



CHANDIGARH AUTHORITY FOR ADVANCE RULING
GOODS & SERVICES TAX
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C
CHANDIGARH-160017



ADVANCE RULING NO. CHD/CAAR/R/2021/01
(IN APPLICATION NO. AD040519000068D)

Date: 31.08.2021

Name and address of the applicant	:	Superintendent Model Jail Chandigarh
GSTIN of the applicant	:	04AAALS6222Q1ZO
Date of application	:	16.05.2019
Clause(s) of Section 97(2) of CGST Act, 2017, under which the question(s) raised.	:	(a) Applicability of a notification issued under the provisions of this Act; (b) Determination of the liability to pay tax on any goods or services or both and (c) Whether any particular thing done by the applicant with respect to any goods and/or services amounts to or results in a supply of goods and/or services, within the meaning of that term.
Date of Personal Hearing	:	30.06.2020, 19.07.2021
Present for the applicant	:	Shri Vikas Bansal

NOTE : Under Section 100 of the CGST Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under Section 99 of CGST Act, 2017, within a period of 30 days from the date of service of this order.

M/s. Superintendent Model Jail, Chandigarh (called as the 'Applicant' hereinafter) having GSTIN number 04AAALS6222Q1ZO, is model jail and is registered under the U.T. Goods and Services Act, 2017.

2. The applicant had filed an application in Form GST ARA -01, dated 16.05.2019, for seeking advance ruling on applicability of a notification issued under the provisions of this Act, determination of the liability to pay tax on any goods or services or both and whether any particular thing done by the applicant with respect to any goods and/or services amounts to or results in a supply of goods and/or services, within the meaning of that term.

3. The question on which the advance ruling is sought by the applicant is as follows:

- "Whether (a) Model Jail, Chandigarh and (b) Prisoner Training Rehabilitation and Welfare society (Model Jail, Vocational Institute) is Government, Government Authority, Local Authority or Government entity;
- Whether furniture items manufacture by jail inmates are liable for GST, if supplied to

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16/8/21

- a. Government, Government Authority, Local Authority or Government Entity
- b. Public at large;

- Whether Repair of Furniture items by jail inmates are liable for GST;
- Whether food prepared by jail inmates are classified as supply of goods or supply of services;
- Whether Foods prepared by jail inmates are liable for GST, if supplied to
 - a. Government, Government Authority, Local Authority or Government Entity
 - b. Jail Inmates through inner Canteen
 - c. Public at large;
- Whether sale of goods like Consumable, Eatables (except Foods prepared by Jail inmates) by the Model Jail to the jail inmates in the Jail premises are liable to GST. When such items are supplied at (a) Free of Cost, (b) Cost Price or (c) Cost Price plus 10% as Administrative Cost;
- Whether there is any exemption Notification or provision of Reverse Charge Mechanism is being applicable on above activities;
- Whether there would be change in tax implication if the above activity is done in the name and style of Prisoner Training Rehabilitation and Welfare Society (Model Jail, Vocational Institute);
- Whether GST input Credit is available on any items which is supplied free of cost to Prisoners, like Food (as mentioned above) or Medicine."

1. A copy of the said was forwarded to both Central Tax & State Tax jurisdictional officers constituted under Advance Ruling for examinations of the questions raised by the applicant under the applicable provisions of CGST Act, 2017 and UTGST Act, 2017, if any.
2. Personal hearing notice was served on the applicant to attend the same on 30.06.2020 before this Ruling. The same was attended by the authorized representative of the applicant Sh. Vikas Bansal. Further PHs were given on 15.07.2020, 05.08.2020 and 18.08.2020, which went unattended by the applicant.
3. Subsequently final PH was granted for appearance on 19.07.2021 wherein the applicant were requested for providing the documents pertaining to the constitution of Prisoner Training Rehabilitation and Welfare Society (Model Jail, Vocational Institute) and sale invoices of the items manufactured by jail inmates supplied to Government, Govt Authority Local authority or Govt Entity and public. The same was attended by the applicant and he agreed to submit documents subsequently. The same were submitted by the applicant vide its letter C.No. 5385 dated 28.07.2021. Hence we proceed to discuss the application based on submissions dated 16.05.2019 and vide letter dated 28.07.2021.
4. The submissions are discussed point wise:
 "There are following points which are required to be discussed before coming to the conclusion that whether the above activity is liable to be tax or not:

