supplied directly to SEZ area hence no GST is applicable?

A.a In view of the findings above the said question cannot be answered.

Q.b Can Merit Hospitality claim that it is running a canteen in SEZ area hence no GST is applicable?

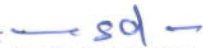
A.b In view of the detailed discussions above, the question is answered in the negative.



Q.c Can Merit Hospitality claim that it is running a restaurant in SEZ area and hence applicable GST rate is 5% only?

A.c In view of the detailed discussions above, the question is answered in the negative.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, GST & Central Excise, Churchgate, Mumbai
5. The Jurisdictional Commissioner of Central Tax


ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :-

Appeal against this order would lie to The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.