

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		27AMWPS0558HIZD
Legal Name of Applicant		ISMAIL AHAMAD SOOFI
Registered Address/ Address provided while obtaining user id		Shop No 007, Imperial Residency Near Aghakhan Palace, Yerwada Kalani Nagar, Yerwada Kalani Nagar, Pune-411006
Details of application		GST-ARA, Application No. 05 Dated 11.04.2018
Concerned officer		PUN-VAT-E- 603, PUNE
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The Applicant is engaged in providing catering services under two different models namely, Business to Consumer (B2C) Model and Business to Business (B2B) Model.
Issue/s on which advance ruling required		(i) Classification of goods and services or both. (ii) Applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1.1 The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by ISMAIL AHAMAD SOOFI (CHEFS CORNER), the applicant, seeking an advance ruling in respect of the following question.

Whether the catering services provided by the Applicant under B2B Model and B2C Model are to be classified as canteen/restaurant services under Entry. No. 7(i) of the Notification No. 11/2017 dated 28th June 2017 as amended by the Notification No. 46/2017- Central Tax (Rate) dated 14th November 2017 or as outdoor catering services under Entry. No 7(v) of the said Notification?

1.2 At the outset, we would like to make it clear that the provisions of both the CGST Act and the GST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submission (Brief facts of the case), as reproduced verbatim, could be seen thus -

Brief details of the services provided by the Applicant

- 2.1 The Applicant is in the business of providing catering/canteen services to the industries and corporates.
- 2.2 The Applicant enters into contract with companies for providing catering services to its employees by following either Business to Business (B2B) Model or Business to Consumer (B2C) Model.
- 2.3 Under B2C Model, the Applicant enters into contract with the companies to provide catering services to the employees of the companies. In such type of the contracts, the amount of consideration is paid by the employees directly to the Applicant as per the agreed schedule, which is generally on monthly basis. All the risk with respect to the excess food is borne by the Applicant.
- 2.4 Under B2B Model, the Applicant enters into contract with the companies to serve food and beverages to the employees of the companies in the cafeteria designated within the companies' premises. In this model, the food is directly served by the Applicant to the employees of the companies. In such type of the contracts, the amount of consideration is paid by the companies directly to the Applicant as per the agreed schedule.
- 2.5 Under both the Models, the food is prepared either in the kitchen located in the company's premises or in the centralized kitchen located outside the company's premises.
- 2.6 Under both the Models, the company may provide the facilities such as utensils, electricity, equipment, furniture, pest control services etc. to the Applicant for running the canteen facility in its premises, depending upon the contractual arrangement.
- 2.7 The Applicant has to maintain the cleanliness in the canteen as per the requirements of the companies. In most of the cases, the Canteen Committee set up by the Company will inspect the quality standards of materials and it can also reject the materials of bad quality. Under both the Models, the food items to be supplied in the canteen and its rates are as per the agreement between the company and the Applicant.
- 2.8 It is important to note that as per Section 46 of the Factories Act, 1948, the certain companies/institutions are under statutory obligation to provide canteen services to its employees. Under such circumstances, the companies/institutions outsource the activity of running the canteen to the third-party service providers, like the Applicant.
- 2.9 Presently, the Applicant treats the catering services provided by it under B2C Model as canteen/restaurant services under Entry. No. 7 (i) of Notification No. 11/2017 dated 28th June 2017 as amended by the Notification No. 46/2017- Central Tax (Rate) dated 14th November 2017 and discharges GST at 5% cumulatively (CGST & SGST). For the catering services provided by it under B2B Model, the Applicant treats it as outdoor catering services under Entry 7 (v) of the abovementioned Notification and discharges GST at 18% cumulatively (CGST & SGST). However, given the absence of clarity in the area of catering services, the Applicant would like to seek an advance ruling whether the catering services provided by it under both the Models would amount to supply of canteen/restaurant services or supply of outdoor catering services?

Additional submissions on 10.07.2018

Mr. Ismail Ahamad Soofi (Prop. of Chef's Corner)

.... Applicant

SYNOPSIS

1. Mr. Ismail Ahamad Soofi proprietor of 'M/s. Chef's Corner' (hereinafter referred to as 'Applicant') has filed an application before this Hon'ble Authority on 11.04.2018. The Applicant in this regard was granted an opportunity of personal hearing on 27.06.2018 wherein the Applicant through its authorized representative made detailed submissions covering certain additional grounds apart from the submissions made in the application. Therefore, in this regard, the Applicant wishes to make the following additional submissions which are without prejudice to the submissions made in the advance ruling application.

SUBMISSIONS

- A. **Under the Service Tax regime, the Revenue has accepted the Applicant's contention that it's business is covered under the definition of 'canteen service' and is not a 'outdoor catering' service.**

- A.1 The Applicant submits that the revenue authorities have already accepted the contention of the Applicant that the services provided by the Applicant squarely fall under the definition of "canteen service". In this regard, the Applicant refers to the dispute raised by the department under the Service tax regime.
- A.2 Under the Service Tax regime, the Applicant was, inter-alia, engaged in providing services in relation to serving of food or beverages to the employees of Lear Automotive India Pvt. Ltd., in the canteens maintained within the factory premises of Lear Automotive at Bhosari and Chakan. Both the factories of Lear Automotive (Bhosari and Chakan) are covered and are operating in accordance with the statutory requirements contained under the Factories Act, 1948. The Applicant was charging Service Tax on these transactions to Lear Automotive for the canteen services provided to them.

Existing law during the relevant period

- A.3 In this regard, during the relevant period, the mega-exemption Notification No. 25/2012-ST dated 20.06.2012 was issued by the Government to provide exemption from payment of service tax to certain services listed thereunder. Entry No. 19 of the aforesaid Notification provides exemption to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year. The relevant entry reads as under:

"19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a license to serve alcoholic beverages."