- i) Whether Model Jail, Chandigarh is State Government;
- ii) Whether Prisoner Training Rehabilitation and Welfare Society (Model Jail, Vocational Institute) is Government Authority or Government Entity;
- iii) Whether the activity or transaction undertaken by Model Jail, Chandigarh is Supply or not;
- iv) Whether the activity or transaction undertaken by Model Jail, Chandigarh is in relation to a function entrusted under Article 243G of the Constitution of India;
- v) Even if activity is taxable, whether there is any exemption on supply of Goods by the Model Jail, Chandigarh;
- vi) Even if activity is taxable, whether there is any exemption or reverse charge mechanism on provision of supply of services by the Model Jail, Chandigarh;

The point-wise analysis is as follows:

- i) Whether Model Jail, Chandigarh or PTRWS Model Jail Vocational Institute is State Government or Government Authority.

The brief extract of State Government and Government Authority are as follows:-

Section 2(53) of the various SGST Acts refers to their respective State Governments. The definition of the State Government has not been given under the State GST Acts. The definition of the State Government as per the General Clauses Act is as under:

"State Government"-

- (a)
- (b)
- (c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government; and shall, in relation to functions entrusted under Article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article. As mentioned above, Prisons and their administration, are a state subject covered by item 4 under the State List in the Seventh Schedule of the Constitution of India. Further, As per the definitions given under Notification no. 11/2017-Central tax (rate) and Notification no. 12/2017-Central tax (rate) dated 28th June 2017:

"Governmental Authority" means an authority or a board or any other body, - (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution.

"Government Entity" means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

From above, we conclude that Model Jail, Chandigarh is State Government and PTRWS

Model Jail Vocational Institute is Government Entity."

- Further in their reply dated 28.07.2021, the applicant submitted the memorandum of charter for "Prisoners Training, Rehabilitation and Welfare Society (Model Jail Vocational Institute), Model Jail, Chandigarh".

- **Observation:** The above view of the applicant has been examined. As prison is a constitutional function of the state subject, hence overall supervision and management of a jail is with the state governments/UT administrations. Thus, the Model Jail Chandigarh appears to be under State Subject and hence would be covered under State authority. However, the documents submitted by the applicant vide letter dated 28.07.2021 pertaining to Prisoners Training, Rehabilitation and Welfare Society (Model Jail Vocational Institute), Model Jail, Chandigarh have also been examined. The said documents nowhere indicate that the society has been set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority. Hence Prisoners Training, Rehabilitation and Welfare Society (Model Jail Vocational Institute), Model Jail, Chandigarh cannot be treated as Government entity.

ii) Whether the activity or transaction undertaken by Model Jail, Chandigarh is Supply or not.

As per provisions of Section-22 of GST Act, 2017 every supplier shall be liable to be registered under this act in the state or Union Territory, other than special Category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Twenty Lakh Rupees. Provided that where such person makes taxable supplies of goods or services or both from any of the special category states, he shall be liable to be registered if his aggregate turnover in the financial year exceeds Ten Lakh Rupees. The Scope of supply is explained under section 7 of CGST Act, 2017

Scope of Supply

(1) For the purposes of this Act, the expression "Supply" includes-

- (a) All form 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.

"business" 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;

From above, we conclude that although the activity may be covered under business but will not be covered under Supply as such activities or transactions undertaken by the Model Jail is in relation to the function entrusted under Article 243G of the Constitution of India.

Further, vide the letter dated 28.07.2021, the applicant has submitted sample invoices issued by the Superintendent Model Jail, Chandigarh to various Government Authorities, wherein they are charging CGST/ UTGST/IGST. Further, in voices issues to banks like HDFC as provided by the applicant the GST has been charged on FCM basis.

Observation: The above view of the applicant is accepted only to the extent that any business activity undertaken by the Model Jail Chandigarh in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall only be treated neither as a supply of goods nor a supply of

services. However from the invoices submitted by the applicants it has been found that the applicant in the current case is already charging the CGST/UTGST/IGST as applicable from various Government authorities and from other independent buyers on supply of services and goods. It is also not understood as to why this application has been filed by the applicant especially when they are charging the CGST/UTGST/IGST as applicable correctly. Thus the activities or transactions undertaken by the Model Jail, Chandigarh as indicated in the invoices submitted vide their letter dated 28.07.2021 and their submissions fall under the ambit of supply of services and goods.

