

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata IRS., Joint Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai.
2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT)/Member(FAC),
Office of the Joint Commissioner (ST), Enforcement /
Inter-State Investigation Cell, Chennai-6.

ORDER No.9/AAR/2018 DATED 30.08.2018

GSTIN Number, if any / User id		33AHPPB9234K1Z5
Legal Name of Applicant		M/s. Goodwill Industrial Canteen
Registered Address/Address provided while obtaining user id		240,KCT ITI Complex, Thodugadu Village, Tiruvallur, Tamilnadu-602105
Details of Application		GST ARA-01 Application Sl. No. 5 dated 19.02.2018
Concerned Officer		. Centre: Chennai Outer Commissionerate - Poonamallee Division State : The Assistant Commissioner (CT), Tiruvallur Assessment Circle, No. 174, J.N. Road, Tiruvallur – 602 001
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in Brief)	The Company provides outdoor catering services to various companies.
Issue/s on which advance ruling required		Clarification of GST rate for the services rendered
Question(s) on which advance ruling is required		Clarification regarding applicable GST to the outdoor catering services rendered by them to their clients.

Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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

M/s Goodwill Industrial Canteen, 240 KCT ITI Complex, Thodugadu Village, Tiruvallur (hereinafter called the Applicant or Goodwill) is registered under GST vide registration No. 33AHPPB9234K1Z5. The applicant has submitted the copy of application in Form GST ARA – 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and TNSGST Rules 2017. They are Industrial caterers. The applicant has sought advance ruling to know the applicable percentage of GST to their business.

2. The Applicant has stated to render catering services to various companies. They prepare food in their place and supply to the employees of their clients/companies. The said companies provide them the rent free space to distribute the food to the employees of the companies. They purchase materials and use their own manpower in cooking and distributing food. The applicant has submitted that, on interpretation of Notification 11/2017CT(R) dated 28/06/2017 as amended, they assume that GST for the catering services rendered by them is 5%.

3. The Authorised Representative of the Applicant was personally heard in the matter on 08.05.2018. In the first hearing, the Applicant submitted, that they enter into contracts with companies on whose rent free premises where food is supplied, no payment is taken from employees of the company. They submitted that it is a catering service and eligible for Sl.No. 7(i) of Notification No. 11/17 as amended. In the subsequent hearing, the applicant submitted a copy of Contract which is indicative of all their contracts and stated that they are submitting a copy of Advance Ruling of Gujarat on similar issue which has held that Sl.No. 7(v) of Notification No. 11/17 is applicable and that in their case too Sl.No. 7(v) applies at 18%, that they are already raising invoices at 18%, they only supply to Industries/commercial entities and not to educational institutions.

4. The Applicant has furnished their agreement with M/s Kone Elevators (hereinafter referred as client), Chennai to run the Industrial Canteen at the Factory. As per the contract

entered by the Applicant with the client, the premises for services to be provided for canteen has been made available to the Applicant by the client along with required furniture, fittings, cooking and catering utensils, and crockery and cutlery items apart from providing water, electricity and fuel. The Applicant has to purchase the required provisions, vegetables, etc. prepare food stuff as per the menu given by the Management using the Applicant's manpower. This will be served to the employees, by collecting coupons on behalf of the client. Based on the coupons collected, the Applicant will give a bill and payment will be made by the company to the Applicant on monthly basis.

5. The Advance Ruling is sought on the applicability of Notification No. 46/2017-C.T. (Rate) dated 14th November 2017 to the case at hand. In the case at hand, the Applicant is engaged in supplying food and beverages at the canteen of their customers. From the contracts furnished, it is seen that the Applicant supplies the food in the place of business of the Service Recipient. The charges are received from the companies monthly basis on the coupons collected. In short, it is deciphered that the Applicant is vested with management of the canteen facilities. The Applicant himself does not get paid for by the consumers of the food and beverages. The Recipient of the services are the companies who enter into contract with the applicant. Supply of food is classified under 9963. The issue to be decided is whether the supply of the applicant falls under 7(i) of Notification No. 11/2017 dated 28.06.2017 or under 7(v) of the said Notification. The relevant extracts and the changes these entries underwent are detailed below:

5.1 Notification 11/2017-C.T. (Rate) dated 28th June 2017 provides the rate of various services under GST. The relevant rate extracts are as follows:

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	-
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(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	-
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The tax rates under Sl.No. 7 came under Scrutiny and the same was taken up by the council for consideration. Tax Structure of different categories of Restaurants, with a view to their possible rationalization / reduction was mandated to be examined. The same was examined at the 23rd Meeting of the GST Council held on 10th November 2017. The council discussed the various aspects involved in respect of the rate of tax on the supply is reproduced below:

