



1. M/s Goodwill Industrial Canteen – Tamil Nadu

Advance Ruling No- 9/AAR/2018

Issue for Determination	Clarification regarding applicable GST rate on the outdoor catering services
Facts of the Case	<p>The Applicant is an industrial caterer providing outdoor catering services to various companies. The food is prepared in the premises of the clients wherein rent-free space is allocated to them and the food is supplied to their employees. The applicant purchases materials and uses their own manpower for cooking and distributing food. In such a case, the applicant raises a bill and payment is made to them on monthly basis. According to the applicant, as per Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 as amended, GST for the catering services rendered by them is 5%.</p>
Discussion and Findings	<p>The main discussion of advance ruling depends upon whether the supply of outdoor catering services falls under the exempted rate provided in the above mentioned notification.</p> <p>The applicant states that they enter into contracts with companies on whose rent-free premises, food is supplied to the employees of the said company and the bill is raised on monthly basis.</p> <p>Findings</p> <p>From the above discussions, it can be concluded that applicant himself does not get paid for by the consumers of the food. The recipient of the services are the companies who enter into contract with the applicant. The tax rate as per the said notification for outdoor catering is 18% which came under scrutiny and the same was taken up by the council for consideration. Accordingly, the said notification was amended vide Notification No. 46/2017 dated 14th November 2017 wherein it was agreed to keep a rate of 5% tax without input tax credit on all restaurants except those hotels having declared room tariff of more than 7,500 per night for whom tax rate shall be 18% with input tax credit. But there was no relaxation for outdoor catering services which continued to attract a rate of 18% tax with input tax credit.</p> <p>However, GST council in its 27th meeting held on 4th May 2018 gave relaxation in composite supply of food and drinks in restaurants, canteens, eating joints, etc to institutions on contractual basis and fixed the GST rate at 5% making the increased rate of 18% restricted to supplies in case of</p>

outdoor/indoor functions that are event based and occasional in nature. To give effect to the above decision, Notification No. 46/2017 was amended vide Notification No. 13/2018 dated 26th July 2018.

Ruling
The services of the applicant of supplying food and beverages on the premises of industrial units/offices are liable to tax at the rate of 18% under Notification No.11/2017 – CT (Rate) dated 28.06.2017 for the period upto 26.07.2018 and from 27.07.2018 onwards at the rate of 5% as under the same notification amended subject to the condition that credit of input tax credit charged on goods and services used in supplying the services has not been availed.

2. M/s GKB Lens Private Limited- Karnataka

Appeal Case No. – 05/WBAAAR/Appeal/2018 dated 27.09.2018

Issue for Determination

I. Whether the transfer of goods (optical lenses and frames for spectacles and accessories) from Head Office in West Bengal to its branches in other states, can be done at cost price, by applying the second proviso to Rule 28 of CGST Rules, 2017 (instead of 90% of MRP as required under the First Proviso to Rule 28 of CGST Rules, 2017)

II. What is meant by the expression “where the recipient is eligible for full input tax credit” as used in the second proviso to Rule 28 of the CGST Rules, 2017

Facts of the Case

The Applicant is a re-seller and importer of Sun Glasses, Frames, Lenses, Contact Lenses, etc having its Head Office in West Bengal which transfers goods from its Head Office to its branches in other states. The Authority had earlier ruled that the applicant has the option of supply goods by applying the terms of second proviso to Rule 28 of the CGST Rules 2017 instead of the first proviso. Also, the expression “where the recipient is eligible for full input tax credit” meant that the applicant will be eligible to take full input tax credit of the amount of tax paid by the supplier. An appeal had been filed against the ruling by the Assistant Commissioner, CGST & CX, Tollygunge Division, Kolkata South Commissionerate(“Appellant”) regarding the availability of input tax credit on stock transfer from Head Office to its branches in other states at Zero Value.

Discussion and Findings

The main discussion of advance ruling depends upon whether input tax credit would be available in case of stock transfer from Head Office to its branches at zero value.

The appellant states that the wordings of the ruling had created an impression that the recipient would be eligible to avail input tax credit of the tax paid by the supplier even at zero value. As per the appellant, the authority should have declared that in terms input tax credit would be available for supply at zero value.

Findings

The respondent submitted a copy of tax invoice issued by the head office as evidence of no tax being charged on supplies made at zero value and had no objection to any clarification being added to the above-mentioned ruling.

As per Section 16 of the CGST Act 2017, input tax credit is available only when the recipient is in possession of a tax invoice or debit note issued by the registered supplier. In case of supply between distinct or related persons, the value declared in the invoice shall be deemed to be the open market value of the goods or services supplied.

It was seen that the question raised by M/s GKB Lens Pvt Ltd was correctly answered by the Authority. However, it was clarified that no input tax credit shall be available to the recipient if the value declared by the supplier in the invoice/debit note is zero.

Ruling

The Ruling of the West Bengal Authority for Advance Rulings is modified in the following manner:
"No input tax credit, however, would be available for supply of goods/services at Zero Value by Head Office to its other branches in different states"

Mumbai

1102 Peninsula Business Park, Tower
B, S B Road, Lower Parel , Mumbai
400013

New Delhi (Head Office)

S-217, Panchsheel Park
New Delhi 110017
Tel - +91-11-40946000

Bangalore

Golden Square Serviced Office No
1101, 24th Main, JP Nagar 1st
Phase (above ICICI Bank)
Bangalore-560078

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