


<b>OFFICE OF THE GUJARAT AUTHORITY FOR ADVANCE RULING COMMISSIONERATE OF GOODS AND SERVICES TAX, GUJARAT STATE. D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.</b>	
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RULING ORDER NO. GUJ/GAAR/R/18/2019  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/19)

Date: 28.08.2019

Name and address of the applicant	:	M/s. Gurukrupa Hospitality Services, Ward No. 4, Timber Bazar, Behind Bholenath Saw Mill, Anjar, Kutch – 370 110.
GSTIN of the applicant	:	24AAOFG8771C1Z8 (Ghatak-103, Gandhidham)
Date of application	:	19.04.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	19.07.2018
Present for the applicant	:	Shri Premal Shah, CTP

The Applicant, M/s. Gurukrupa Hospitality Services has submitted that the applicant is having business of supplying foods, snacks, beverages etc. to the consumers/clients as per agreement with them. They sought for clarification regarding applicability of tax rates (5% or else) on the services provided or to be provided by them to one of their client who is also registered person.

2. The Applicant, vide their letter dated 12.04.2018, has submitted that they have entered into an agreement with one of their client for running of canteen and its total affairs including supply of snacks, tea, lunch and dinner to its employee and workers. Further, as per the agreement the applicant has to supply food and other things at their canteen place according to the conditions mentioned in the agreement and also abide by the terms and conditions given in the agreement. The Applicant has mentioned that they will be provided some of the equipment by their client for such activity. The concern of the Applicant is what will be the rate of tax to be charged to the client.

3.1 The Applicant has submitted that as per the provision of Sec. (9) of CGST Act, 2017, the tax shall be levied on supply of goods or services at such rates as notified by the Government.

3.2 The Applicant has further submitted that Entry 6 of the Schedule II is regarding Composite Supply and according to it, following composite supply shall be treated as a supply of services namely:

(a)...

(b) *“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.”*

3.3 The applicant has mentioned that the above entry clearly says that supply of food by way of or as a part of any service or even in any other manner whatsoever shall be treated as supply of services. So, as we are supplying a food as a part of a service, same shall be regarded as a canteen service and rates should be decided accordingly as the rates for goods, and services are separate as per Rates notifications. For further clarification of the same, the applicant has given reference of Serial no. 7(i) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017.

4.1 The Goods and Services Tax and Central Excise Commissionerate, Kutch (Gandhidham) *inter-alia* informed that the question under consideration is whether the activity carried out by the applicant is considered as a supply of goods or a supply of services and GST is applicable @ 5% or otherwise. It is opined by the Commissionerate that as per Para 1 (b) of the Schedule-II of Section-7 of the CGST Act, 2017 confirmed that the activity carried out by the applicant shall be considered as a supply of services. It is submitted that it is understood that the problem is to confirm the classification of services provided by the applicant as beverage service/canteen service to their customers, because of multiple classifications of services under Chapter Heading No. 9963, sub-clause (i) to (ix). Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 is referred and it is submitted that as per Sr. No. 71 of Annexure of the said Notification, ‘Accommodation, food and beverage services’ falling under Chapter Heading 9963 and under this Chapter

Group 99631 & 99632 pertains to Accommodation services and other accommodation services. Group 99633 pertains to Food, edible preparation, alcoholic & non-alcoholic beverages serving services. It is further submitted that as per GST Tariff, a special entry is available in respect of the services provided in canteen and other similar establishments at Sr. No. 83 of the same Annexure and the same are covered under Chapter Heading 996333 and GST @ rate of 18% is applicable on that service.

4.2 It is further submitted that as per contract made between the applicant and the client, the canteen space and some equipments have been provided by the client to the applicant and the applicant is only providing the services pertaining to Food, edible preparation serving. It is opined by the Commissionerate that the activity carried out by the applicant appears to be in the nature of cooking of Foods and serving of foods along with edible preparations and it is classifiable as services provided in canteen and other similar establishments (Chapter Heading 996333).

4.3. It is further opined by the Commissionerate that as per classification of services provided vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the activity carried out by the applicant appears to be in the nature of service provided in canteen and other similar establishments and also classifiable under Chapter Heading 996333 and GST @ rate of 18% is applicable on that service. It is further submitted that the question raised by the applicant in the authority of advance ruling is not covered in the category of advance ruling as the category of service is very much clear in the Chapter Note 996333.

