

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-600 006.**

**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-600 034.

2.Thiru S. Vijayakumar, M.Sc., Joint Commissioner CT)/
Member (FAC) ,Inter-State Investigation Cell, Chennai-600 006.

ORDER No.11/AAR/2018 DATED 27.09.2018

GSTIN Number, if any / User id		33AAACR2547Q1Z3
Legal Name of Applicant		M/s. Sodexo Food Solutions India Private Limited .
Registered Address/Address provided while obtaining user id		5 th Floor, Block 6A, Centennial Square, off. Dr.Ambedkar Road, Murugesan Nagar, Kodambakkam, Chennai-600 024.
Details of Application		GST ARA-01 Application Sl. No. 15 dated 02.04.2018
Concerned Officer		State: The Assistant Commissioner (ST), Kodambakkam Assessment Circle, 4 th Floor, PAPJM Annexe Building, No.1, Greams Road, Chennai-600 006. Centre: Chennai South Division- Thyagaraya Nagar
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in Brief)	Providing catering services, facility management services
Issue/s on which advance ruling required		Applicability entry 7 (i) of the Schedule under Notification No.11 / 2017 CT (Rate) [as amended vide Notification No. 46 / 2018 -CT (Rate) dated 14.11.2017]
Question(s) on which advance ruling is required		Since entry 7(i) covers canteens located in any establishment (including factories, offices, offshore rigs, etc and not just educational institutions), Circular No. 28/02/2018-GST applies to canteens located any type of establishment (and not just in educational institution) and catering services, i.e., supply of food or drink in a mess or canteen provided by anyone are liable to 5% GST under entry

	7(i) of Notification No. 11/2017-CT (Rate) [as amended vide Notification No. 46/2017 - CT (Rate) dated 14.11.2017).- ruling sought for.
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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. Sodexo Food Solutions India Private Limited, 5th Floor, Block 6A, Centennial Square, off. Dr. Ambedkar Road, Murugesan Nagar, Kodambakkam, Chennai-600024 (hereinafter referred to as 'applicant' or 'Sodexo') is engaged in the business of providing catering services, facility management services and other services to customers across India in the manufacturing sector, services industry sector and remote locations including off-shore oil rigs, mining sites, factory sites. They are registered under GST Act with Registration No. 33AAACR2547Q1Z3.

They have sought clarification and ruling on

Whether entry 7 (i) covers canteens located in any establishment and Circular No. 28/02/2018-GST applies to canteens located in any type of establishment and liable to 5% GST vide Notification No. 11/2017-CT (Rate) as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017

2.0 Sodexo have stated that they operate in India under three legal entities, Sodexo Foods Solutions India Private Limited (hereinafter referred to as 'applicant'), Sodexo Facilities Management Services India Private Limited, and Sodexo Technical Services India Private Limited (collectively referred to as 'Sodexo India'). Sodexo is interalia engaged in providing the following services:

- B2B contracts with corporate customers for operation and management of canteens, cafeteria's at their premises, wherein sodexo provides the services of cooking, preparing, serving of food and beverages at the premises of the customer; The consideration for services is charged to

the corporate customers on a per plate basis; The contracts are for providing services on an ongoing basis for an agreed duration which could range from 1 years to 5 years, depending on the terms agreed with the corporate customer on a case to case basis.

- Retail services of cooking and serving food and beverages by canteens, cafeteria, etc. wherein Sodexo is engaged in sale of food and beverages to the employees or visitors who visit the canteen, cafeteria or similar premises (belonging to the customer); The consideration for food and beverages is charged to the employees or visitors.; The food and beverages sold could either be (a) sale of MRP based products (such as biscuits, chocolates, chips, etc) across the counter, in pre packaged form or (b) sale of food and beverages which are prepared, such as dosa, tea, coffee, etc (referred to as 'cash sales' or 'retail sale').; The canteens / cafeterias operate in a manner similar to a restaurant, eating joint or similar establishments. To illustrate, the canteens / cafeteria have a menu, they cook and serve food and beverages to the consumers who visit the canteens / cafeteria as per the orders placed by the consumers and they charge the consumers as per the price menu and food and beverages ordered by the consumers.

