



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING**

**CT Complex, M.J Road, Nampally, Hyderabad-500001.**

**(Constituted under Section 96(1) of TGST Act, 2017)**

**Present:**

**Sri J. Laxminarayana, Additional Commissioner(Grade-I) (State Tax)**

**Sri B. Raghu Kiran, IRS, Joint Commissioner (Central Tax)**

**A.R.Com/22/2018**

**Date. 29-06-2020**

**TSAAR Order No. 07/2020**

Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Telangana Goods and Service Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Telangana Goods and Service Tax Act, 2017.

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1. M/s. Navneeth Kumar Talla, H.No No.23/6/17/A, Bela Shahali Banda, Hyderabad, (GSTIN No. 36AAMPT4171B1ZN) has filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 and Read with Rule 103 of CGST/TGST Rules, seeking Advance Ruling on the issues raised in their application.

2. The applicant submitted the application in **FORM GST ARA-01** and Statement containing the applicant's interpretation of law & relevant facts and requested for advance ruling on classification of services rendered by them and rate of tax applicable. They have submitted a copy of Challan evidencing payment of application fee of Rs.10,000/-.

3. A personal hearing was held in this case and the assessee have appeared for personal hearing on 09.11.2018. However due to administrative exigencies, the Orders were not released. Further Government Go. Rt.No.312, Revenue (CT.II) Department, Dt. 05.11.2019 have appointed Sri B. Raghu Kiran, IRS, Joint Commissioner(Central Tax) as member in place of Sri V. Srinivas, IRS, Additional Commissioner(Central Tax). Hence another notice was issued to the applicant to appear for Personnel Hearing on 04-12-2019. The Authorised representative Sri. G. Ashok Kumar appeared and explained their case as under:

- a. The Authorised representative has submitted that, the applicant / Assessee is doing the following nature of business:
  - (i) They are dealing with supply of food to MNG Cancer Hospital Hyderabad (Autonomous Body) on out sourcing basis to patients of MNG Cancer Hospital.
  - (ii) The applicant requested to clarify:
    - (a) whether Food supplied to Hospitals i.e. Government Hospital, Private Hospitals and Autonomous Bodies on outsourcing basis, GST is chargeable?

- (b) If GST is chargeable what is the tax rate? If no GST is chargeable on the Supply of food, the GST already paid by the Hospitals and remitted to Government is recoverable from their future bills?

4. This being the case Consequent upon receipt of the application filed by M/s. Navneeth Kumar Talla, the jurisdictional officer i.e. Assistant Commissioner (State Tax) Charminar Circle, was requested vide this office letter CCT's Ref no.A.R.Com/22/2018 dated: 11.09.2019 inform, whether the questions raised in the application is already pending or decided in any proceedings in the case of the applicant under any of the provisions of the GST Act, 2017 and also requested to offer his/he comments on the points raised in the application.

5. The Assistant Commissioner (State Tax), Charminar Circle, vide his reply dated: 01.04.2019, stated that there are no issues pending before him with regard to issues raised by the applicant.

6. In view of the reply given by the Jurisdictional Officer, the application filed by M/s. Navneeth Kumar Talla was admitted and a personal Hearing was given to the applicant.

7. The case is posted on 04-12-2019 at 3.00 p.m, Sri G. Ashok Kumar Authorised representative of M/s. Navneeth Kumar Talla has appeared for the personal hearing and reiterated the following written submissions which were already submitted. It was submitted that:

- As per the Notification No. 8/2017- Integrated Tax(Rate), dt. 28-06-2017 as per the Chapter 99 Section 6HSN Code 9963 Para (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 part of such outdoor catering and such supply or service is for cash, deferred payment or other valuable consideration the rate of tax is 18%.
- The Hospital Authorities have filed a letter to Commissioner (ST) for clarification of rate of tax under GST regarding supply of food to Hospital. The Commissioner (ST) vide letter CCT's Ref No. A(1)/15/2018 dated 05-02-2018 replied to the Hospital Authorities regarding rate of GST on food and beverage services will be chargeable as per Notification No.11 of 2017 and advised to file an application for clarification on Advance Ruling before Advance Ruling Authority for authenticity.