(iii) Whether the activity or transaction undertaken by Model Jail, Chandigarh is in relation to a function entrusted under Article 243G of the Constitution of India.

Section 7(2) of the CGST Act 2017 overrides the definition of supply given under Section 7(1) of the CGST Act 2017. The inference derived here is that the activities or transactions covered under Section 7(2) will not be considered within the definition of supply at all. Section 7(2)(b) of the CGST Act 2017 states that the activities or transactions undertaken by the Central Government or State Government or local authority in which they are engaged as public authorities as may be notified by the Government on the recommendations of the Council will neither be treated as supply of goods nor supply of services. Thus, any activities or transactions which are notified by the Government under this clause will not be treated as supply altogether.

As of now, under Section 7(2) of the CGST Act, 2017, the Central Government has notified only one kind of activity in which Central Government or State Government or local authority are engaged as public authorities shall be treated neither as supply of goods nor supply of services. The activities specified herein are the services by way of an activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India.

Article 243G of the Constitution of India entrusts powers, authority and responsibilities to the Panchayats. The Constitution of India endows the Panchayats to such powers and authority to enable them to function as institutions of self-government. Also, it allows the law to contain provisions for the devolution of powers and responsibilities upon Panchayats subject to certain conditions with respect to:

- (a) the preparation of plans for economic development and social justice
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

The 11th Schedule of Indian Constitution was added in 1992 by the 73rd Constitution Amendment Act. This schedule contains 29 subjects. This schedule covers important topics such as Panchayat's powers, rural development, poverty alleviation, market, roads and drinking water etc. Eleventh schedule of Indian Constitution contains the following functional items placed within the purview of the Panchayats:

1. Agriculture including agricultural expansion
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Animal Husbandry, Dairying and poultry

4. Fisheries Industry
5. Minor irrigation, water management and watershed development
6. Social forestry and farm forestry
7. Small scale industries in which food processing industry is involved
8. Minor forest produce
9. Safe water for drinking
10. Khadi, village and cottage industries
11. Rural housing
12. Fuel and fodder
13. Rural electrification, including distribution of electricity
14. Road, culverts, bridges, ferries, waterways and other means of communication
15. Education including primary and secondary schools
16. Non-conventional sources of energy
17. Technical training and vocational education
18. Adult and non-formal education
19. Public distribution system
20. Maintenance of community assets
21. Welfare of the weaker sections of the in particular of the schedule caste and schedule tribes
22. Social welfare, including welfare of the handicapped and mentally retarded
23. Family welfare
24. Women and child development
25. Markets and Fairs
26. Health and sanitation including hospitals, primary health centres and dispensaries
27. Cultural activities
28. Libraries
29. Poverty Alleviation Programmes

As mentioned above, the main objective of the manufacturing activity in the jail is to convert its inmates into ordinary members of society by providing them with useful skills, education, and respect for the law. Further, supply of high quality nutrition food for distribution at Anganwari center on behalf of Secretary Social Welfare, Women & Children Development, Chandigarh Administration is done for the benefit of Women and Child Development.

Further, vide the letter dated 28.07.2021, the applicant has submitted sample invoices issued by the Superintendent Model Jail, Chandigarh to various Government

Authorities, wherein they are charging CGST/ UTGST/IGST. Further, in voices issues to banks like HDFC as provided by the applicant the GST has been charged on RCM basis.

Observation : From the invoices submitted and from the submissions of the applicant, it no where appears that any such service is being provided which falls under the scope of Article 243G of the Constitution of India. All the activities undertaken by the Model Jail, Chandigarh fall under the definition of "business". The supply of said goods/ services are applicable to GST. Also, the applicant in the current case is already charging the CGST/UTGST/IGST as applicable from various Government authorities and independent buyers on supply of services and goods. Thus it appears that the services/goods supplied by the applicant don't fall under the Section 7(2)(b) of the CGST Act, 2017.