- A.4 It is further submitted that the legislature never intended to grant benefit of exemption to air-conditioned restaurants, but because of this entry, the exemption was being availed by such restaurants.
- A.5 To give effect to the legislative intent, an amendment was made to Entry No. 19 vide Notification No. 3/2013-ST dated 01.03.2013. The amended Entry No. 19 reads as follow:
"19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year."
- A.6 After the said amendment was carried out in Entry No. 19 of the said Notification, the wrongful availment of service tax exemption was stopped, but due to this, the canteens in the factories established as per the Factory Act, 1948 and having air-conditioning/ central air-heating facility was unable to avail benefit of service tax exemption. In order to address this concern, the legislature inserted a new Entry No. 19A vide Notification No. 14/2013-ST dated 22.10.2013 wherein, the legislature specifically granted exemption to the canteens having air-conditioning facility.
- A.7 During the year 2015, the Applicant was informed by Lear Automotive that service tax is not payable on the canteen services provided by the Applicant as the same were exempted vide the above-referred notifications. Therefore, on a careful perusal of Entry 19 of the Notification and the requirements therein, the Applicant was of the view that the Applicant is fulfilling all essentials of the said Notification and thus, the services of providing food and beverages to canteens maintained under the Factory Act, provided to Lear Automotive is exempt and it is not liable to pay tax on the same.
- A.8 Since, the Applicant was not liable to pay service tax on its services, it filed a Refund Application dated 27.11.2015 for Rs. 6,63,926/- for claiming the refund of service tax paid by it on the services in relation to serving of foods and beverages provided at the canteen maintained in the factory of Lear Automotive in Form-R under Section 11B of the Central Excise Act, 1944.
- A.9 However, the refund claim of the Applicant was rejected by the Ld. Assistant Commissioner (Refund), Service Tax, Pune Commissionerate vide his **Order-in-Original No. R/693/2015-2016 dated 21.03.2015** on the ground that the Applicant is not eligible for exemption under the aforesaid notifications since they are not available for 'outdoor catering services'.
- A.10 The Applicant then filed an appeal against the above-referred OIO dated 21.03.2015 on various grounds. The appeal was decided by the Ld. Commissioner, Service Tax, (Appeals), Pune vide his **Order-in-Appeal No. PUN-SVTAX-000-APP-195-16-17 dated 23.08.2016** (Attached herewith as **Annexure-1**). The issue involved in the appeal was whether canteen services provided by the Applicant are exempt under Entry 19 of the Mega Exemption Notification. No. 25/2012 dated 20.06.2012. It was held that the words contained in the Entry 19 are "restaurant, eating joint or mess." and the same does not include the word 'canteen'. Therefore, taking the inclusivity of the terms into consideration the term 'canteen' could not be read within the ambit of Entry 19. Thus, the Applicant is liable to pay Service Tax for the services being provided at the Bhosari unit. It is pertinent to note here that the exemption was denied to the Applicant on the ground that 'canteen' services are not included in the Entry 19 of the Mega Exemption Notification No. 25/2012 dated 20.06.2012. However, the Ld. Commissioner (Appeals) had accepted the contention of the Applicant that the services provided by the Applicant are indeed canteen services and it was precisely the reason the Applicant was denied exemption at the Bhosari unit.
- A.11 With regards to the second issue of whether, the exemption could be provided to the Applicant under Entry No. 19A of Notification No. 25/2012-ST (as amended by Notification No. 14/2003-ST), it was held that the Applicant fulfilled both the conditions as stated under:
 a) Of serving food at a canteen which is maintained in a factory covered under Factory Act, 1948
 b) The canteen has an air-conditioned facility.
- A.12 In light of the above, the Ld. Commissioner (Appeals) held that the Applicant's canteen facility at the Chakan unit was eligible for exemption under the Entry No. 19A of Notification No. 25/2012-ST (as amended by Notification No. 14/2003-ST).
- A.13 The Applicant respectfully submits before the advance ruling authority that in light of the above discussion it is clearly understood that the issue of whether the Applicant is providing canteen services has been settled in favor of the Applicant and stands settled under the previous regime. The OIA dated 23.08.2016 has categorically held that the services provided by the Applicant are in nature of 'canteen' services.
- A.14 It is submitted that the Ld. Commissioner (Appeals) has in-fact proceeded to pass the order on the premise that the Applicant is involved in providing 'canteen' services. As explained in the OIA dated 23.08.2016, the distinction between the entries no. 19 and 19A of the Exemption Notification was the mere fact that entry 19 didn't include canteen services while Entry no. 19A provides exemption to the canteens which have an air-conditioner at any time during the year.
- A.15 Even though, no explicit definition has been given by to the term 'canteen' in the discussions/findings of the aforesaid order, however, the Applicant has been duly recognized as running a canteen under the earlier service tax regime and the same has been accepted as per the OIA dated 23.08.2016.
- A.16 However, under the present law even canteen has been included in the same entry as an eating joint, restaurant and canteen under serial no. 7(i) of the Notification No. 11/2017 -Central Tax(Rate) dated 28.06.2017 (hereinafter referred to as the "rate notification") (reproduced at para B.9) and therefore it should be given the same treatment.
- A.17 The OIA dated 23.08.2016 has been accepted by the Department in so far as no appeal has been filed against the same by the Department. Therefore, it is clearly understood that the Department has accepted the



contention of the Applicant that the services provided by the Applicant are in the nature of 'canteen' services only and the same cannot be classified as 'outdoor catering' services.

B. The nature of the services provided by the Applicant has remained the same under the GST regime and therefore the services provided by the Applicant will be considered as 'canteen' service even under the GST regime and the Department cannot contend to the contrary.

B.1 The Applicant submits that the nature of services provided by the Applicant has remained the same under the existing law as it was under the previous regime of Service Tax law. Therefore, the Department cannot contend now that the Applicant provides 'outdoor catering' services having accepted the fact that Applicant is providing 'canteen' services.

Position under the GST regime

B.2 The earlier regime under Service Tax law has now been replaced with the newly introduced Goods & Service Tax. Under the newly introduced GST regime, any supply of goods or services or both such as sale, barter, exchange, license, rental, lease, or disposal which is made for a consideration in the course of furtherance of business is taxable under the Central Goods & Services Act, 2017 (hereinafter referred to as the "CGST Act") and the respective State GST Acts.

B.3 Further, Clause 6(b) of Schedule II of the CGST Act deems the supply of food and beverages for a consideration as a supply of service. The said clause reads as under:

"supply by way 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 (other than alcoholic liquor for human consumption), where such supply or service is for cash deferred payment or other valuable consideration."

B.4 Further, the rates for the supply of services were notified vide the rate notification. Serial No. 7 of the above-referred notification notified the rate for services provided by a canteen and outdoor caterer. The relevant paras of the said notification read as follows:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
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, neither having the facility of air - conditioning 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	-
		(iv) 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, provided by a restaurant, eating joint including mess, canteen, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year	9	-
		(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	-

B.5 The above notification was amended by the Central Government vide its Notification No. 46/2017- Central Tax(Rate) dated 14.11.2017 wherein the item nos. (i) was substituted as following:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
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,	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)].