8. Further, it was also contended that the Government of India ministry of Finance Department of Revenue Tax research unit has given certain clarification regarding levy of GST on health care services provided by a clinical establishment and food supplied to the patients as per Circular No.32/06/2018-GST, dt. 12-02-2018 at Si. No. 5(3) as under:

<b>Si No</b>	<b>Issue</b>	<b>Clarification</b>
5	(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals form outdoor caterers. When outsourced, there should be no ambiguity that the supplier shall charge tax as applicable and hospital will get no ITC. If hospitals have their own	(3) Food supplied to the in-patients as advised by the doctor/ nutritionists is a part of composite supply of heath care and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

	canteens and prepare their own food, then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when no charged, may be subjected to GST.	
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9. Further, it was brought to the notice of committee members that recently the Central Board of Excise and Customs & Commercial Taxes Department of States/Union Territories clarified the rate of Tax as under

Restaurant under composition scheme	Composition Levy @ 5% of the turnover
All stand-alone Restaurants(Air-conditioned Or otherwise)	5% (without ITC)
Restaurants in hotel premises having room Tariff of less thanRs.7,500 per unit per day	5% (without ITC)
Restaurants in hotel premises having room Tarrif of Rs.7,500 and above per unit per day (even for a single room)	18%(Full ITC)
Is there any restaurant where the rate of Tax is 28%?	No
Rate of tax on takeaway	As applicable on serving of Food for consumption on Premise of that restaurant
Outdoor Catering	18%(Full ITC)

10. Submitting the above, it was informed that the Hospital authorities are refusing to repay the GST on Supply of food to Hospital as per the above Circular instructions and also informed that the GST already paid by Hospital Authorities will be recovered from future bills.

11. The Advance Ruling was sought for whether GST is payable on supply of food by the applicant to hospitals on outsource basis. In the case at hand, the Applicant is engaged in supplying food and beverages at the canteen of their customers. The Applicant himself does not get paid for by the consumers of the food and beverages. The Recipient of the services are hospitals who enter into contract with the applicant. The charges are received from the hospitals on monthly basis on the coupons collected. In short, it is deciphered that the Applicant is vested with management of the canteen facilities. Supply of food is classified under Service Code No. 9963. We have examined the relevant notifications providing exemption to services and found that the services rendered by the applicant are not taxable.

12. We find that entry 74 of Notification No. 12/2017 deals with exemption to the services provided by clinical established which is read as under :

Heading 9993	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	Nil	Nil
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From the above, it can be inferred that exemption is available as per the entry of the above notification only when the clinical establishment itself provides this service (supply of food) as a part of health care services to the in-patients and the same is not available, when such supply of food and beverages is made by a person other than clinical establishment based on a contractual

arrangement with such establishment Circular No. 32/06/2018 dated 12-02-2018 supports this view.

Therefore we hold that GST is payable on supply of the services by the applicant to Hospitals and no exemption is provided in r/o the same.

13. To decide the rate of tax in r/o the supply of services by the applicant, reference is to be made to Notification No. 11/2017- State Tax (Rate), issued in G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017 which provides the rates of tax in respect of various services. The extracts of relevant entries dealing with the services supplied by the applicant are as follows:

7	<b>Heading 9963</b> (Accornmodatro4 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 airconditioning or central air-heating in any 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.	6	-
		(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	-

14. The tax rates under SI. No. 7 came under Scrutiny and the same was taken up by the council for consideration. Tax Structure of different categories of Restaurants, with a view to their possible rationalization / reduction was mandated to be examined. The same was examined at the 23<sup>rd</sup> Meeting of the GST Council held on 11<sup>th</sup> November 2017. The council discussed the various aspects involved in respect of the rate of tax on the supply is reproduced below:

65.28. *The Hon'ble Chairperson proposed a tax rate of 18% with input tax credit on the outdoor catering. The Hon'ble Chief Minister of Puducherry observed that a tax rate of 18% on outdoor catering was too high. the Hon'ble Chairperson observed that historically, this was the prevailing rate of tax on outdoor catering. The Hon'ble Deputy Chief Minister of Delhi stated that a tax rate of 18% on outdoor catering could lead to tax evasion. He cautioned that having such big difference of tax rate between restaurant and outdoor catering, would lead to the practice of issuing bill from the restaurant for the outdoor catering and that they had similar experience in case of differential tax rate on liquor. The Principal Secretary, Finance, Odisha proposed a tax rate of 5% without input tax credit for the outdoor catering. The Hon'ble Minister from*