2.1 As per recent Notification No. 46/2017- Central Tax (Rate) dated 14th November 2017, entry no. 7 (i), there has been a change in the GST rate from 18% to 5% with effective from 15th November 2017, in respect of supply of food and / or beverages by restaurant, eating joint including mess, canteen other than those located in the premises of having rooms with declared tariff of Rs 7,500 per day or more. Accordingly, the implication of such amendment in the GST rate for services provided by a restaurant, eating joint, including mess canteen which do not have rooms with declared tariff of Rs 7,500 or more per day has been reduced to 5% (with no input tax credit to the service provider). Further, the CBEC (TRU) has issued circular no. 28/02/2018-GST dated 8th January 2018 stating that a canteen of an educational institution which supplies food and beverages to students and staff should be covered under 5% GST rate, even if the canteen is outsourced to an outside contractor. Further, by way of a corrigendum to this dated 18 January 2018. the CBEC (TRU) has clarified that 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 with effect from 15.11.2017." However, the GST rate for services provided by an outdoor caterer has been retained at 18%. There is no change in the taxable entry 7 (v) which relates to 'supply of food and beverages by way of or as a part of a service in outdoor catering'. In the press release issued by the Government along with this amendment, it has been stated that 'Outdoor catering will continue to be at 18% with full ITC'.

2.2 Sodexo have stated that the option to pay 5% GST without ITC by restaurants, eating joints, mess and canteens and the 18% GST rate for outdoor catering services seems to be simultaneously prescribed. Especially when the customers are not entitled to avail ITC of the GST charged by Sodexo, the clients are insisting that since the services are provided in canteens the appropriate rate of tax is 5% . Sodexo has a huge interest in knowing the correctness of the rate to be charged since GST is a pass through tax and the differential of 13% if not received from clients could spell disaster for the company.

2.3 Sodexo have further stated that, in the normal course, "outdoor catering" means ordering of food along with service thereof on the occasion of some function etc, where the service provider would either bring the food and serve it at the customer's premises or prepare the food itself at the customer's premises and serve the same; Outdoor catering does not contemplate any continuous provision of service, but an occasional transaction whereas the terms, "restaurant, eating joint, mess or canteen" refer to a reasonably permanent establishment where food is served continuously.; The basic characteristics of an outdoor caterer is its non-continuous nature. Once a customer engages a person to set up a mess canteen in the customer's premises, to permanently cater to the employees and guests of such caterer, a separate establishment in the nature of restaurant, eating joint, mess or canteen comes into existence with reasonable continuity and permanence and such establishments are not "outdoor catering".; They have relied on the decision of Hon'ble Supreme Court in the case of Tamil Nadu Kalyana Mandapam vs Union of India reported in 2004-TIOL-36-SC-ST, wherein vide Para 56, it had held the following in the case of Outdoor Caterers;

"Outdoor catering has an element of personalized service provided to the customer. Clearly the service elements is more weighty, visible and

predominant in the case of outdoor catering. It cannot be considered as a case of sale of food and drink as in restaurant".

2.4 Sodexo have further stated that on examining the classification of Food Services under the General Tariff Schedule under GST, it can be seen that Group 99633 deal with Food, Edible Preparations, Alcoholic and Non-alcoholic beverages serving services.; There are 8 sub categories under this group.; The First set comprising of 996331 to 996333 deal with services provided by Restaurants, café's, eating facilities including take away, room services and door deliver; Hotel, Inn, guest house, club and the like; canteen and other similar establishments.; These three sub entries feature food services dispensed on a regular basis from a fixed location where food is prepared and served.; It also includes services where food is prepared and served for a defined end use such as room services or door delivery. For the sake of convenience, sodexo defines this sub rule as indoor catering.; Sub entries 996331 to 996333 uses the expression 'services provided'. These sub entries do not denote it as catering services. On the contrary. sub entries 996334 to 996336 uses the expression 'catering services/ preparation and / or supply services of food'.; Entries 996334 to 996336 deals essentially with outdoor catering. It is interesting to highlight one aspect at this juncture. The former sub entries indicate the fact that the food gets prepared and dispensed from a specified location on a continued basis which may include take away services too whereas the latter group deals essentially with Outdoor catering.; The former sub group contains defined commercial locations where food is prepared and served on a continuous basis. The gradation as restaurant, cafe, canteen, hotel etc. are just finer efficacies meeting the specific type of dispensation but the basic Rule of food getting prepared and served in that location on a continuous basis remains constant. The design of the Group under the GST Tariff appears to have clarity and even an unintended overlap stands avoided. It is a well settled principle of interpretation that in case of competing entries, specific would prevail over general and consequently canteen even if held to be outdoor caterer would continue to fall under 7(i) instead of getting it consigned to 7(v) of the Notification.