		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. 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.		
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B.6 Thus, on a perusal of the above paragraphs, it is understood that the services provided by a restaurant, mess, canteen or an eating joint have been sought to be taxed at 5% (2.5%+2.5%) provided the supplier has not availed any ITC in respect of the same. In this regard, attention is also invited to entry at Serial No. 7(v) of the rate notification which specifies that the services provided in the nature of 'outdoor catering' services are taxable at the rate of 18% (9%+9%).

B.7 Thus, it is imperative at this juncture to identify as to whether the services provided by the Applicant fall under the category of services covered by Serial No. 7(i) or Serial No. 7(v) of the rate notification and the taxability of the said service will be determined accordingly.

B.8 In this regard, the terms 'Restaurant', 'Canteen', 'Outdoor catering', 'Caterer' are not defined under GST law. For better understanding and clarity, we will refer to the dictionary meaning of these terms and other interpretative aids. In this regard, reference is made to the following definition of canteen as given under various dictionaries:

DICTIONARY	DEFINITION
Cambridge English Dictionary	A place in a factory, office, etc. where food and meals are sold, often at a lower than usual price
Oxford Dictionary	A restaurant provided by an organization such as a college, factory, or company for its students or staff.
Collins Dictionary	A canteen is a place in a factory, shop, or college where meals are served to the people who work or study there.
Vocabulary.com	A canteen is a store that sells food and drink at an institution like a camp, college, or military base. A canteen can also be a small container used to carry water to drink.
Idoceonline.com	A place in a factory, school etc where meals are provided, usually quite cheaply

B.9 The Applicant humbly submits that in light of the definitions as reproduced above, broadly speaking a canteen is a facility situated in an institution, college or office wherein meals are provided to the members, students or employees, for a consideration. The Applicant's business squarely falls under the definition of canteen services. The Applicant submits that in most of the cases it is involved in cooking the food and beverages at the factory premises and the same is supplied to the employees of the clients for a consideration. Whereas in some cases, the Applicant prepares the food elsewhere at a central kitchen facility and further brings the same to the client's premises for further supply to the employees of the factory.

B.10 Therefore, the Applicant squarely falls under the Serial No. 7(i) of the rate notification and is eligible to collect tax at the rate of 2.5% subject to the conditions mentioned therein.

B.11 The contention of the Applicant is further clarified by the plain reading of the Circular No. 28/02/2018-GST dated 08.01.2018 read with corrigendum issued vide Circular No. 28/02/2018 dated 18.01.2018. The aforesaid circular while clarifying the taxability of mess facility provided in educational institutions stated that the supply of food or beverages by a mess or canteen is taxable at 5% without ITC and the fact whether the said service is supplied by the institution or a third party is immaterial. The corrigendum issued to the above-referred circular further clarified as follows:

"2.1 If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition given under para 2(y) of notification No. 12/2017-Central Tax (Rate), then the same is exempt. [Sl. No. 66A of notification No. 12/2017-Central Tax (Rate) refers]

2.2 If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service at entry 7(i) of notification No. 11/2017-CT (Rate) [as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017] to the concerned educational institution and attracts GST of 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken, effective from 15.11.2017."

B.12 The above corrigendum supports the contention of the Applicant that if food or drinks are supplied in a mess or canteen by anyone other than the institution, college or the company itself then the same is taxable at the rate of 5% provided no ITC has been taken on the goods and services used in supplying the said service. It is pertinent to note here that the above-referred circulars have used the example of education institutions only for clarificatory purposes and it is not the case here that the circular is restricted to only the mess or canteens operating in education institutions. Entry 7(i) of the rate notification includes all kinds of mess, canteens, restaurant and eating joints and is not restricted to the ones operational at the educational institutions.



- B.13 In this regard, the Applicant places reliance upon the sample agreements entered into with its clients namely Renishaw Metrology Systems Limited and Corning Technologies India Private Limited. The same are collectively attached herewith as **Annexure-2**. Further the invoices raised by the Applicant in respect of the above sample agreements are collectively attached herewith as **Annexure-3**. A perusal of the relevant entry under the notification, above-referred circular and the sample agreements makes it sufficiently clear that the services provided by the Applicant are in the nature of canteen services. The Applicant is primarily engaged in the business of supplying food and beverages in the canteen premises of the factory and the consideration for the same is charged from the employees of the factory either directly or indirectly. Further, the food supplied by the Applicant is available only to the employees/ authorized personnel of the factory and is serviced in a designated area. These facts are established in the sample agreements attached above.
- B.14 The Applicant submits that it has already explained in the preceding paras that it is engaged in providing services which squarely fall under canteen services and the same are liable to be taxed accordingly. Further, in this regard the Applicant submits that the nature of services provided by the Applicant has not changed under the previous regime as well as the existing regime. The Applicant having satisfied that it provides canteen services should squarely fall under Entry 7(i) of the rate notification.
- B.15 In this regard, the Applicant submits that under the earlier law the Applicant was denied the exemption since the term 'canteen' was not mentioned under the relevant entry, however, the Entry No. 7(i) of the rate notification includes the term 'canteen' also and the therefore the same has to be construed accordingly. Further, the Department has also accepted the contention of the Applicant that it is engaged in providing canteen services and not outdoor catering services.
- B.16 Therefore, in light of the above submissions, the Applicant falls under the definition of canteen and the same do not fall under the ambit of 'outdoor catering' services.
Without prejudice to the above, even if it is presumed that the services provided by the Applicant can be covered by both the categories of 'canteen' services and 'outdoor catering' services, the Applicant should be given the benefit of lower rate of tax
- B.17 In view of the above, the Applicant further submits that assuming without admitting the services supplied by the Applicant falls under both the Serial No. 7(i) and Serial No. 7(v), the Applicant should be given the benefit of the lower rate of tax. The Applicant submits that referring to the above discussion, it has been clearly established that the services supplied by the Applicant are 'canteen' services. However, the Department's contention is that the services provided by the Applicant are covered under the category of 'outdoor catering' service.
- B.18 Assuming, that the services provided by the Applicant contains elements of both 'outdoor catering' and 'canteen' services, the Applicant should be given the benefit of adopting the lower rate of tax. The Applicant submits that it is an established rule of law that when a particular service is capable of falling under two categories, the assessee can adopt the classification beneficial to it.
- B.19 In this regard, the Applicant places reliance upon the decision of the Hon'ble Supreme Court in the case of **Minwool Rock Fibers Ltd. [2012 (278) ELT 581 (SC)]** wherein it has been clearly held that in a classification dispute if a particular good is capable of falling under two competitive headings then the heading beneficial to the assessee should be adopted. The relevant portion of the said decision reads as under:
"13. We have already noticed the relevant entries to which we are concerned with in this appeal. No doubt there is a specific entry which speaks of Slagwool and Rockwool under Sub-heading No. 6803.00, but there is yet another entry which is consciously introduced by the Legislature under sub-heading No. 6807.10, which speaks of goods in which Rockwool, Slagwool and products thereof are manufactured by use of more than 25% by weight of blast furnace slag. It is not in dispute that the goods in question are those goods in which more than 25% by weight of one or more of red mud, press mud or blast furnace slag is used. If that be the case, then, in a classification dispute, an entry which is beneficial to the assessee requires to be applied and the same has been done by the adjudicating authority, which has been confirmed by the Tribunal. Alternatively, it can be said that Sub-heading No. 6807 is specific to the goods in which more than 25% by weight, red mud, press mud or blast furnace slag is used. The heading is based entirely on material used on composition of goods. A tariff heading, based on composition of goods, is also specific heading like a heading based on commercial nomenclature. Therefore, we are of the view that the goods in issue are appropriately classifiable under Sub-heading No. 6807.10 of the tariff entry."
- B.20 Applying the ratio of the above case to the facts of the present matter, it is clearly understood that in case the Applicant's services fall under both the categories of 'outdoor catering' as well as 'canteen' then the same should be classified under the category of 'canteen' services as the same is beneficial for the Applicant. Accordingly, the present services are liable to be taxed at the rate of 5% as per the Serial No. 7(i) of the rate notification.
- B.21 In this regard, reliance is also placed upon the case of **Share Medical Care vs Union of India [2007 (209) E.L.T. 321 (S.C.)]**, wherein the Hon'ble Supreme Court held in clear terms that in a case where the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. The Hon'ble Apex Court in pertinent part held as follows:
"16. In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier, exemption was sought under category 2 of exemption notification, not under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. On the contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the