iv) Even if taxable, whether there is any exemption on supply of Goods

The notification no. 01/2017-Central tax (rate) Dated 28.06.2017(as amended) notifies CGST rate schedule under section 9(1) of the CGST Act 2017. Further Notification no. 02/2017-Central Tax (Rate) dated 28.06.2017 has been issued specifying exemption from payment of CGST in r/o the goods notified under the notification issued under section 11(1) of the Act. The Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.2/2017-Central Tax (Rate), dated the 28th June, 2017. As per Notification No. 35/2017-Central Tax (Rate) dated 13th October, 2017 after S. No. 149 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

Sr. No.	Chapter Heading	Description of Goods
"150 -	Supply of goods by a Government entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority, against consideration received from Central Government, State Government, Union territory or local authority in the form of grants";	

From above, we conclude that even if activity is said to be taxable then it would be exempt supply if supplied to any Government Department namely Govt. Medical College & Hospital-32, Department of Social Welfare, Schools/Colleges, Chandigarh Police, Divisional Library Sector34 or any other Government. However, if supplied to public at large at open market then it may be taxable."

Vide the letter dated 28.07.2021, the applicant has submitted sample invoices issued by the Superintendent Model Jail, Chandigarh to various Government Authorities wherein they are charging CGST/ UTGST/IGST. Further, in voices issues to banks like HDFC as provided by the applicant the GST has been charged on RCM basis.

Observation : From the documents submitted by the applicants it appears that the business activities undertaken by them no where are covered under the scope of Article 243G of the Constitution of India. Also, the applicant in the current case is already charging the CGST/UTGST/IGST as applicable from various Government authorities and independent buyers on supply of services/goods which clearly indicate that they do not fall under the Section 7(2)(b) of the CGST Act, 2017. Here the applicant is already charging the CGST/UTGST/IGST as applicable on supply of goods/ services. Hence, exemption does not appear to be applicable under Notification No. 02/2017.

v) Even if activity is taxable, whether there is any exemption or reverse charge mechanism on provision of supply of services by the Model Jail, Chandigarh.

Notification No. 11/2017-Central tax (rate) Dated 28.06.2017 has issued specifying rate of CGST on intra state supply of specified services with services code tariff (SAC). Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 grants Exemption from payment of CGST on intra state supply of specified services. Services provided by one department of the Central Government/State Government to another department of the Central Government/ State Government are exempt under notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 [S No 8 of the Table]. Therefore, any service provided by Model Jail Chandigarh to another Central/State Government is exempt from tax.

From above, we conclude that above activity even if taxable may be treated as supply of services as food is prepared in the jail premises and then supplied to the department. There are various exemption provisions by which activity of supply of services are exempt if provided to Government or if gross consideration of activity is less than Rs 5,000.

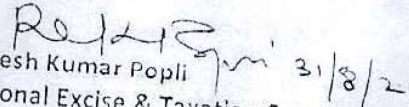
Further, Reverse charge mechanism is also applicable in case of supply of services by Government, or Local Authority to any person whose turnover exceeds Rs 20 Lakhs (Rs 10 Lakhs for special category states)"

Vide the letter dated 28.07.2021, the applicant has submitted sample invoices issued by the Superintendent Model Jail, Chandigarh to various Government Authorities, wherein they are charging CGST/ UTGST/IGST. Further, in voices issues to banks like HDFC as provided by the applicant the GST has been charged on RCM basis.

Observation : From the submissions and forgoing discussions, it is seen that the applicant in the current case is already charging the CGST/UTGST/IGST as applicable from various Government authorities and independent buyers including RCM. The applicant is already charging GST under RCM from HDFC banks as indicated in one of the invoices submitted the applicants vide their letter dated 28.07.2021. It is also not understood as to why this application has been filed by the applicant especially when they are charging the CGST/UTGST/IGST as applicable correctly.

RULING

The application is accordingly disposed of with the observations made against each point raised by the applicant. Exemption is not applicable under Notification No. 02/2017. Hence goods manufactured in prison, when sold at arms length for consideration is taxable in GST.


Rakesh Kumar Popli
Additional Excise & Taxation Commissioner


Dr. Puneeta Bedi
Joint Commissioner

Place: Chandigarh
Date: 31.08.2021.

Copy to:

1. M/s Superintendent Model Jail , Chandigarh.
2. Concerned Central/State Tax Officer.

Note : An appeal against this advance ruling order shall be made before the Chandigarh Appellate Authority for Advance Ruling for Goods & Service Tax, Chandigarh.

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