



RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX

NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)



ADVANCE RULING NO.RAJ/AAR/2018-19/28

J.P.Meena Additional Commissioner	:	Member(Central Tax)
Hemant Jain Joint Commissioner	:	Member(State Tax)
Name and address of the applicant	:	M/s The Akshaya Patra Foundation, Mahal Scheme, C-6 to C-11, Goner Road, Jagatpura, Jaipur 302017, Rajasthan.
GSTIN of the applicant	:	08AAATT6468P1ZL
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	04.01.2019
Present for the applicant	:	Shri Virendra Parwal (Authorised representative) and Shri K.R.Shreedhar (GM, Finance, TAPF)
Date of Ruling	:	09.01.2019

Note: Under Section 100 of the CGST/RGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/RGST Act 2017, within a period of 30 days from the date of service of this order.

The Issue raised by M/s The Akshaya Patra Foundation situated at Mahal Scheme, C-6 to C-11, Goner Road, Jagatpura, Jaipur 302017, Rajasthan {hereinafter the applicant} is fit to pronounce advance ruling as it falls under ambit of the Section 97(2) (g) and it is given as under:

whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Further, the applicant being a registered person, GSTIN is 08AAATT6468P1ZL, as per the declaration given by him in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the application is admitted to pronounce advance ruling.



1. **SUBMISSION OF THE APPLICANT:**

- a. The applicant is a not for profit organisation. It's headquarter is at Bengaluru and having establishment/setup in 12 States across India. From a modest beginning of serving 1500 meals a day in 2001, now the applicant is reaching out to more than 17 lakh children studying in more than 14000 schools from its 38 kitchens spread over in 12 states across the country.
- b. The applicant is a charitable trust registered under section 12AA of the Income Tax Act, 1961.
- c. Mid-Day Meal Scheme: The applicant strives to eliminate classroom hunger by implementing the Mid-Day Meal Scheme in the government and government aided schools. It also aims at countering malnutrition and supporting the right to education of socio-economically disadvantaged children. Since 2001, the applicant has been concerting all

its efforts towards providing fresh and nutrition meals to children on every single school day.

- d. The applicant is also registered under GST for having rental income in Karnataka, Rajasthan, Uttara Pradesh and Telangana.
- e. The TAPF was formed by Trust deed dated 16 Oct 2001, amended on 20 Feb 2016 with the following objects:-

Object of the Trust:

Relief of the poor, medical relief education for the public and any other object of general public utility. Without in any way taking away the generality of the meaning of the above expressions the objects particularly shall be:

(a) To uphold and promote the Socio-Economic welfare of the underprivileged sections of the Society through education among hailing from poor families in rural areas and/or urban slums initially, especially those who come from such background in and around Bangalore and other towns and cities in particular to those attending Government and other schools mainly catering to such underprivileged student by providing sustenance and support through proviso of free food, meals, refreshment etc. during the school hours so that their continued attendance in school and prolongation of education are ensured and the compelling needs of poverty of their families do not deprive them away from the schools and to ensure better nutrition, health and well being of such children.

(b) Try to banish hunger of the deprived economically backward and poor sections of the society and those hailing from rural area and slums in cities by every possible method, by the provision of free food distribution, relief and sustenance.

(c) Evolve means and methods to eradicate child labour in sections of society referred to in sub clause (a) & (b) above in general and especially protecting the children of those sections of society against hazardous labour where the Indian children are at present used and exploited.



f. All the activities in connection with the achievement of the above objects will be carried on in India without any commercial motive and the benefits thereof will be available to the public at large without any discrimination on grounds of community or cast or creed or sex.

g. The Ministry of Human Resources Development, Government, of India has prescribed a Model MOU for partnering with NGOs for the implementation of Mid-Day Meal program to all the state governments. The copy of the letter No. 9 - 7/2017/Desk (MDM) dated 26th April 2017 is enclosed. Few important provisions of the model MOU which has a bearing on the subject is mentioned below. (In the below paragraphs the word First party refers to the Government Authorities and Second Party refers to the NGOs like Applicant).

h. **Cooking Cost** - The First Party will reimburse the cooking cost to the Second Party @ Rs..... (per meal cooking cost) per child per school day for primary school children and Rs (per meal cooking cost) per child per school day for upper primary schools children (or as per the instructions / norms of GOI/State Government).

i. Supply of Food grains

The Second Party shall lift the food grains from Food Corporation of India godown on the basis of Release Order issued by the First Party based on allotted number of children and working days. Subsequently transportation charges will also be reimbursed to the Second Party as per the rates fixed by the Government of India or by the State Government.