authorities to grant such benefits if the applicant is otherwise entitled to such benefit. Therefore, non-consideration on the part of the Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper. The prayer ought to have been considered and decided on merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in the way of the applicant in claiming exemption under category 3 if the conditions laid down thereunder have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside."

...Underlining Supplied

- B.22 Similarly, the Applicant submits that since the tax rate of 5% is a benefit given to the services falling under the Serial No. 7(i) of the rate notification, the same should be extended to the services provided by the Applicant also by adopting the principle of beneficial interpretation.
- C. **The Advance ruling passed in the case of Rashmi Hospitality Services Pvt. Ltd. is not applicable in the present case**
- C.1 At this juncture it is pertinent to note that recently an advance ruling was passed by the Gujarat Advance Ruling Authority in the matter of **Rashmi Hospitality Services Pvt. Ltd.** reported at **2018-VIL-35-AAR** wherein the taxability of services similar to those of the Applicant was discussed. In the said case, the applicant therein was engaged in the business of catering and supply of food, beverages and other eatables (non-alcoholic drinks) i.e. complete services at various places of their customers who have in-house canteen in their factories. The Applicant i.e. Rashmi Hospitality Services Pvt. Ltd. had filed an application before the Gujarat Advance ruling authority on the following issues:
- Issue 1- Whether the rate of tax on supplies made to the recipient would be 12% or 18%?
- Issue 2- Whether the activity undertaken by the applicant is in nature of supply of service provided by the restaurant eating joint including mess canteen or in nature of supply of outdoor catering?
- C.2 The Gujarat Advance Ruling Authority finally held that the supply of services by Rashmi Hospitality Services Pvt. Ltd. is covered by Sr. No. 7(v) of the Notification No. 11/2017- Central Tax (Rate) as outdoor catering, attracting GST @18%. In this regard the Ld. Advance ruling authorities had relied upon the decision of the Hon'ble Allahabad High Court in the case of **Indian Coffee Worker's Co-op Society Ltd.** reported at **[2014 (34) STR 546 (All.)]**.
- C.3 The Hon'ble Allahabad High Court in the above-mentioned case had held that activities of providing food, beverages (alcoholic or non-alcoholic) or crockery and similar articles for any purpose or occasion which are provided at a place other than his own provided to him by way of tenancy or provided by the recipient will fall under the category of 'outdoor catering services' as defined under the Section (65) (76a) read with Section 65(24) of the Finance Act, 1994.
- C.4 The Applicant submits that the above-referred Advance Ruling passed by the Gujarat Advance Ruling Authority relying upon the afore-mentioned decision of the Allahabad High Court is not applicable to the present application
- C.5 **Firstly**, the Applicant submits that as per the Section 103 of the CSGT Act the advance ruling pronounced by an Authority or an Appellate Authority under the CGST Act is binding only on the following persons:
- The Applicant who had sought the Advance Ruling in respect of any matter
 - The concerned officer or the jurisdictional officer in respect of the Applicant.
- C.6 In the present case, the Applicant is different from Rashmi Hospitality Services Pvt. Ltd. i.e. 'Applicant involved in the aforesaid application and further even the concerned office is different. Therefore, the aforesaid advance ruling would not be applicable in the present application as it would hold no binding value in the Applicant's matter.
- C.7 **Secondly**, the aforesaid ruling has been passed relying upon the decision of the Hon'ble Allahabad High Court in the case of Indian Coffee Workers (supra) which is not applicable to the facts of the present case. The Hon'ble Allahabad High Court in the aforementioned case had held that it is immaterial as to who is the recipient of the service while determining whether a particular service is outdoor catering service or not. The Applicant submits that in light of the corrigendum issued vide the Circular No. 28/02/2018 dated 18.01.2018 (reproduced at para B.11) it is clearly established that the determination of a supplier and recipient of service is an important factor while deciding whether the service provided falls under the category of mess or canteen, under the GST law.
- C.8 Thus, the decision of the Allahabad High Court passed in the context of Service Tax law cannot be relied upon in light of the conflicting principles. In light of the same, the aforesaid ruling cannot be relied upon in the present case since the same follows the principle laid down in the Indian Coffee Workers decision which is inapplicable in the present case in light of the corrigendum issued vide Circular No. 28/02/2018 dated 18.01.2018.
- C.9 Further, the Allahabad High Court decision had held the services provided by the assessee in the said case on the ground that the services were provided by the assessee at a place other than his own and therefore the services were covered by the definition of 'outdoor caterer'. However, in the present case, as already submitted above there are also situations or transactions wherein the Applicant prepares food in a central kitchen and the same is only served at the premises of the client. Therefore, the facts involved in the Indian Coffee Workers case are distinguished from the present case and hence the ratio of the same cannot be applied in the present case.
- C.10 The Applicant also submits that in the case of B2C transactions of the Applicant, the services provided by the Applicant are akin to a restaurant. The entire risk of running the business lies upon the Applicant since the



