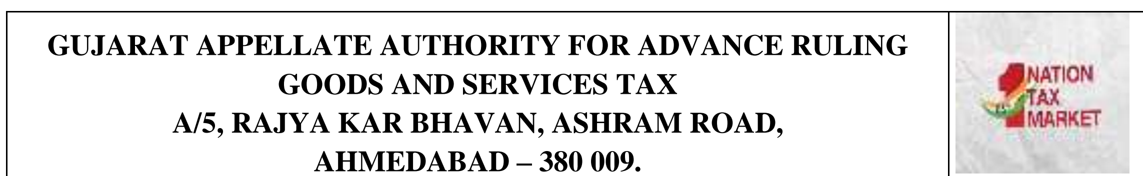

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2018/3
(IN APPEAL NO. Advance Ruling Appeal/SGST & CGST/AR/3)

Date : 31.7.2018

Name and address of the Appellant	:	M/s. Rashmi Hospitality Services Private Limited Survey No. 650, Welspun City, Versamedi, Anjar, Kutch – 370 110.
GSTIN of the Appellant	:	24AACCR5234Q1Z2
Advance Ruling No. and Date	:	GUJ/GAAR/R/2018/8 dated 21.3.2018
Date of filing appeal	:	03.05.2018
Date of Personal Hearing	:	12.7.2018
Present for the applicant	:	Shri Surendra Shetty Shri Mehul P. Buch (Consultant)

The Appellant M/s. Rashmi Hospitality Services Private Limited submitted that it is having business of caterers and supply food, beverages and other eatables (non-alcoholic drinks) complete services at various places of their customers, who have in house canteens at their factories. The appellant submitted that it normally charges GST @ 18% classifying their services under heading 9963 as 'outdoor catering'. The appellant submitted that one of the customers, who was recipient of services, had given the contract for catering services to be provided to the staff and premise for services to be provided for canteen, which was non air-conditioned, had also been made available to the appellant. The said customer had asked the appellant to charge GST @ 12%, therefore, the appellant requested for advance ruling as to whether rate of tax on their supplies made to the recipient would be 12% or 18%. The appellant submitted copy of agreement entered into between them and the client. The appellant, vide letter dated 18.01.2018 submitted that it is an industrial canteen contractor providing catering services to manufacturing industries which is statutory canteen maintained under law and their service recipient has asked to charge GST @ 5% on service based on clarification delivered by Tax Research Unit, Department of Revenue vide Circular issued from F.No. 354/03/2018 (Circular No. 28/02/2018-GST dated 08.01.2018). The appellant further submitted that viewing the above clarification, it is admitted fact that statutory body have to provide food and beverage to their staff and the appellant is the outside contractor providing the service to statutory body, hence whether the above clarification is applicable to them, and what should be the tax rate before the said notification and after notification?

2. The Gujarat Authority for Advance Ruling (herein after referred to as 'the AAR'), vide Advance Ruling No. GUJ/GAAR/R/2018/8 dated 21.03.2018, ruled as follows:-

> *The supply of services by M/s. Rashmi Hospitality Services Private Limited (GSTIN 24AACCR5234Q1Z2) is covered under Sr. 7(v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the Central Goods and Services Tax Act, 2017 and Notification No. 11/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the Gujarat Goods and Services Tax Act, 2017, attracting Goods and Service Tax @ 18% (CGST 9% + SGST 9%).*

3. Aggrieved by the aforesaid ruling, the appellant has filed the present appeal.

4.1 The appellant has submitted that the CBIC, vide Circular dated 08.01.2018 has clarified that even if the mess or canteen services are outsourced to a third person, the same would still be covered by Serial No. 7(i) of Notification No. 11/2017-C.T. (Rate), as amended, with stipulation that no input tax credit is availed. As the appellant is operating a canteen in the factory premises of the company, the clarification applies in all fours and consequently, the rate of tax applicable to such supply being made by the Appellant is 5%, as applicable to a mess / canteen. It is further submitted that the clarification issued by CBIC is in the context of a mess or a canteen, which was being operated in an education institute either by the institution or by the students or was outsourced to a third person. It is submitted that the facts in respect of which the ruling was sought are *pari-materia* to the one considered by the CBIC in its Circular dated 08.01.2018. The appellant submitted that there being no difference in the underlying factual position, it was not open to the AAR to arrive at a finding contrary to the instruction issued by the CBIC, which was binding on it, and requested to quash and set aside the impugned order on this ground itself.

4.2 The appellant further submitted that under the Food Safety and Standards Act, 2006 (FSSAI), the authority concerned is required to issue a license specifying the kind of business for which the license is being granted to a Food Business Operator. It is submitted that the appellant has been issued such a license under the FSSAI only for conducting business as a club / canteen. It is further submitted that it has not been licensed to conduct business as an outdoor caterer, though license has a separate, specific and independent category in the license viz. catering. Therefore, it is submitted that by no stretch of imagination, it can be said that the supply being made by the appellant is in the nature of outdoor catering. The appellant submitted that in terms of Section 46 of the Factories Act, 1948, it is mandatory for every factory to have a canteen, and it is this canteen in the factory of the company, which the appellant has been operating. It is submitted that as the statute itself envisages that food that can be served in a factory is only by a canteen, the supply made by the appellant as a canteen operator cannot be regarded as an outdoor catering. The appellant further submitted that the term 'outdoor catering', 'mess' and 'canteen' have not been defined in the statute and referred to the dictionary meanings of these terms. It is submitted that catering does not involve the supply of food / beverages on a daily basis whereas in case of canteen, the supply is virtually on a daily basis to the same set of people.

