

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/12/2018-19

Date- 01.11.2018

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAAFF0535H1ZT
Legal Name of Appellant	Merit Hospitality Services Pvt. Ltd.
Registered Address/Address provided while obtaining user id	Unit No. 27, Gr. Floor, Narayan Plaza Premises CHS Ltd., Off Saki Vihar Road, Chandivali, Andheri (E), Mumbai-400 072
Details of appeal	Appeal No. - MAH/GST-AAAR-12/2018-19 dated 09.08.2018 against Advance Ruling No. ARA-22/2017-18/B-29 dated 05.05.2018
Concerned officer/Jurisdictional Officer	Deputy Commissioner of GST (E-639), LTU-04, GST Bhavan, Mazgaon, Mumbai - 400 010

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 Merit Hospitality Services Pvt. Ltd. (herein after referred to as the "Appellant") against the Advance Ruling No. ARA-22/2017-18/B-29 dated 05.05.2018.



BRIEF FACTS OF THE CASE

A. Merit Hospitality Services Pvt. Ltd.(hereinafter referred to as “Appellant” or the “Company”) is engaged in the business of providing catering services to the various corporate offices on regular basis under contracts. The Company is registered as “Outdoor Caterers” under the GST Act. It was also registered under the same category under the Service Tax regime. The company is engaged in the business of supply, by way of, and as a part of any service, or in any other manner, whatsoever, of goods, being foods or any other articles for human consumption or drink. In nutshell, it is providing snacks and food for the breakfast, lunch, evening tea and dinner to the employees of various companies. The food is prepared at their own kitchen and it is distributed to various companies at different locations. There are four different situations mentioned below on the basis of which the company is carrying on the above mentioned business. These situations are based on the terms of the contract entered by Merit Hospitality with various corporate clients.

Case (I) The Appellant has entered into a contract for supply of food to the employees of the company, say ‘A’ Ltd. The contract is signed between Merit Hospitality and ‘A’ Ltd. for supply of food. As per the terms of contract, Merit Hospitality has to supply the food at ‘A’ Ltd. ‘s premises. The distribution of the foods is directly done by the staff of ‘A’ Ltd. The menu and the material specifications are mentioned in the contract and also the rate of various items are pre-determined between Merit Hospitality and the company. The billing is done by the Merit Hospitality, directly to the company on the monthly basis and payment is received from the company to Merit Hospitality directly as per terms of payment mentioned in the contract.

Question: Whether on the facts and circumstances of the case, can the above activity be called as canteen activity, and the applicable rate of 5% be charged on our bills.



Case (II) The facts mentioned in the case I remains the same except that in addition to the supply of food on the request of the client, Merit Hospitality Pvt. Ltd. also undertakes the services of distribution of food for which Merit Hospitality raises separate bill charging 18% GST.

Question: Can both the activities, put together i.e. supply and distribution of food to the employees of 'A' Ltd., be called as canteen service and applicable rate of 5% be charged on our bills?

Case(III) The employees of 'A' Ltd. have formed "Employees Co-op. Society", which is registered under the Societies Registration Act. The Employees Co-op. Society is running a canteen for the employees of 'A' Ltd. The contract of supply of food of Merit Hospitality is now with the "Employees Co-op society" and not with A Ltd.

Question: Under such circumstances, can it still be claimed that Merit Hospitality is running a canteen and the applicable rate of 5% be charged on our bills?

Case (IV) : The Merit Hospitality has entered into a contract with a company called say "B" Ltd. and B Ltd. is having its unit in SEZ area (Special Export Zone). The supply of food is done by Merit Hospitality to the employees of "B" Ltd. and the payment for the same is made by the employees of "B" Ltd. , directly to Merit Hospitality.

Question:

- (a) Can Merit Hospitality claim that since the food is supplied directly to the SEZ area, hence no GST is applicable?'; or
- (b) Can Merit Hospitality claim that it is running a canteen in SEZ area, hence no GST is applicable? Or
- (c) Can Merit Hospitality claim that it is running a restaurant in SEZ area and hence applicable rate is 5% only?
- B. The appellant filed an application for advance ruling u/s 97 of the CGST Act, 2017 and the MGST Act 2017 raising the above enumerated questions/issues before the Authority for the Advance Ruling (AAR).
- C. AAR vide its Ruling No. ARA-22/2017-18/B-29 dated 05.05.2018 decided the issues as under:-



Case I: The above question pertaining to the Case I mentioned above is answered in negative.

Case II: The above question pertaining to the Case II mentioned above is answered in negative.

Case III: The above question pertaining to the Case III mentioned above is answered in negative.

Case IV:

Question (a) pertaining to case IV could not be answered by the authority due to lack of clarity in the issue in the absence of adequate information or details .

Question (b) pertaining to case IV is answered in negative.

Question (c) pertaining to case IV is answered in negative.

D. Being aggrieved by this ruling of AAR, the appellant has filed an appeal against the said ruling under section 100 (1) of the CGST Act 2017.

Grounds of Appeal

1. The Learned Advance Ruling Authority (ARA) erred in not answering the specific questions under the circumstances mentioned in case IV of the application namely:
Q.(a) Can Merit Hospitality claim that since the food is supplied directly to the SEZ area, hence no GST is applicable?'; or
Q.(b) Can Merit Hospitality claim that it is running a canteen in SEZ area, hence no GST is applicable? Or
Q. (c) Can Merit Hospitality claim that it is running a restaurant in SEZ area and hence applicable rate is 5% only?
2. The Ld. Advance Ruling Authority erred in not deciding the issues of applicability of GST rate for supplies for supplies made to unit situated in Special Economic Zone (SEZ) as raised in the case IV of the application stating that all the facts required for decision in respect of the specific case were not put before the authority when factually all documents as listed and demanded by the Authority were promptly submitted by the Appellant during the course of proceeding as evidenced by various submissions made by the Appellant.