consideration is paid by the employees and the same is not covered by the client company. However, the Allahabad High Court decision in the above case has not considered the possibility of the present services falling under the category of 'restaurant' service and hence the said decision is not applicable in the present case.

- C.11 Thirdly, the Applicant submits that the above ruling is not applicable in the present case insofar as it has failed to examine or decide the applicability of the Circular No. 28/02/2018 dated 18.01.2018 in the facts of the case. It is humbly submitted that the Circular No. 28/02/2018 dated 18.01.2018 is important to consider in the facts involved in the present case and the aforesaid ruling having failed to consider the same suffers from judicial infirmity and the same cannot be relied upon to decide the present case.
- D. **Without prejudice to the above, the Applicant submits that the B2C services provided by it are squarely covered by the scope of Restaurant services and hence the same should qualify as Restaurant services and accordingly be eligible to be taxed at 5%.**
- D.1 Without prejudice to the submissions made above, the Applicant submits that the services provided by the Applicant are clearly in nature of 'Restaurant' services and therefore the same would fall under Serial no. 7(i) of the rate notification.
- D.2 The Applicant submits that even if it is presumed that the Applicant is providing outdoor catering services to its clients, the services supplied under the B2C model would still fall under restaurant/canteen service and cannot be categorised as outdoor catering services. The services provided by the Applicant under its B2C model have been already explained under the application filed by the Applicant and are not being repeated here for the sake of brevity.
- D.3 The meaning of the term 'Restaurant' is given in the Concise Oxford English Dictionary as 'a place where people pay to sit and eat meals that are cooked and served on the premises.' The meaning of the term 'Canteen' is given in the above referred Dictionary as 'a restaurant in a workplace or educational establishment.'
- D.4 According to the above referred dictionary meaning, the term Restaurant means the place where people pay for dining out in the premises where the food is cooked and served. Furthermore, the term canteen means a restaurant (i.e. a place where people sit and eat meal) which is attached to a factory, school etc.
- D.5 Similar to the services provided in a restaurant, the Applicant has pre-fixed menu which cannot be altered by the consumer i.e. the employee. Further, the food and beverages are supplied at the place and time which are not decided by the consumer just like any restaurant.
- D.6 Thus, the Applicant submits that the services provided by it are akin to a restaurant service and the same should be taxed accordingly. In light of the above, the Applicant falls under the serial no. 7(i) of the rate notification and the services provided by it are liable to be taxed similar to the restaurant services.
- D.7 In this regard, the Applicant further wishes to place reliance upon a sample agreement entered into between the Applicant and Tata Consultancy Services Ltd. (TCS) which will further clarify the contention of the Applicant. A copy of the said agreement dated 23.03.2018 is attached herewith as **Annexure-4**. Further, the copy of the invoices raised by the Applicant on TCS is attached herewith as **Annexure-5**. Upon perusal of the said agreement it is clearly understood that the Applicant is in the business of supplying food and beverages at the client's premises and the said supply is restricted to the employees/guests/ any other authorized personnel of TCS and is not available to the general public. Further, the Applicant accepts food card/coupons directly from the employees of the client and encashes the same later on (Annexure B of the aforesaid agreement).
- D.8 In this regard, the Applicant wishes to further make a reference to the above agreement wherein the pre-decided menu is attached as Annexure-D to the agreement dated 23.03.2018. It is clear from the perusal of the same that the employees are provided restaurant services as they cannot alter the menu or personalise it to their own choice.
- D.9 In the present case, the recipient of the services (i.e. the employees) would have a limited choice of menu to select the meal from. Also, apart from the standard level of servicing, the employees would not be in position to demand for customization, personalization of the services from the Applicant. Therefore, it can be concluded that Applicant is providing the restaurant services to its employees under B2C model and the same is not covered by outdoor catering services.

QUESTIONS REQUIRING ADVANCE RULING

The question on which Advance Ruling is sought by the Applicant is as under:

The recent amendment made in the Notification No. 11/2017 - Central Tax (Rate) by Notification No.46/2017- Central Tax (Rate) has reduced the rate on the restaurant and canteen services from 9% to 2.5%, provided the credit of input tax charged on goods and services used in supplying such service has not been taken. In view of the above amendment in the tax rate, the question has arisen regarding the classification of services provided by the Applicant under the B2B Model & B2C Model as canteen/restaurant services chargeable at 5% cumulatively (both CGST & SGST) or outdoor catering services attracting 18% cumulatively (both CGST & SGST).

APPLICANT'S INTERPRETATION

C. Relevant legal provisions on canteen services under the current GST Regime.

- C.1 The terms 'canteen'/'restaurant' are not defined anywhere in the GST Act or under the erstwhile Service Tax Regime. Hence, reliance is placed on the dictionary meaning of the word 'restaurant'. The meaning of the term 'Restaurant' is given in the Concise Oxford English Dictionary as a place where people pay to sit and eat meals that are cooked and served on the premises.' The meaning of the term 'Canteen' is given in the above referred Dictionary as a restaurant in a workplace or educational establishment.'