Or

The First party shall make arrangements for delivery of food grains at the centralized kitchen on the basis of allotted number of children and working days.

j. Annual Audit Report - The Second Party will furnish an Annual Audit Report along with audited statement of accounts in terms of all grants received from the State Government, donations received in the name of

Mid Day Meal Scheme, both in cash and kind, duly certified by an approved Auditor to the First Party.

- k. The applicant is operating 38 kitchens across 12 States in the country under the above Guidelines. For each of the kitchen a MOU strictly as per the guidelines of MHRD (as mentioned above) has been entered into with the respective authorities. The Applicant has entered into MOU with the respective State Government to serve Mid-Day Meal to children in government schools. The MOU is made under the framework of Revised Guidelines issued by Ministry of Human Resource Development, Govt, of India, issued from time to time. The copy of the latest Guidelines no. 223321 / 2017/ MDM - 2 is enclosed for ready reference. Some important part of the Guidelines are extracted below which has a bearing on the question raised for advance ruling.



1. Responsibility of the State Government

- a. Cooking Cost - The State Government will pay/reimburse the cooking cost to the CSO/NGO as per the instructions / norms of GOI/State Government.
- b. Assets created through assistance from State Government- CSO/NGO should give written commitment to return to the State Government the permanent/semi-permanent assets, if any, acquired by it through the grants received under the programme, once the agreement / MOU expires.
- m. In Rajasthan a MOU entered with District Education Officer (Elementary Education), Jodhpur for serving Mid-Day meal to about 12000 Government school children dated 24th Oct 2016 which is valid for 3 years is enclosed. The key terms and conditions of the MOU which are important for the current context is mentioned below:-
1. Government would provide the Food Grains at an agreed quantum per child / meal for the expected average attendance in advance. Applicant

shall provide the monthly report of details covering food grains received, utilized and balance in the prescribed format.

2. For other food ingredients and conversion costs, Government would provide the cash conversion cost at agreed rates per child / meal.

3. To enable to reach nutritious, hygienically prepared quality meals to the children, applicant can raise donation, both in cash and kind to meet out deficit

4. All the additional expenses that may be required, on the preparation of the Mid-Day Meal as well as the transportation of the cooked meals to the schools in the project area shall be borne by the applicant

5. Menu will be in accordance as specified by the state Government from time to time.

n. The applicant state that the above terms are mentioned commonly in all the MOUs entered into between the applicant with respective State Government. The copies of MOUs entered with Government of Gujarat for the implementing MDM program in Ahmedabad and with Government of Andhra Pradesh for implementing MDM program in Kuppam town provided with application as sample for reference.

o. The applicant raises funds by way of donation from Corporates, Trusts & Foundations and general public for meeting the expenditure incurred on Mid-Day meal program apart from free grains and food conversion cost received from government. The certified extract of official website of the applicant requesting for fund support from Donors is also enclosed, which shows the total cost, government subsidy and the deficit amount to be supported from donations.

p. The Income tax department, Ministry of Finance, Government of India has recognized the program of Mid-Day Meal as a "Program of National Importance" and has sanctioned approval under section 35AC of the Income



Tax Act, which enable donors to claim 100% deduction of the donation amount given to the Mid- Day Meal program of the applicant from their income. The original sanction was given in 2003 and was being periodically renewed for every 3 years with the latest extension for a period of 3 years commencing from 1st April 2015 to 31st March 2018, copy of sanction letter is enclosed.