3. The Ld. Advance Ruling Authority failed to state in the order that the facts which he had required to decide the issue and according to him were demanded by him during the hearing proceedings by the applicant did not provide or was unable to furnish such information or documents related to those facts.
4. The Ld. Advance Ruling Authority erred in quoting, relying and concluding his opinion based to his observations in respect of the applicant's other transactions pertaining to the domestic market and applying such observations in the case of transactions with the unit based in SEZ under consideration. Thus, he failed to distinguish applicability of GST Act and rules in case of domestic situations and that in goods and services supplied in a unit based in SEZ area.

Additional submission dated 01/10/2018

5. The appellant vide the above additional submission submitted that U/s 16(1)(b) of the IGST Act, 2017, supply of goods or services or both to a SEZ unit or a developer of SEZ are treated as 'zero' rated supplies. Further, Section 16(3) of the IGST Act allows a registered person to make a "zero rated supplies" without payment of Integrated tax subject to conditions, safeguards and procedure as laid out under rule 96A. As per Rule 96A(1), various requirements have been laid out for exports which under Rule 96A(3) mutatis mutandis apply to services given to SEZ units.

The Appellants craves leave to add, alter, delete any ground of appeal during the course of appeal.

PRAYER

In view of the foregoing, the prayer made by the Appellant was as under:-

- a. To set aside the order on Case IV in the Original Advance Ruling Application;
- b. Grant an opportunity for a personal hearing and make further submission of documents if any;
- c. Pass any such further or other order as may be deemed fit and proper in the facts and circumstances of the case.



Personal Hearing

6. Personal hearing in the matter was conducted on 03.10.2018, wherein the appellant was represented by ShriVivekTamhane, who reiterated the written submissions made at the time of filing appeal as well as the additional submissions dated 01.10.2018 as stated above. He deposed that the appellant have come before the Appellant Authority for the ruling in respect of questions asked pertaining to case IV of the original application filed before the Advance Ruling Authority, adding that they are not contending the ruling pronounced in respect of the questions asked pertaining to case I, case II and case III.

Discussions and findings

7. Heard the appellant's arguments, wherein they intend to contend the ruling pronounced by the Advance Ruling Authority in respect of the question pertaining to case IV only. Hence, the moot issue before us is to decide whether the activities undertaken or proposed to be undertaken of the appellant by way of supply of food or drinks or any articles for human consumption to the employees of the company, located in the Special Economic Zone is covered under the zero rated supply or otherwise.
8. First, we will discuss the "zero rated supply", as provided under Section 16(1) of the IGST Act, 2017, which is reproduced herein below:
Section 16(1) "Zero rated supply" means any of the following supplies of goods or services or both, namely:-
 - (a) **export of goods or services or both; or**
 - (b) **supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.**
9. Thus from the above provision, it is crystal clear that the supply made by the appellant to the employees of the unit located in SEZ cannot be construed as zero rated supply by any stretch of imagination, as the employees can neither be treated as SEZ developer nor as SEZ unit. Accordingly, GST will be applicable as per the classification of the services determined in terms of the scheme of the classification of services as provided under Annexure A to the Notification 11/2017-C.T. (Rate) dated 28.06.2017 as amended by the Notification No. 46/2017-C.T. (Rate) dated 14.11.2017.



10. As regards the question © pertaining to the case IV of the appeal/application, wherein the appellant has claimed that since it is running a restaurant in the SEZ area, the applicable rate of GST will be 5%, it is observed that question raised in the application is not relevant and lacks rational in as much as the appellant is presuming and is putting pre-emptive notion before the Appellate Authority as to they are running the restaurant in the SEZ area and then asking authority to decide upon the GST rate applicable on such activities. To answer this question, first we would like to discuss the meaning of the "Restaurant". "Restaurant" is not defined under the GST Act. Therefore, we will understand the meaning of Restaurant as provided in the Cambridge Dictionary. As per the Cambridge Dictionary, *Restaurant is a place where meals are prepared and served to the customer.* Now, on perusal of the submissions made by the appellant on 01.10.2018, wherein they have categorically submitted that they are registered as "Outdoor Caterers" and are basically engaged in providing the corporate catering services to their offices /units as per the terms and conditions of the contracts entered with them. They further submitted that they prepare the food in their own kitchen and then distribute it to various companies at different locations.
11. From the foregoing, it is apparent that the food is being cooked at one place and being distributed to the various different locations of the companies with whom they have entered into contract. Thus, this event is not covered under the definition of the "Restaurant services" as discussed above. Thus, the appellant claim in the case IV that it is running Restaurant Services in the SEZ area is not tenable and hence the GST rate of 5% as envisaged by the appellant is not correct.

In view of the above discussion and findings, we pass the following order :-

Order

The services of supplying food by the appellant to the employees of the unit located in the Special Economic Zone is not covered under the zero rated supplies in terms of Section 16(1)(b) of the IGST Act, 2017 and the services of the appellant are also not in the nature of restaurant services as claimed by the appellant.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

Copy to- 1. The Appellant

2. The AAR, Maharashtra

3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai

4. The Commissioner of State Tax, Maharashtra

5. The Jurisdictional Officer

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