- C.2 Some of the Dictionary meanings of the word 'canteen' are as under:
- A restaurant provided by an organization such as college, factory, or a company for its students or staff (ref: www.oxforddictionaries.com)
 - A restaurant attached to a factory, school, etc. providing meals for large number of people (ref: www.colinsdictionary.com)
 - A place in a factory, office, etc. where food and meals are sold, often at a lower than usual price (ref: www.dictionary.cambridge.org)
- C.3 Therefore, the canteen is understood to be a place, generally in an organization or institute such as factory, school, etc. where meals are provided. Therefore, to constitute a canteen it is important that: -
- Such place must be in organization, institutes such as factory, school, etc.
 - Meals must be provided at such place.
- C.4 In other words, reference to the term 'canteen' in the GST rate Notification is made to the place where the food is served. In clearer terms, it is said to be canteen services when the food is served in the premises of the companies as opposed to the food served in other places like restaurant etc.
- C.5 At this point, the Applicant would like to bring to your attention the Circular No. 28/02/2018-GST dated 08th January 2018 (hereinafter referred to as 'the Circular'). The relevant extract of the Circular is given below: *"Queries have been received seeking clarification regarding the taxability and rate of GST on services by a college hostel mess. The clarification is as given below:*
- 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 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. 46/2017CT (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."**
- Emphasis Supplied.
- C.6 The abovementioned Circular provides that the supply of food or drink provided by a mess or canteen to the students and staffs are to be classified under 5% category of catering services irrespective of such services being provided by the educational institution itself or is outsourced to an outside contractor. Also, to further clarify, a Corrigendum to the above circular was issued on 18.01.2018. The relevant extract of the Corrigendum to the Circular is given below:
- "In Para 2 of the said circular, for*
- "It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor."*
- read,*
- 3. If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is V the definition given under para 2(V) of notification No. 12/2017 Central Tax (Rate), then the same is exempt. [Sl. No. 66(a) of notification No. 12/2017-Central Tax (Rate) refers]**
- 2. If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service at entry 7(i) of notification No. 11/2017-CT (Rate) as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017) to the concerned educational institution and attracts GST of 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken, effective from 15.11.2017."**
- ... Emphasis Supplied.
- C.7 Therefore, from the above Circular, it is amply clear that the catering services provided by anyone other than the educational institutions (i.e. an outdoor caterer) to the students, staff, etc. of the education institution, is to be treated as canteen' services as covered under Entry No. 7(i) of Notification No.11/2017 - CT (Rate) and would attract 5% GST cumulatively (CGST & SGST).
- C.8 In view of the above submissions, the Applicant has analysed the catering services provided by it under both the Models, as follows:
- B2C Model**
- C.9 The Applicant submits that the catering services by it under B2C Model involves supply of food or drinks to the employees in the canteen established in the premises of the companies/institutions. Under this Model, the Applicant recovers the charges for supply of food or drinks from the staff/employees.
- C.10 On reading and applying the meaning of the term 'canteen' and also the Circular to the Applicant's B2C Model, the Applicant submits that the catering services provided by it to the employees of the companies/institutions fall under the category of canteen services attracting 5% GST (CGST & SGST) as the food and drinks are supplied by the Applicant in the companies' canteen.
- B2B Model**
- C.11 Like B2C Model, under B2B Model also, the Applicant supplies food and drinks in the canteen to the employees of the companies and institutions. Only the primary difference under this model is that the consideration for the food and drinks supplied to the employees is paid by the companies/institutions on monthly basis or at agreed intervals instead of the employees directly.
- C.12 The intention of the Applicant and the companies/ institutions under the B2B Model, is also to run and provide the canteen services to the employees and staff of such company/institution.
- C.13 Therefore, regardless of the fact, whether the consideration towards the services is paid directly by the employees or the companies/ institutions, the nature of services remains to be canteen services and not otherwise.



D ISSUES RELATING TO ADVANCE RULING AND APPLICANT'S UNDERSTANDING.

Question

- D.1 Whether the catering services provided by the Applicant under B2B and B2C Models are to be classified as canteen services?

Applicant's Understanding

- D.2 Based on the above discussions and keeping in mind the dictionary meaning of the term 'canteen' and the Circular No. 28/02/2018-GST dated 08th January 2018, the Applicant is convinced that the supply of catering services provided by it to the employees of the companies/ institutions under both the Models are to be classified under Entry.No. 7 (i) attracting 5% GST (both CGST & SGST), irrespective of whether the consideration is received from the employees or from the companies.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

1. Question on which Advance Ruling is required -

Whether the catering services provided by the Applicant under B2B Model and B2C Model are to be classified as canteen / restaurant services under Entry No.7(i) of the Notification No.11/2017 dated 28 th June 2017 as amended by the Notification No.46/2017 Central Tax (Rate) dated 14 th November 2017 or as outdoor catering services under Entry No.7(v) of the said Notification ?

2. Brief facts of the services provided by the Applicant:

The Applicant is engaged in providing catering services under two different models namely Business to Consumer (B2C) and Business to Business (B2B) Model.

Under B2C Model, the applicant enters into contract with the companies to provide catering services to employees of the companies. The amount of consideration is paid by the employees directly to the Applicant as per the agreed schedule which is generally on monthly basis.

Under B2B Model, the applicant enters into contract with the companies to serve food and beverages to the employees of the companies in the cafeteria designated with the companies premises. In this model, the food is directly served by the Applicant to the employees of the companies. The amount of consideration is paid by the companies directly to the Applicant as per the agreed schedule.

Under both the Models, the food is prepared either in the kitchen located in the companies' premises or in the centralized kitchen located outside the companies' premises.

Presently, the Applicant treats the catering services provided by it under B2C Model as canteen/restaurant services under Entry No.7(i) of the Notification No.11/2017 dated 28 th June 2017 as amended by the Notification No.46/2017- Central Tax (Rate) dated 14 th November 2017 and discharges GST at 5% cumulatively (CGST & SGST). For the catering services provided by it under B2B Model, the Applicant treats it as outdoor catering services under Entry No.7(v) of the above mentioned Notification and discharges GST at 18 % cumulatively (CGST & SGST). The Applicant would like to seek an advance ruling whether the catering services provided by it under both the Models would amount to supply of canteen/restaurant services or supply of outdoor catering services ?

3. Legal Submission:

In the present case, the Applicant is engaged in providing catering services to employees of the companies under two different Models i.e. B2B Model and B2C Model. Applicant is an Outdoor caterer because the services which he provides as caterer are at a place other than his own place. The place for catering services is provided by the companies. The Applicant is an outdoor caterer who supplies food and beverages for a purpose. The purpose is to cater to employees of companies who use the facility of a canteen which is provided by the companies to their employees.