*Jharkhand stated that many persons carried on only catering business, and for them, rate of tax should be kept at 5% without input tax credit. He added that many outdoor caterers did only dry catering, that is, provided labour while the food, etc. was bought by the customer. Advisor, Finance, Punjab also supported this suggestion. He stated that several people only did catering business and theoretically, they could claim that they had set up a restaurant to cater to a function at a venue. He suggested that rate of tax for outdoor catering where only food was being provided should be kept at 5%. The Hon'ble Chairperson observed that low rate of tax for one sector would lead to demand for lowering tax for other services sector also. The Hon'ble Minister from Uttar Pradesh proposed to keep a uniform tax rate of 12% without input tax credit as it would be bad optics to charge tax at the rate of 18% on outdoor catering and 5% on restaurant. The Secretary stated that this proposal would not be acceptable to the trade. The Hon'ble Minister from Assam did not support this proposal and stated that this would lead to increase in prices.*

*65.29. Keeping in view the discussion as above, the Council agreed to apply tax rate of 5% tax without input tax credit on all standalone restaurants and a rate of tax of 18% with input tax credit on a restaurant in a hotel having room of declared tariff of more than Rs, 7,500 per night. The take away food from a restaurant shall have similar tax treatment as that for the restaurant. Outdoor catering shall, however, attract tax at the rate of 18% with input tax credit and there would be no change in Composition scheme for restaurant.*

15. Accordingly, Notification No. 11/2007 - State Tax (Rate), issued in G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017 was amended vide Notification No. 46/2017 - State Tax (Rate), issued in G.O.Ms No. 280, Revenue (CT-II) Department, Dt. 12-12-2017 as mentioned below:

(ii) against serial number 7,-

(a) for item (i) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
<p>“(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. <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.</p>	2.5	<p>Provided 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)].”;</p>



And no amendment was made in Sl. No 7(v) of Notification No. 11/2017 State Tax (Rate), issued in G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017.

16. The above amendment is based on the decision of the GST Council, in its 23<sup>rd</sup> meeting held on 11<sup>th</sup> November 2017 which is given supra. From the discussions, it is evident that the intention of having tax rate of 5% as in Sl.no 7(i) is only in respect of supply of foods in Standalone restaurants and other similar eating joints and that in Hotels wherein the declared tariff of any unit of accommodation is less than Seven thousand Five hundred only. That is it is applicable in cases where the consumers who purchase the food & beverages, do so on the premises of the supplier of such food & beverages and directly pay to such supplier.

17. In the instant case, as per the contract furnished by the applicant, it is seen that the applicant prepares food using his own labour at the premises of hospitals, who are the recipient of the service, and the applicant supply food to consumers who don't make payment to the applicant. The applicant is paid only by the hospitals. The above GST Council discussions and decisions clearly differentiate a restaurant/ canteen / mess run independently and the services extended by the applicant which fall under the category of outdoor catering. The very likely scenario of 'Outdoor Caterer' trying to call himself as a 'restaurant' has been discussed and the decision to lower the tax rate only to restaurants has been taken by the council. Therefore, the supply of food by the applicant in the premises of client, whether prepared in that place or brought and served is more appropriately covered by the description at Sl.No. 7(v) of the Notification No. 11/2017- State Tax (Rate), issued in G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017 and is liable to tax at 9% CGST and 9% SGST.

18. Further, GST Council in the 27<sup>th</sup> Council Meeting held on 4<sup>th</sup> May 2018, discussed and on 21.07.2018, the following decision as given in the press note was taken and the same is reiterated below:

*Rationalize 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 at GST rate of 5%; and making 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.*

19. To effect the above decision of the Council, the Notification No. 46/2017 - State Tax (Rate), issued in G.O.Ms No. 280, Revenue (CT-II) Department, Dt. 12-12-2017 was amended vide Notification No. 13/2018 - State Tax (Rate), issued in G.O.Ms No. 171, Revenue (CT-II) Department, Dt. 20-08-2018 as follows:

In the said notification, in the Table:-

(ii) against serial number 7,-

(a) for item (i) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
“(i) Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, 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	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.

