

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

Members present are:

1. *Senthil Nathan S, IRS*
Joint Commissioner,
Office of the Commissioner of Central Tax & Cental Excise, Thiruvananthapuram.

2. *N. Thulaseedharan Pillai.*
Joint Commissioner (General),
Office of the Commissioner of State Taxes, Thiruvananthapuram.

Sub:- GST Act, 2017 - Advance Ruling U/s 98 - whether recovery of food expenses from employees for the canteen provided by company comes under the definition of outward supplies are taxable under GST Act - Orders issued.

Read:-Application dated 30.12.2017 from M/s. Caltech Polymers Pvt. Ltd.

ORDER No.CT/531/18-C3 DATED 26/03/2018

1. M/s. Caltech Polymers Pvt. Ltd., Malappuram (hereinafter called the applicant or the Company) has preferred an application for Advance Ruling on whether recovery of food expenses from employees for the canteen service provided by the applicant / company comes under the definition of outward supplies and are taxable under Goods & Service Tax Act.

2. The applicant is a Private Limited Company engaged in the manufacture and sale of footwear. It is submitted that they are providing canteen services exclusively for their employees. They are incurring the canteen running expenses and are recovering the same from its employees without any profit margin.

3. The applicant has further submitted that the service provided to the employee is not being carried out as a business activity. It is according to the provisions of the Factories Act, 1948. As per section 46 of the said Act, any factory employing more than 250 workers is required to provide canteen facility to its employees. The applicant detailed the work as follows:-

- a) The space for the canteen is provided by the Company, inside the factory premises.
- b) The cook is employed by the Company and is paid monthly salary.
- c) The vegetables and other items required for preparing the food items are purchased by the Company directly from the suppliers.
- d) The number of times, the Canteen facility is availed, each day, by the employees is tracked on a daily basis.
- e) Based on the details above, the expenditure incurred by the Company on the vegetables and other items required for preparation of food is recovered

from the employees, as a deduction from their monthly salary, in proportion to the foods consumed by them.

- f) The company does not make any profit while recovering the cost of the food items, from the employees. Only the actual cost incurred for the food items is recovered from the employees.

4. The company is of the opinion that this activity does not fall within the scope of 'supply', as the same is not in the course or furtherance of its business. The company is only facilitating the supply of food to the employees, which is a statutory requirement, and is recovering only the actual expenditure incurred in connection with the food supply, without making any profit.

5. The company also referred to the Mega Exemption Notification No. 25/2012 - ST dated 20.06.2012 issued by the Government of India whereby services in relation to supply of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 was exempted under the Service Tax Law.

6. The applicant, in their application dated 30-12-2017, raised the following questions to be determined by the authority for Advance Ruling.

"Whether reimbursement of food expenses from employees for the canteen provided by company comes under the definition of outward supplies as taxable under GST Act."

7. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

8. It is true that in the pre-GST period, vide Sl No. 19 and 19A of Notification No. 25/2012 ST dated 20.06.2012 as amended by Notification No. 14/2013-Service Tax dated 22.10.2013 the 'services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), including a canteen having the facility of air-conditioning or central air-heating at any time during the year' was exempted from service tax. But, there is no similar provision under the GST laws.

9. The term "business" is defined in Section 2(17) of the GST Act, which reads like this:-

"business" includes:- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit:

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a); ...

From the plain reading of the definition of "business", it can be safely concluded that the supply of food by the applicant to its employees would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business.

10. Schedule II to the GST Act describes the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service.

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

Even though there is no profit as claimed by the applicant on the supply of food to its employees, there is “supply” as provided in Section 7(1)(a) of the GST Act, 2017. The applicant would definitely come under the definition of “Supplier” as provided in sub-section (105) of Section 2 of the GST Act, 2017.

11. The term ‘consideration’ is defined in Section 2(31) of the GST Act, 2017 which is extracted below:

‘consideration’ in relation to the supply of goods or services or both includes,-

a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

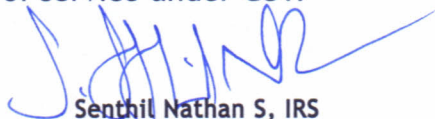
Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

Since the applicant recovers the cost of food from its employees, there is consideration as defined in Section 2(31) of the GST Act, 2017.

12. In the light of the aforesaid circumstances, we rule as under.

RULING

It is hereby clarified that recovery of food expenses from the employees for the canteen services provided by company would come under the definition of ‘outward supply’ as defined in Section 2(83) of the Act, 2017, and therefore, taxable as a supply of service under GST.



Senthil Nathan S, IRS
Member, CGST



N. Thulaseedharan Pillai
Member, SGST

To

M/s. Caltech Polymers Pvt. Ltd.,
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