2.5 GST rate of 5% extended to Educational Institutions vide Circular of 8 Jan 2018 is violative of Article 301 of the Constitution of India. Circular No. 28/02/2018-GST dated 8th January 2018 read with Corrigendum issued on 18th January 2018 has clarified that GST shall be applicable at 5% under entry 7(i) on supply of food and drink in a mess or canteen, by anyone other than educational

institution to the concerned educational institution. The entry 7(i) covers supply of food and beverages by all types of canteens. Given that there is no differentiation in the taxable entry 7(i) for canteens of educational institutions and canteens of other establishments (such as factories, corporate offices, hospitals, offshore rigs, etc), it would be essential to clarify that GST rate of 5% under entry 7(i) should be available for canteens located in any type of establishments and not just restricted to canteens of educational institutions. ; The Circular No. 28/02/2018_GST dated 8' January 2018 seeks to make a differentiation between supply of food and drinks in the canteen of an educational institution and that of supply of food and drinks made in a factory or office canteen, or in hospitals to 'in-patients' or cafeterias or on off-shore rigs, barges or oil installations. Such a differentiation is violative of Article 301 of the Constitution.; In this regard, they refer to the decision of the Supreme Court of India in **Firm A. T. B. Mehtab Majid vs State of Madras and And wherein the Hon'ble Court** has clearly laid down that any taxation that is discriminatory in nature will offend Article 301.; They have claimed that in view of the above, it would be critical to clarify that supply of food and beverages in factory canteens, offices, hospitals, offshore rigs by services providers such as Sodexo should also attract 5% GST so that there is no discrimination in the GST tax structure for supply of food and drinks in the normal course of trade, commerce and intercourse across the territory of India.

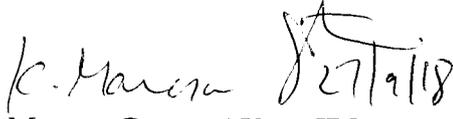
3.0 The applicant was heard in person. They stated that they have contracts with various institutions.; they have contracts with them for making food at client premises; in certain cases, the payment is received from visitors to premises, in other cases payment is received only from the institutions. They provided a write-up and undertook to provide contract copies . The applicant furnished contract copies and invoices. The details and documents furnished were examined.

4.0 The applicant vide their letter dated 14/08/2018 have stated that the Government have issued Notification No. 13/2018-Central Tax (Rate) dated 26th July 2018 which amends the original Notification 11/2017-CT(Rate) dated 28th June 2017; As per the Notification 13/2018-CT(Rate), the old entry of S.No. 7(i) under Notification 11/2017 has been substituted by a new entry which states that supply of food and beverages in canteens, mess, cafeteria or dining spaces of an institution such as a school, college, hospital, industrial unit, office would be liable to 5% GST under entry 7(i).; Also the said notification 13/2018 replaced the old entry 7(v) under Notification 11/2017. In the light of the above amendments in the GST rate for Supply of canteen food services, the applicant requested to withdraw the Advance Ruling Application filed before the authority.

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

RULING

The application filed by the Applicant for advance ruling is dismissed as withdrawn.

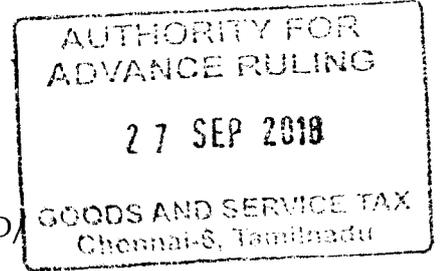

Ms. Manasa Gangotri Kata, IRS
Member


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

To

M/s. Sodexo Food Solutions India Private Limited,
5th Floor, Block 6A, Centennial Square off,
Dr. Ambedkar Road, Murugesan Nagar,
Kodambakkam, Chennai-600024

/By SPAD/



Copy Submitted to:

1. The Additional Chief Secretary / Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
2. The Principal Chief Commissioner of GST & Central Excise,
No 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

Copy to:

3. The Assistant Commissioner (ST),
Kodambakkam Assessment Circle,
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4. The Commissioner of GST & C.Ex.,
Chennai South Commissionerate,
692, MHU Complex, Nandanam,
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5. Master File/ Spare-2.