- q. The applicant also carries out other charitable feeding programs such as Anganwadi feeding, wherein the part of the cost is met by Government Subsidy and the remaining cost is met through donations, private school feeding programs where entire 100% cost is met through donations. These programs are quite small in number and constitute about 10% of the total volume of meals. In none of the above programs, the applicant, charge/receive any money or consideration from the beneficiaries.
- r. In course of providing Mid-Day Meal sometimes certain goods like spices, food grains, kitchen equipment and relevant spares (Boiler, Conveyor Belt Spares etc.), office equipment (Laptop, Computer, Stationery, Letter Head etc.), distribution vehicles are transferred from one kitchen of the applicant to another kitchen situated in a different state. It may be noted that the applicant has taken registration in various states for discharging GST liability on rental income and therefore they are 'distinct person' for the purpose of GST.

During course of the activity of Mid-Day Meal, certain scrap in the form of empty oil & other tins, pipes & iron, empty bags, plastic items, cartoons, Flex & Boxes, spares parts of machine/equipment, vehicle & its parts like tyres etc. is generated which is sold from time to time. The sale proceeds of these items are recorded under the head 'miscellaneous income' in the books of accounts.

- s. At present, the applicant is not paying GST on serving of food under Mid-Day Meal program, transfer of goods between one kitchen to another kitchen of applicant situated in different states and sale of above mentioned scrap items and for the reason that as per the applicant, it is not covered under the scope of 'Supply' in terms of section 7 of the CGST Act/RGST Act.

2. **QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT**

Applicant has sought ruling to be pronounced under section 97(2) (g) of the CGST Act 2017, on the following questions:

- a. Whether preparation and serving of food to children of government schools under Mid-Day meal Program of Government and serving of food under Govt sponsored Anganwadi meals program is covered under the scope of 'supply' as per section 7 of CGST/RGST Act, 2017?
- b. Whether transfer of goods / capital equipments, exclusively used for Mid-Day Meal (MDM) program and Anganwadi meals program sponsored by Govt, between different kitchens of applicant which are 'distinct persons' as per GST law is covered under the scope of 'supply' as per section 7 of CGST/RGST Act, 2017?
- c. Whether sale of scrap items (as mentioned in statement of facts) which was generated during Mid-Day Meal program is covered under the scope of 'supply' as per section 7 of CGST/RGST Act, 2017?



3. **COMMENTS FROM JURISDICTIONAL OFFICER**

The jurisdictional officer has commented that all the three queries raised by the applicant appear to be covered under Section 7 of CGST/ RGST Act, 2017.

4. **PERSONAL HEARING (PH)**

In the matter personal hearing was given to the applicant, Shri Virendra Parwal (Authorised representative) and Shri K.R.Shreedhar (GM, Finance, TAPF) of the applicant appeared for personal hearing on 04.01.2019. During the PH they reiterated the submissions already made in the

application for advance ruling and requested that the case may be decided at the earliest.

5. **FINDINGS, ANALYSIS & CONCLUSION:**

I. **A.** We find that as per Section 7 of CGST Act, 2017, the definition of Supply is as reproduced below:

7. (1) for the purposes of this Act, the expression "supply" includes—



(a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

(b) *import of services for a consideration whether or not in the course or furtherance of business;*

(c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*

(d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

(2) *Notwithstanding anything contained in sub-section (1),—*

(a) *activities or transactions specified in Schedule III; or*

(b) *such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

B. Further, the definition of business under Section 2(17) of CGST Act includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

The word 'commerce' has several definitions which are as under:-

As per Business Dictionary, it means exchange of goods or services for money or in kind, usually on a large scale enough to require transportation from place to place or across city, state or national boundaries.

Similarly, Wikipedia defines it as “exchange of goods and services, especially on a large scale”.



As per the documents submitted by the applicant we observe that the applicant is reimbursed as per the rate fixed by the Government of India or by the State Government for the transportation charges for lifting food grains from Food Corporation of India godown on basis of the release order.

It is further observed that the applicant is also paid /reimbursed of the cooking cost of the meals as per the instructions/norms of GOI /State Govt.

While going through the MOU dated 24-10-2016 for Mid- Day Meal Programme between the District Education Officer (DEO), Elementary Education, Jodhpur and Unit President, Akshaya Patra Foundation Jaipur, it is observed that the applicant is receiving conversion charges from the DEO, Jodhpur for cooking of the meal @ Rs 4.13 (Class I to V) and Rs 6.18 (VI to VIII) per child per day meal served.