The Applicant is providing Outdoor Catering services which comes under Entry No.7(v) of the above mentioned Notification No.11/2017 dated 28 th June 2017 and attracts GST at 18% cumulatively (CGST & SGST) as per the Entry No. 7(v) of the said Notification. The Entry No.7(v) of the above mentioned Notification is as follows. "Supply, by way of or as part of any service or in any other manner whatsoever in outdoor catering wherein goods, being food or another 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."

As the Applicant is providing Outdoor Catering services, the amended Notification No.46/2017- Central Tax (Rate) dated 14 th November 2017 is not applicable to the Applicant. The Applicant is liable to pay GST at 18% cumulatively (CGST & SGST) on outdoor catering services provided by him as per Entry No.7(v) of the above mentioned Notification No.11/2017 dated 28 th June 2017.

Under Service Tax Regime, The expression "caterer" is defined in clause (24) of Section 65 of the Finance Act 1994 as follows:

"Caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar or accoutrements for any purpose or occasion."

The expression "Outdoor caterer" is defined in clause (76)(a) of Section 65 of the Finance Act 1994 as follows: "Outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services."

The view of Outdoor Catering services is expressed in the recent Judgement delivered by Hon. High Court, Allahabad on 10.04.2014 in case of M/s. Indian Coffee Workers' Co-operative Society Limited Vs. Commissioner of Central Excise & Service Tax, Allahabad (Central Excise Appeal No.50 of 2014). As per the Judgement delivered by

Hon.High Court, Allahabad , the Assessee was liable to the payment of service tax as an Outdoor Caterer within the meaning of Section 65(105) (zzt) read with clauses (24) and (76a) of the Finance Act, 1994.

04. HEARING

4.1 The case was taken up for preliminary hearing on dt. 16.05.2018, with respect to admission or rejection of the application nobody was present from the side of applicant. The jurisdictional officer, Sh. Y. A. Lokre, Dy. Commr. of S.T.(PUN-VAT-E-603), Pune appeared and made written submissions.

4.2 The application was admitted and final hearing was held on 26.06.2018 , Sh. Sandeep Sachdeva, Advocate along with Sh. Nirav Karia, Advocate appeared and made oral and written submissions as per their ARA. Sh. Sandeep Sachdeva, Advocate requested for grant of further two weeks' time for making some more written submissions which is considered and they were requested to make submissions as desired latest by 09.07.2018 without fail. The jurisdictional officer, Sh. A. Lokre, Dy. Commr. of S.T.(PUN-VAT-E-603), Pune appeared and stated that they have already made written submissions.

05. OBSERVATIONS

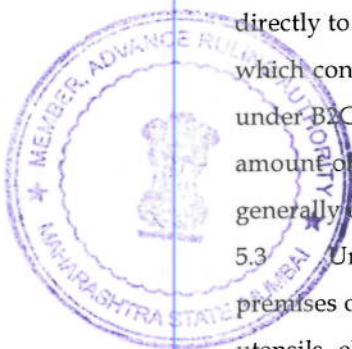
5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department.

5.2 The applicant has submitted that they enter into contract with industries and corporates to provide catering services which are of two types, namely Business to Business (B2B) Model or Business to Consumer (B2C) Model and have further submitted that under B2B Model, they serve food and beverages directly to the employees of the companies in the cafeteria designated within the companies' premises for which consideration is paid by the companies directly to the Applicant as per the agreed schedule and under B2C Model, they provide catering services to the employees of the companies and in this case, the amount of consideration is paid by the employees directly to the applicant as per the agreed schedule, generally on a monthly basis.

5.3 Under both the Models: (a) the food is prepared either in the kitchen located in the company's premises or in a centralized kitchen located outside the company's premises, (b) companies may provide utensils, electricity, equipment, furniture, pest control services etc. depending on the contract. (c) they have to maintain cleanliness in the canteen and in most of cases, a Canteen Committee set up by the Company will inspect the quality standards of materials, food items to be supplied in the canteen and (d) the food rates are as per the contract between the company and the applicant.

5.5 We find that at present they are treating catering services provided under B2C Model as canteen/ restaurant services under Entry. No. 7 (i) of Notification No. 11/2017 dated 28th June 2017 as amended and are paying GST at 5% cumulatively (CGST & SGST). Under B2B Model, they are treating such catering services as outdoor catering services under Entry 7 (v) of the abovementioned Notification and are paying GST at 18% cumulatively (CGST & SGST).

5.6 We find that there is no doubt in the applicant's mind that they are providing catering services as mentioned in their application. The only doubt that has been raised by them is whether the said catering services, under both the models, supplied by them are to be classified as canteen/restaurant services under Entry. No. 7(i) of the Notification No. 11/2017 dated 28th June 2017 as amended, or as outdoor



catering services under Entry. No 7(v) of the same Notification. In effect they have no doubt about the taxability of the catering services provided by them.

5.7 We find that under Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017, Serial No. 7 Heading 9963(i) covers accommodation, food and beverages services. The nature of services and the applicable tax rate on the same is as under:-

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, neither having the facility of air-conditioning 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	-
		(ii) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	6	-
		(iii) 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, provided by a restaurant, eating joint including mess, canteen, having licence or permit or by whatever name called to serve alcoholic liquor for human consumption.	9	-
		(iv) 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, provided by a restaurant, eating joint including mess, canteen, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.	9	-
		(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) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff	9	-
		(vii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, including but not limited to food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) together with renting of such premises.	9	-
		(viii) Accommodation in hotels including five star hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff	14	-
		(ix) Accommodation, food and beverage services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above.	9	-



The above notification was amended by the Central Government vide its Notification No. 46/2017- Central Tax(Rate) dated 14.11.2017 wherein the item nos. (i) was substituted as following:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
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. 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.	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)].

5.8 We find, from the submissions made by the applicant, that the provisions of clause (ii), (iii), (vi), (vii) and (vii) of the above mentioned Notification do not apply to the current facts in hand. Therefore the issue before us is to ascertain whether the activities of the applicant would fall under Sr. No. 7, Headings 9963(i), or (v) of the above referred Notification.