4.3 The appellant submitted that the AAR referred and relied upon the definition of 'catering' and 'outdoor catering', as provided under the erstwhile Chapter V of the Finance Act, 1994 to hold that the supply being made by the appellant is that of outdoor catering, and also placed reliance on the judgement on the Hon'ble Allahabad High Court

in the case of Indian Coffee Workers Co-op Society Vs. CCE. It is submitted that the definition under a repealed statute could not be read into while interpreting another statute. It is also submitted that the taxable event and the levy in any fiscal statute has to be strictly construed and there is no room for any intendment.

4.4 The appellant also submitted that merely because it had classified the service being supplied by it as outdoor catering and was discharging the tax @ 18%, the same was no ground for holding that the service being supplied by the appellant is that of outdoor catering, as there is no estoppels in law while interpreting the fiscal statute.

PERSONAL HEARING:

5. Personal hearing in the matter held on 12.07.2018, wherein, Shri Surendra Shetty, Director and Shri Mehul P. Buch, consultant appeared before us and reiterated their written submissions.

FINDINGS:

6. We have carefully gone through and considered the submissions made by the appellant in the grounds of appeal and at the time of personal hearing as well as Advance Ruling given by the AAR and other material available on record.

7.1 The issue involved in this appeal is whether the supply made by the appellant falls under Sl. No. 7(i) or under Sl. No. 7(v) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017, as amended, issued under the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and Notification No. 11/2017-State Tax (Rate) dated 30.06.2017, as amended issued under the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017'), the relevant part of which is reproduced below :-

Sl. No.	**Chapter, Section or Heading**	**Description of Service**	**Rate (per cent.)**	**Condition**
(1)	(2)	(3)	(4)	(5)
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, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.	2.5	**Provided** that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to *Explanation* no. (iv)]]

		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.		
		(ii) ………	6	-
		(iii) ………	9	-]
		(iv) * * * * *	*	*]
		(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) ………	9	-
		(vii) ………	9	-
		(viii) ………	14	-
		(ix) ………	9	-

8.1 The terms 'outdoor catering', 'restaurant', 'mess' and 'canteen' have not been defined in the CGST Act, 2017 and the GGST Act, 2017 or the Notifications issued there under. However, in the catering industry, the term 'outdoor catering' refers to service wherein the kind, quantum and manner in which food / eatable/ drinks is to be served is decided by the service recipient and the service provider provides service of catering at the place other than his own. This meaning of 'outdoor catering' has legal precedence as the term 'outdoor catering' was specifically defined in Chapter V of the Finance Act, 1994.

8.2 In the present case, the service recipient has engaged the appellant for running of the canteen and rates for the meal, snacks, tea have been fixed and payable by the service recipient. The menu is required to be decided by the canteen committee of the service recipient. Further, the appellant is providing these catering services from other than his own premises. Therefore, the nature of service provided by the appellant is that of 'outdoor catering' service in view of the meaning of the said term as commonly understood, even though there is no statutory definition of the said term provided in the CGST Act, 2017 and the GGST Act, 2017.

8.3 Further, in respect of the issue whether the nature of service provided by the appellant would change since the meal, snacks, tea etc. are consumed by the workers / employees of the recipient, the AAR has referred to the judgement of Hon'ble High Court of Allahabad in the case of Indian Coffee Workers' Co-Op. Society Ltd. Vs. CCE & ST, Allahabad [2014 (34) S.T.R. 546 (All.)]. In the said judgement, it has been held that the taxable catering service cannot be confused with who has actually consumed the food, edibles and beverages which are supplied by the assessee. It is also held that the taxability or the charge of tax does not depend on whether and to what extent the person engaging the service consumes the edibles and beverages supplied, wholly or in part.

8.4 Once the service being provided by the appellant is covered under 'outdoor catering' service in terms of the Notifications issued under the CGST Act, 2017 and the GGST Act, 2017, the category under which the license has been issued to the appellant under the Food Safety and Standards Act would not make any difference on the taxability of the service provided by the appellant. For the same reasons, the provisions of Factories Act, 1948 are also not relevant to determine the nature of service provided by the appellant.

9.1 The appellant has also referred to Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit), Circular No. 28/02/2018-GST dated 08.1.2018, whereby clarifications regarding GST on College Hostel Mess Fees has been issued.

9.2 The said Circular No. 28/02/2018-GST dated 08.1.2018 and Corrigendum dated 18.01.2018 has clarified the applicability of GST on College Hostel Mess Fees under various situations, including the catering services provided by an educational institution to its students, faculty and staff, which would be exempt under Sl. No. 66(a) of Notification No. 12/2012-Central Tax (Rate) dated 28.06.2017.

9.3 However, the situation where the food / eatables/ drink are the choice of the recipient and the kind, quantum and manner in which the food is to be served is also decided by the recipient, as is the issue in the present case, has not been covered by the said Circular and hence the same is not applicable in the facts of the present case.

10. In view of the above, we confirm the ruling given by the AAR holding that the supply of services by the appellant is covered under Sr. 7(v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the Central Goods and Services Tax Act, 2017 and Notification No. 11/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the Gujarat Goods and Services Tax Act, 2017, attracting Goods and Service Tax @ 18% (CGST 9% + SGST 9%) and reject the appeal filed by M/s. Rashmi Hospitality Services Private Limited.

(Ajay Jain)
Member

(Dr. P.D. Vaghela)
Member

Place : Ahmedabad
Date : 31.7.2018.