In view of the above observations, the activity of preparation and serving of food under Mid Day Meal and Anganwadi meal programme undertaken by the applicant is covered under definition of business.

C. There is no exemption granted to charitable trusts in case of supply of goods which are taxable and are not specifically exempt or Nil rated. In case of exemption, a charitable trust is required to comply with below mentioned criteria:-

- I) The entity must be registered under section 12AA of the Income tax Act.
- II) The services provided by the entity must be a charitable activity.

Under the GST act, not all services provided by a Trust registered under Section 12AA would be termed as a charitable activity. Only

the following activities are termed as a charitable activity and are exempt from GST within the meaning of definitions provided at definition 2(r) of Notification No. 12/2017 Central Tax (rate) dated 28.06.2017, which is reproduced as below:

(r) "charitable activities" means activities relating to -

(i) public health by way of,-

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS;

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion , spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

In view of the above, we observe that the activities undertaken by the applicant are not covered under the definition of charitable activities.

E. The activities undertaken by the applicant under Mid-Day Meal Programme and Anganwadi meals programme is a supply in accordance with the Section 7 of CGST Act, 2017. However, MDM programme is taxed Nil by the virtue of Notification No.12/2017

dated 28.06.2017 mentioned at serial number 66 heading number 9962.

F. The Preparation and serving of food under Government sponsored Anganwadi meals programme which is undertaken by the applicant who receives reimbursement from the government of Rajasthan @ Rs.5.40 per pregnant women/lactating & nursing mothers/adolescent girls and Rs. 5.25 per child per day. (as per the MOU dated 22.12.2010 between the TAPF and Director cum Deputy Secretary, Women & Child Development Department, Government of Rajasthan). Therefore, the above said activity is against consideration and hence it is covered under the scope of 'supply' as per section 7 of CGST/RGST Act, 2017.


II. As the activity of 'transfer' is covered under definition of supply under section 7 of CGST/RGST Act, 2017. Thus, the transfer of goods / capital equipments, exclusively used for Mid-Day Meal (MDM) program and Anganwadi meals program sponsored by Government, between different kitchens of applicant which are 'distinct persons' as per GST law is covered under the scope of 'supply' as per section 7 of CGST/RGST Act, 2017.

III. The scrap items (as mentioned in statement of facts by the applicant) which generates during course of the activity of Mid-Day Meal in form of empty oil & other tins, pipes & iron, empty bags, plastic items, cartoons, Flex & Boxes, spare parts of machine / equipment, vehicle & its parts like tyres etc. are sold from time to time is for a consideration. The sale proceeds of these items are recorded under the head miscellaneous income in the books of records. The sale of scrap is an activity of sale for a consideration as mentioned in definition of 'supply' as per section 7 of CGST/RGST Act, 2017.

6. In view of the foregoing, we rule as under:-

RULING

- A. Preparation and serving of food to children of government schools under Mid-Day meal Program of Government and serving of food under Government sponsored Anganwadi meals program is covered under the scope of 'supply' as per section 7 of CGST/SGST Act, 2017.
- B. The transfer of goods / capital equipments, exclusively used for Mid-Day Meal (MDM) program and Anganwadi meals program sponsored by Government, between different kitchens of applicant which are 'distinct persons' as per GST law is covered under the scope of 'supply' as per section 7 of CGST/SGST Act, 2017.
- C. The sale of scrap items (as mentioned in statement of facts by the applicant) which was generated during Mid-Day Meal program is an activity of sale and thus covered under the scope of 'supply' as per section 7 of CGST/SGST Act, 2017.


J.P. MEENA 9/1/19
Member
(Central Tax)

8/c
(CGST)




HEMANT JAIN 9/1/19
Member
(State Tax)

SPEED-POST

M/s The Akshaya Patra Foundation,
Mahal Scheme, C-6 to C-11,
Goner Road, Jagatpura, Jaipur
302017, Rajasthan.

F.No. IV (4)26/AAR/RAJ/2018-19/134-135

Dated:- 09.01.2019

Copy to:-

Assistant Commissioner, Circle-J, Ward-4, Commercial Taxes Dept., Kar-Bhawan, Jhalana Institutional Area, Jaipur, Rajasthan.


Superintendent