5. Now, we discuss the issue in two parts viz. taxability of subject supply of services **up to 25.07.2018** and **w.e.f. 26.07.2018**, due to amendments in subject Notifications, as below:

**A. TAXABILITY UP TO 25.07.2018:**

5.1 We find that Sr. No. 7 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, up to 25.07.2018, 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 up to 25.07.2018, issued under the

Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017') provides different rates for different types of services under 'Accommodation, Food and beverage services' of Heading 9963. The part of the said Sr. No. 7 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, relevant for examining the present issue, is as follows :

Sl. No .	Chapter, Section or Heading	Description of Service	Rate (per cent .)	Condition
(1)	(2)	(3)	(4)	(5)
7	<b>Heading 9963</b>  (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.  <b>Explanation.</b> - "declared tariff"	2.5	<b>Provided</b> that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]

	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	-

5.2 Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit), vide Circular No. 28/02/2018-GST dated 08.1.2018, has issued clarifications regarding GST on College Hostel Mess Fees as follows :-

*“2. 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.”*

5.3 It, therefore, needs to be examined whether the activity undertaken by the applicant is in the nature of supply of service provided by a restaurant, eating joint including mess, canteen and covered by Sr. No. 7(i) of the Notification No. 11/2017-Central Tax (Rate) or it is in the nature of supply of service as a part of outdoor catering and covered by Sr. No. 7(v) of the Notification No. 11/2017-Central Tax (Rate).

5.4 On perusal of the copy of the agreement submitted by the applicant, it is evident that the service recipient has engaged the applicant for running of the canteen for their workers / employees. **The rates for the meal, snacks, tea have been fixed and payable by the recipient.** The menu is required to be decided by the canteen committee of the recipient. It is, therefore, evident that the applicant, who is caterer, is providing service from other than his own premises to the recipient. Therefore, the nature of service provided by the applicant is that of **“outdoor catering service”**.

5.5 Even though the meal, snacks, teas are provided to and consumed by the workers / employees of the recipient, it is clear from the foregoing discussion that the applicant is providing service to the recipient and not to workers / employees of the recipient. From the nature of service provided by the applicant, as is evident from the copy of agreement, it is clear that it is not in the nature of service provided by a restaurant, eating joint including mess, canteen. Therefore, the clarification issued, vide Circular No. 28/02/2018-GST dated 08.1.2018, is not applicable.

5.6 In erstwhile Service Tax regime, a similar issue was decided by 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.)], wherein it was held as follows -

*“8. Analyzing the provisions of clause (24) of Section 65 of the Finance Act, 1994, in order to be a caterer, a person should be one*

*who supplies food, edible preparations, beverages (alcoholic or non-alcoholic) or crockery and similar articles or accoutrements for any purpose or occasion. The supply may be made directly or indirectly. Consequently, there has to be, firstly, a supply of food, edibles, beverages or crockery and similar articles or accoutrements. Secondly, this supply may be for any purpose or occasion. A purpose is an effectuation of a particular object. An occasion is an event defined with reference to time which may take place either as an isolated occurrence or be sporadic or periodical. Thirdly, the supply may be directly by the person himself or indirectly through another. In order to be an outdoor caterer within the meaning of clause (76a), a person must, at the outset, be a caterer. Clause (76a) provides a statutory definition of who is regarded as an outdoor caterer. A caterer is an outdoor caterer because services in connection with catering are provided at a place other than his own. The use of the expression 'in connection with catering' broadens the ambit of the definition by bringing within its purview not merely a service of catering but a service which has a connection with catering. The place where the service is to be provided must be a place other than that of the caterer himself. The inclusive part of the definition includes a place which may be provided to the caterer by the person receiving the service either by an agreement of tenancy or otherwise.*

9. *In the present case, the assessee is a caterer. The assessee is a person who supplies food, edibles and beverages for a purpose. The purpose is to cater to persons who use the facility of a canteen which is provided by NTPC or, as the case may be, by LANCO within their own establishments. NTPC and LANCO have engaged the services of the assessee as a caterer. The assessee is an outdoor caterer because the services which he provides as a caterer are at a place other than his own. The place is provided by NTPC and LANCO. The inclusive part of clause (76a) expands the definition to a place provided by way of tenancy or otherwise by the person receiving such services. NTPC and LANCO have engaged the services of the assessee as an outdoor caterer and the assessee is an outdoor caterer because services in connection with catering are provided by it at a place other than a place of the assessee.*