<p>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.</p> <p><b>Explanation 1.-</b> 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.</p>		(iv)]
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20. From the above, it is clear that Sl.No 7(v) now only covers supply at functions which are occasional and event based. The supply of food to institutions which were earlier covered under entry at Sl.No.7(v) has been included under Sl.No. 7(i). In the instant case the applicant is making supply of services in the dining space of the hospitals which is squarely covered in the Explanation 1 to Sl.No 7(i) and thereupon is liable to tax at the rate of 5% subject to the condition that credit of input tax charged on goods and services used in supplying the services has not been taken.

21. Further, the above Notification No. 13/2018 - State Tax (Rate), issued in G.O.Ms No. 171, Revenue (CT-II) Department, Dt. 20-08-2018 was slightly amended vide Notification No. 27/2018 as under :

In the said notification,-

- (i) in the Table, -
  - (b) against serial number 7, in column (3), in item (i), in Explanation 1, the words “school, college” shall be omitted;

However, Notification No. 11/2017 - State Tax (Rate), issued in G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017 was totally revamped as per the 37<sup>th</sup> GST Council Meeting held on 20-09-2019 and Notification No. 20/2019-CT (Rate), dt. 30-09-2019, was issued which is as under :-

In the said Notification,

- (i) in the Table:-
  - (a) against serial number 7, for the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, -

(3)	(4)	(5)
“(i) Supply of ‘hotel accommodation’ having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	-
(ii) Supply of ‘restaurant service’ other than at ‘specified premises’	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)]
(iii) Supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms.	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)]
(iv) Supply of 'outdoor catering', at premises other than 'specified premises' provided by any person other than- (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	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 (iv)]
(v) Composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises' provided by any person other than- (a) suppliers providing 'hotel accommodation' at 'specified premises', or (b) suppliers located in 'specified premises'.	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 (iv)]
(vi) Accommodation, food and beverage services other than (i) to (v) above Explanation: (a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract State tax prescribed against them in column (4) subject to conditions specified against them in column (5), which is a mandatory rate and shall not be levied at the rate as specified under this entry. (b) This entry covers supply of 'restaurant service' at 'specified premises' (c) This entry covers supply of 'hotel accommodation' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent. (d) This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'. (e) This entry covers composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.	9	-";

22. In terms of the above amendment, from 01.10.2019, the supply of food by the applicant to hospitals fall under entry no. (ii) of S. No. 7 of Not. No. 11/2017 - State Tax (Rate), issued in G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017 and is subject to 5% GST with the condition of non-availability of input tax credit.

23. Thus, the supply of food to hospitals by the applicant depends on the time period (during which they are supplied) and will be subjected to tax as per the provisions of Not. No. 11/2017 - State Tax (Rate), issued in G.O.Ms No. 110, Revenue (CT-II) Department, Dt. 29-06-2017 amended from time to time.



In view of the forgoing facts, the Ruling is given as under :

**Ruling**

<b>Q1.</b> Whether the food supplied to hospital i.e. Government Hospitals, Private Hospitals and Autonomous Bodies on outsourcing basis the GST is chargeable? If GST is chargeable what is the tax rate?	Ans: Yes
<b>Q2.</b> If no GST is chargeable on the supply of food the GST already paid by the Hospitals and remitted to Government is recoverable from my future Bills.	Ans: For the period from 01.07.2017 to 26-07-2018 – 18% (CGST 9% + SGST 9%)
	For the period from 27.07.2018 onwards – 5% (CGST 2.5% + SGST 5%)  Provided that credit of input tax charged on goods and services used in supplying the service has not been taken

Sd/- J. Lakshminarayana  
ADDL. COMMISSIONER (State Tax )

Sd/- B. Raghu Kiran  
JOINT COMMISSIONER (Central Tax)

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- 2.The Assistant Commissioner (State Tax), Charminar Division.