65.28. The Hon'ble Chairperson proposed a tax rate of 18% with input tax credit on the outdoor catering. The Hon'ble Chief Minister of Puducherry observed that a tax rate of 18% on outdoor catering was too high. The Hon'ble Chairperson observed that historically, this was the prevailing rate of tax on outdoor catering. The Hon'ble Deputy Chief Minister of Delhi stated that a tax rate of 18% on outdoor catering could lead to tax evasion. He cautioned that having such big difference of tax rate between restaurant and outdoor catering, would lead to the practice of issuing bill from the restaurant for the outdoor catering and that they had similar experience in case of differential tax rate on liquor. The Principal Secretary, Finance, Odisha proposed a tax rate of 5% without input tax credit for the outdoor catering. The Hon'ble Minister from Jharkhand stated that many persons carried on only catering business, and for them, rate of tax should be kept at 5% without input tax credit. He added that many outdoor caterers did only dry catering, that is, provided labour while the food, etc. was bought by the customer. Advisor, Finance, Punjab also supported this suggestion. He stated that several people only did catering business and theoretically, they could claim that they had set up a restaurant to cater to a function at a venue. He suggested that rate of tax for outdoor catering where only food was being provided should be kept at 5%. The Hon'ble Chairperson observed that low rate of tax for one sector would lead to demand for lowering tax for other services sector also. The Hon'ble Minister from Uttar Pradesh proposed to keep a uniform tax rate of 12% without input tax credit as it would be bad optics to charge tax at the rate of 18% on outdoor catering and 5% on restaurant. The Secretary stated that this proposal would not be acceptable to the trade. The Hon'ble Minister from Assam did not support this proposal and stated that this would lead to increase in prices.

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

Accordingly, Notification No. 11/2017 CT (Rate) was amended vide Notification No. 46/2017 dated 14th November 2017 as below:

(ii) against serial number 7,-

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

(3)	(4)	(5)
<p>“(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. <i>Explanation.</i>- “declared tariff” includes charges for all</p>	<p>2.5</p>	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)].”;</p>

And no amendment was made in Sl.No 7(v) of Notification No. 11/2017 CT (Rate)

5.2 The above amendment is based on the decision of the GST Council, in its 23rd meeting held on 10th November 2017 which is given supra. From the discussions, it is evident that the intention of having tax rate of 5% as in Sl.no 7(i) is only in respect of supply of foods in Stand-alone restaurants and other similar eating joints and that in Hotels wherein the declared tariff of any unit of accommodation is less than Seven thousand Five hundred only. That is it is applicable in cases where the consumers who purchase the food & beverages, do so on the premises of the supplier of such food & beverages and directly pay to such supplier. From the contract furnished, it is seen that the applicant prepares the food using his own labour on the premises of the companies, who is the recipient of the service, and serve the food to consumers who don't make payment for to the applicant. The applicant is paid only by the company. The above GST Council discussions and decisions also clearly differentiate a restaurant/ canteen / mess run independently and the services extended by the applicant which fall under the category of outdoor catering. The very likely scenario of 'Outdoor Caterer' trying to call himself as a 'restaurant' has been discussed and the decision to lower the tax rate only to restaurants has been taken by the council. Therefore, the supply of food by the applicant in the premises of client, whether prepared in that place or brought and served is more appropriately covered by the description at Sl.No. 7(v) of the

Notification No. 11/2017 –C.T. (Rate) dated 28.06.2017 and is liable to tax at 9% CGST and 9% SGST.

5.3 GST Council in the 27th Council Meeting held on 4th May 2018, discussed and on 21.07.2018, the following decision as given in the press note was taken and the same is reiterated below:

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

To effect the above decision of the Council, the Notification No. 46/2017 was amended vide Notification No. 13/2018 dated 26th July 2018 as follows:

In the said notification, in the Table, -

(i) against serial number 7, in column (3),-

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

(3)	(4)	(5)
<p>“(i) Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. <i>Explanation 1.-</i> This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional.</p>	2.5	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]</p>

From the above, it is clear that the instant case of the applicant is making supply of services in the dining space of the industrial units and offices which is squarely covered in the Explanation 1 to Sl.No 7(i) and Sl.No 7(v) now only covers supply at functions which are occasional and event based. The supply of food to institutions which were earlier covered under entry at Sl.No. 7(v) has been included under Sl.No. 7(i) of the Notification No. 11/2017-

CT (Rate) with effect from 27th July 2018 and thereupon is liable to tax at the rate of 5% subject to the condition that credit of input tax charged on goods and services used in supplying the services are has not been taken read with Explanation (iv) of said Notifications.

6. In view of the foregoing, we rule as under:

RULING

The services of the applicant of supplying food and beverages on the premises of industrial unit/office, which are on the terms of the contract with M/s Kone Elevators and such other contracts, are liable to tax at the rate of 9% CGST under Sl.No. 7(v) of Notification No. 11/2017 –C.T. (Rate) dated 28.06.2017 and 9% SGST under Sl.No. 7(v) of G.O.(Ms) No 72 dated 29.06.2017 No.II(2)/CTR/532(d-14)/2017 for the period upto 26.07.2018 and from 27.07.2018 onwards at the rate of 2.5% CGST under Sl.No. 7(i) of the Notification No. 11/2017-C.T. (Rate) as amended and at the rate of 2.5% SGST under Sl.No. 7(i) of G.O.(Ms) No 72 dated 29.06.2017 No.II(2)/CTR/532(d-14)/2017 as amended subject to the condition that credit of input tax charged on goods and services used in supplying the services are has not been taken read with Explanation (iv) of said Notifications.



Ms. Manasa Gangotri Kata, IRS
Member, CGST

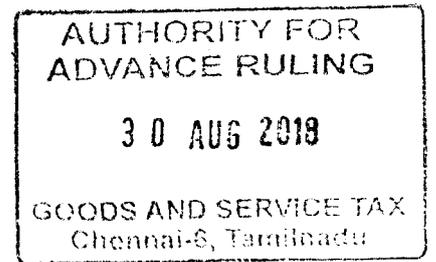


Shri. S.Vijayakumar, M.Sc.,
Member (FAC), TNGST

To

M/s. Goodwill Industrial Canteen
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/By SPAD/



Copy Submitted to:

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2. The Additional Chief Secretary / Commissioner of Commercial Taxes,
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Copy to:

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