10. Consequently, on a plain and literal construction of the provisions of Section 65(105)(zzt) read with the definitions of the expressions 'caterer' and 'outdoor caterer' as contained in clauses (24) and (76a), it is evident that the assessee is subject to the levy of Service Tax. The assessee provides to any person, to wit, NTPC or LANCO, the service of an outdoor caterer. In our view, there is a fundamental fallacy in the submission of the assessee that it should be held not to fall within the definition of the expression 'outdoor caterer' on the ground that the food, edibles or beverages are provided not to NTPC or LANCO but to their employees, customers and guests. That, in our view, begs the question. The taxable catering service cannot, in our view, be confused with who has actually consumed the food, edibles and beverages which are supplied by the assessee. 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. What is material is whether the service of an outdoor caterer is provided to another person and once it is, as in the present case, the charge of tax is attracted."

5.7 The expression 'outdoor catering' has not been defined under the CGST Act, 2017 / SGST Act, 2017 or the notifications issued there under. Nevertheless, the observations made in the aforesaid judgment of the Hon'ble High Court are relevant for deciding the present issue. In the said judgment, the Hon'ble High Court has observed 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.

5.8 In the present case also, services in connection with catering are provided by the applicant at a place other than a place of the applicant. Further, the service of catering is provided by the applicant to the recipient and the fact that the meal, snacks, tea etc. are consumed by the workers/employees of the recipient, would not alter the nature of service provided by the applicant.



5.9 In view of the above, **up to 25.07.2018**, the said supply of services of the applicant is taxable under “Accommodation, food and beverages services” as a part of “**Outdoor Catering Services**” and is covered **under Sr. No. 7(v)** of the Table to the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended up to 25.07.2018, issued under the Central Goods and Services Tax Act, 2017 and Notification No. 11/2017-State Tax (Rate) dated 30.06.2017, as amended up to 25.07.2018, issued under the Gujarat Goods Services Tax Act, 2017, attracting GST @ 18% (CGST:9% + SGST: 9%).

**B. TAXABILITY W.E.F. 26.07.2018:**

6.1 Notification No.13/2018-Central Tax (Rate) dated 26.07.2018 seeks to amend, Notification No.11/2017-Central Tax (Rate) so as to notify CGST rates of various services as recommended by Goods and Services Tax Council in its 28<sup>th</sup> meeting held on 21.07.2018. The **Explanation 1** inserted at column (3) at Sl. No. 7 (i) of the Table to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, reads as under:

**Explanation 1.-** *This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that **such supply is not event based or occasional.***

6.2 By above amendment, the entry relating to composite supply of food and drinks in restaurant, mess, canteen eating joints and such supplies to institutions (Educational, office, factory, hospital) on contractual basis is rationalize at GST rate of 5% and made it clear that the scope of outdoor catering under **7(v) is restricted to supplies in case of outdoor/indoor functions that are event based and occasional in nature.**

6.3 In view of the above, after amendment of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, made vide Notification No.13/2018-Central Tax (Rate) dated 26.07.2018), the said supply of services of the applicant is taxable under the category of “Accommodation, food and beverages services” and is covered under **Sr. No. 7 (i)** of the Table to 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 GST @ 5% (CGST:2.5% + SGST: 2.5%).

7. In view of the foregoing, we rule as under –

**R U L I N G**

- A. **Up to 25.07.2018**, the said supply of services by M/s. Gurukrupa Hospitality Services is covered under **Sr. No. 7(v)** of the Table to the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended up to 25.07.2018, issued under the Central Goods and Services Tax Act, 2017 and Notification No. 11/2017-State Tax (Rate) dated 30.06.2017, as amended up to 25.07.2018, issued under the Gujarat Goods Services Tax Act, 2017, attracting GST @ 18% (CGST:9% + SGST: 9%).
- B. **W.e.f. 26.07.2018**, the said supply of services by M/s. Gurukrupa Hospitality Services is covered under **Sr. 7(i)** of the Table to 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 @ 5% (CGST: 2.5% + SGST: 2.5%).

**(R.B. Mankodi)**  
Member

**(G.C. Jain)**  
Member

Place : Ahmedabad  
Date : 28.08.2019