5.9 We find that further amendments have been made to clause (v) of above mentioned Notification No. 14/2017 vide Notification No. 13/2018-Central Tax (Rate) as under:-

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

(3)	(4)	(5)
"(v) Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.	9	-";

5.10 Thus from the above amendments it is clear that the services supplied by the applicant in normal course does not appear to be covered under clause (v) of the above said Notification. From a reading of clause (v) before and after the amendment it is seen that the word 'outdoor catering' does not find a mention post the amendment. Hence it can be inferred that the said clause post the amendment made considers outdoor catering as a *Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.*

5.11 Since the supply of catering services provided by the applicant cannot be considered to be in the nature of "outdoor catering", we shall now discuss whether the activities of the applicant would fall under

Sr. No. 7, Headings 9963(i) of the above referred Notification. To understand whether the activity of the applicant as claimed is 'canteen services' we would be required to examine as to what a canteen is.

5.12 We find that word "canteen" as per Cambridge English Dictionary is "a place in factory, office, etc. where food and meals are sold often at a lower than usual price".

"A place in a factory, office, etc. where employees can buy food and meals at a lower price".

Further as per general understanding a "canteen" is a small cafeteria or snack bar, especially one in a military establishment, school or place of work. Thus broadly we find that "a canteen is mostly referred to as an eating place provided by an organization, college, university, military, police, government, for the staff/students workforce.

In the present application we find that the applicant has clearly stated that they are providing services only to industries and corporates and for their employees.

We find that the main features that are generally seen in a canteen are as under:-

- (1) The canteen is inside the premises of the industry/corporate.
- (2) The canteen building may have cooking facilities inside it and mostly facilities such as LPG cylinder, furniture, refrigerator, water cooler, cooking and serving utensils etc. being all or some of these items are provided by the company on returnable basis in good and proper condition. Also, generally water and electricity is also provided by the company on chargeable or maybe non chargeable basis.
- (3) Some or all of the food, snacks or tea and coffee may be cooked or prepared in the canteen itself.
- (4) The items are sold to the employees directly by the contractor at agreed prices which are mostly subsidized and the sale amounts are collected by the contractor themselves. However prepaid meal vouchers may also be given to employees by the company which are to be accepted by the contractor.
- (5) The contractor may be required to serve to employees by counter service or even table service in respect of senior officials of the company.
- (6) The company communicates to the contractor only approximate estimated quantity consumption and it does not guarantee any quantity which may vary on a daily basis.
- (7) The contractor can generally sell additional items with the approval of canteen management, company management and rates of all items are to be displayed.
- (8) The contractor may be required to make special arrangement for lunch, breakfast, dinner or refreshment when required by the management, at mutually agreed rates.
- (9) The menu is decided by the company from time to time.
- (10) The service of contractor are generally to be monitored by designated officials of the company and they have full right to inspection of eatables, beverages, food prepared to ensure quality.
- (11) The contractor is required to engage his own employees and is required to follow statutory provisions as applicable.

5.13 We find that the applicant has provided three sample agreements entered into by them with its clients namely M/s Renishaw Metrology Systems Limited (RMSL) and M/s Corning Technologies India Private Limited (CTI) and also M/s. Tata Consultancy Services Ltd. (TCS).

5.14 In their contract with (RMSL) which is wef 01.04.2018 it is clearly seen from a reading of clauses under the heading 'REPRESENTATION OF CONTRACTOR' that the Contractor shall ensure that the food is cooked and carried from outside and no food item is prepared in the company premises using gas/electricity or otherwise. RMSL has under the contract assured the applicant of a minimum of 370 lunch meals. RMSL shall provide space, fixtures, fittings equipment, etc.



5.15 In their contract with CTI, it is again clearly seen from a reading EXHIBIT A to the agreement/contract that the location of the Kitchen of the applicant is at a distance of about 7 kms from the CTI plant and therefore it appears that the food is cooked and carried from outside and sold in CTI's premises. Here too it is seen that the applicant has been provided with space, utensils and other equipments, crockery, cutlery, water, electricity, cleaning of cafeteria, etc. Menu is also dictated by CTI in general.

5.16 In their contract with TCS, from a reading of para 13 of Annexure A to the contract/agreement it is seen that the food is cooked at some main kitchen premises and served in TCS's premises. Para 12 of the said Annexure mentions that TCS shall provide Cooking Gas wherever applicable, provision of space at no extra cost, cutlery, crockery, water, electricity, cleaning material for kitchen/pantry and common seating area, etc.

5.17 From a reading of all the above three agreements there is one clear fact and that is, the clients of the applicant are providing space, etc. to the applicant for supply of catering services and the services are supplied by the applicant at the clients' premises.

5.18 From the above details and discussions it is clearly visible that the service being provided by the applicant would be covered under Serial No. 7 Heading 9963(i) or (iv) of Notification No. 11/2017 dated 28.06.2017 as the applicant can be said to be providing the services of a canteen, but as to the applicant falls under Sr. No.(i) or (iv) of the said Notification would depend on whether the canteen has the facility of air conditioning or central air-heating in any part of the establishment, at any time during the year, as the applicant has not clarified the same anywhere. The said clause (i) has been amended by Notification No. 46/2017 as *“(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, club, 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. 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. However we find that the amendment has also done away with the condition of “Supply, provided by a restaurant, eating joint including mess, canteen, neither having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year and therefore the services of the applicant, in view of amendment vide Notification No. 46/2017 dated 14.11.2017 would fall under Serial no. 7(i) of this amended Notification.*

5.18 From the above discussions we find that the activity of the applicant would fall under clause (i) of Notification No. 11/2017 as amended and with effect from 14.11.2017 i.e the date on which Notification No. 46/2017- Central Tax(Rate) came into effect.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :



ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 05/2018-19/B-

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Mumbai, dt.

09.07.2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- Whether the catering services provided by the Applicant under B2B Model and B2C Model are to be classified as canteen/restaurant services under Entry. No. 7(i) of the Notification No. 11/2017 dated 28th June 2017 as amended by the Notification No. 46/2017- Central Tax (Rate) dated 14th November 2017 or as outdoor catering services under Entry. No 7(v) of the said Notification?

Answer :- In view of the observations and discussions made above the activity undertaken by the applicant in the subject case would be classified as canteen services under Entry. No 7(i) or (iv) of Notification No. 11/2017 dated 28th June 2017 depending on whether their canteen has the facility of air air-conditioning or central air-heating in any part of the establishment, at any time during the year. However as per amended Notification No. 46/2017- Central Tax (Rate) dated 14th November 2017, their service would fall under Sr. No. 7(i) of this amended Notification.



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Jt. Commissioner of S.T., Mahavikas, Mumbai for website.

—sd—
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021