

**Appellate Authority Advance Ruling Order No. CT/7726/2018-C3, Dated 25th September, 2018**

**APPELLATE AUTHORITY FOR ADVANCE RULING,**

**KERALA PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING**

**U/s.101 OF THE KERALA STATE GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Pullela Nageswara Rao, IRS

Chief Commissioner,

Central Tax, Central Excise and Customs

2. Rajan N.Khobragade IAS.

Principal Secretary & Commissioner

State Taxes, Kerala

Sub: GST Act, 2017 - Appellate Authority for Advance Ruling U/s 99 of the Kerala State Goods and Services Tax Act, 2017 - whether recovery of food expenses from employees for the canteen provided by company comes under the definition of outward supplies is taxable under GST Act - Orders issued- reg.

Read: 1. Order No.CT/531/18-C3 dated 26-3-2018 of the Authority for Advance Ruling U/s.98 of the SGST Act 2017.

2. Appeal dated 30.04.2018 filed by M/s. Caltech Polymers Pvt.Ltd.

M/s. Caltech Polymers Pvt. Ltd., Malappuram (hereinafter called the appellant), a registered person with GSTIN 32AAACC9223A1ZE had preferred an application for Advance Ruling on whether recovery of food expenses from employees for the canteen service provided by the company comes under the definition of outward supplies and are taxable under Goods & Services Tax Act.

2. The applicant is a Private Limited Company engaged in the manufacture and sale of foot wear. It was submitted that they are providing canteen services exclusively for their employees. They incur the canteen running expenses for a month and recover the same from their employees without any profit margin on the same.

3. The applicant has further submitted that the service provided to the employee is not being carried out as a business activity and it is according to the provisions in 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 activity 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 food consumed by them.
- f) The company does not make any profit while recovering the cost of the food items, recovered 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 erstwhile Service Tax 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 Authority for Advance Ruling had deliberated on the issue raised and after hearing the authorized representative of the applicant elaborated as follows;

"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 appellant 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."

7. The Advance Ruling authority also clarified that "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 the 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), having the facility of air-conditioning or central air-heating at any time during the year' was exempted from taxable services. But there is no such provision in the GST Act, 2017."

8. Based on the deliberations delineated supra, the Advance Ruling Authority ruled vide paper read 1st above that the recovery of food expenses from employees for the canteen services provided by company would come under the definition of 'outward supply' as defined in Section 2(83) of the SGST Act, 2017 and would be taxable as a supply of service under GST.

9. Aggrieved by the said Advance Ruling, the appellant preferred appeal vide paper read 2nd above, before the Appellate Authority for Advance Ruling. The Authority heard the authorized representative of the appellant on the matter on 13th September 2018 in the Chamber of the Principal Secretary & Commissioner, State Goods & Service Tax Department, Kerala.

10. The appellant contended that as per Schedule III, Clause 1 of GST Act 2017, services by an employee to the employer in the course of or in relation to his employment is neither a supply of goods, nor a supply of services and that any consideration received by the employee from his employer for the services rendered in relation to the employment is outside the purview of GST. A press release dated 10.07.2017 issued by the Central Board of Indirect Taxes and Customs (CBIC) was also submitted.

11. The party also produced a copy of the press release issued by the CBEC to clarify the applicability of Reverse Charge under section 9(4) of the GST Act, 2017 on the purchase of ornaments by a jeweller from a consumer. It reads as follows:

"Even though the sale of gold by an individual is for a consideration, it cannot be said to be in the course of or in furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply perse. Accordingly, the sale of old jewellery by an individual to a jeweller will not attract the provisions of section 9(4) and the jeweller will not be liable to pay tax under reverse charge mechanism on such purchases".

12. Relying on the above press release, the appellant contended that if an activity is not in the course or in furtherance of one's business, it does not constitute supply unless it is an import of service as mentioned under Section 7(1) of the GST Act, 2017. It was also contended that supply of subsidized food is not the business of the appellant, in the same manner as supply of gold jewellery was held not to be the business of the consumer, in the above clarification. The appellant submitted that supply of subsidized food by the appellant does not constitute a 'supply' within the meaning of Section 7 of the GST Act, 2017 and hence does not attract GST.

13. During the Personal Hearing the authorized representative of the Appellant, in addition to the reiteration of the submissions made in the original application for Advance Ruling, submitted that M/s. Caltech Polymers Pvt. Ltd. "is a private limited company manufacturing foot wears. As per the requirement of Factories Act, for an industry having more than 250 employees, canteen facility shall be provided. To comply with the statutory requirements, the company provides food to the employees and cash is recovered from their salary. The authority below classified it as supply in furtherance of business. The Telengana High Court had delivered a judgement in favour of M/s. Bhima case stating that subsidized food to employees and realization of cost of wages is an industrial obligation it does not amount to service. Government of India issued a press release on 10-07-2017, stating that supply by employer to employee is in the course of furtherance of employment and not in the course of furtherance of business and comes under Schedule III, which is not liable to tax."

14. The contentions raised by the appellant have been examined in detail. The crucial aspects to be considered in this case are the elements of "supply" and "consideration". The appellant company has admitted that they are serving food to the employees for cash, though there is no profit involved in the transaction. In spite of the absence of any profit, the activity of supplying food and charging price for the same from the employees would surely come within the definition of "supply" as provided in Section 7(1)(a) of the GST Act, 2017. Consequently, the appellant would definitely come under the definition of "supplier" as provided in subsection (105) of Section 2 of the GST Act, 2017. Moreover, since the appellant recovers the cost of food items from their employees, there is "consideration" as defined in Section 2(31) of the GST Act, 2017.

15. The decision of the Hon'ble High Court of Telengana with respect to Bhimas Hotels case pertains to the erstwhile Service Tax Law, when Service Tax and Value Added Tax stood on separate and independent footing. The Hon'ble Court in Para 12 of the said Order held that "the petitioner has paid the value added tax on the value of the food supplied to its workers. In respect of some assessment years, they have even been imposed with a penalty under the Andhra Pradesh Value Added Tax Act, 2005. Therefore, once the State Authorities have treated the supply of food to the workers of the petitioner as sale, it is not open to the respondents to treat the same as service and impose a liability. "

16. It is apparent from the extract supra that, in the above referred case, the food provided to the employees was already taxed under the erstwhile Value Added Tax and thereby the Hon'ble High Court held that the same could not be subjected to Service Tax. Hence the Hon'ble Court had decided upon a matter where the issue of double taxation was a relevant fact. As there is no possibility of such double taxation in the GST regime, it is evident that the facts of the Bhimas Hotels case cannot be considered to be in pari-materia with the facts of this case.

17. In light of the detailed discussion supra, this Appellate Authority for Advance Ruling does not find any reason to deviate from the findings and the decision of the Authority for Advance Ruling, issued vide paper read 1st above. Accordingly, the following orders are issued.

**Order No. CT/7726/2018-C3 Dated: 25.09.2018**

The supply of food items to the employees for consideration in the canteen run by the appellant company would come under the definition of 'supply' and would be taxable under GST. Therefore the appeal fails and stands dismissed.

Pullela Nageswara Rao, IRS Chief  
Commissioner,  
Central Tax, Central Excise & Customs

Rajan N. Khobragade IAS.  
Principal Secretary and Commissioner,  
State Goods & Service Tax Dept., Kerala