2018

Analysis of Latest Advance Ruling on Recovery of Food Expenses from Employees for the Canteen Provided

CA. Sanjeev Singhal
Sanjeev Kavish and Associates, Chartered Accountants
2/12/2018

Analysis of Latest Advance Ruling on recovery of food expenses from employees for the canteen provided

Fact of the Advance Ruling

Case :

Advance Ruling U/S 98 of the GST Act- 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 **Caltech Polymers Pvt. Ltd**. ORDER No.CT/531118-C3 DATED 26/03/2018

Fact :

1. M/s. Caltech Polymers Pvt. Ltd., Malappuram in Kerala (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. They are incurring the canteen running expenses and are recovering the same from its employees without any profit margin.

3. As per the provision of Factories Act, 1948, any factory employing more than 250 workers is required to' provide canteen facility to its employees.

4. 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.

5. 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.

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 under GST Act.

7. 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 incidents or ancillary to sub-clause (a); from the plane 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.

8. Schedule II to the CGST Act,2017 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 CGST Act, 2017. The applicant would definitely come under the definition of "Supplier" as provided in sub-section (105) of Section 2 of the CGST Act, 2017.

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

RULING

In the light of the aforesaid Facts , AAR 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 services under GST.

Though the above ruling will be applicable on the Company who has applied for this advance ruling but become benchmark for the others as well.

From the above cited ruling, it is clear that if the food expenses would not have been charged from the employees, it is not subject to GST. Because charging from employees is main factor. But, as per clause -2 of the Schedule-1 of the CGST Act,2017 , if the goods or services are supplied without consideration to the related person or distinct person [Here, in the above case, the employer and employee is related person as defined in Explanation to Section-15 of the CGST Act,2017]**, even though the same shall be treated as supply. Therefore, this transaction is otherwise taxable also.**

Now looking at the above judgment of the AAR , there are number of questions those have been left answered .

1. What is cost of Food on which GST shall be levied. Should it be determined under section 15 of the CGST Act,2017

2. If the food has been outsourced by the company instead of their own canteen and what will be the food cost to be recovered from employees. Same cost as outsourced or at subsidized rates.

3. What is the situation of ITC in case of own preparation of food through own canteen or outsourced.

4. Will the GST shall be charged from employee.

5. How the same shall be invoiced.

So there are multiple of questions which need to be answered or addressed.

Let us consider and answer one by one question.

1. In the above case of AAR, the cost of food has been charged by the company from employees as clarified in this case that consideration is the cost to company and no profit element has been added. As per section 15[1] of CGST Act,2015 it will be transaction value if the supplier and recipient is not related person and price charged shall be the sole consideration. Here, in the above case, the employer and employee is related person as defined in Explanation to Section-15 of the CGST Act,2017 . Therefore, Section 15 of CGST will be apply and accordingly cost of the food shall be determined as per Rule 28 and 30 of the CGST Rules, 2017.

2. If the food has been outsourced and supplied to employee the cost charged to employee shall be as per rule 28 and 30 of the CGST rules as the employer and employee is related person.

3. ITC on the above service shall be disallowed u/s 17[5] explicitly in both the cases of own canteen or outsourced. But as in the above case providing food was statutory requirement as per Factory Act ,1948, ITC on the inward services shall be allowed.

4. Whether GST will be charged from the employees, the answer is ‘yes’ as provided in Section-15[2][a] of the CGST Act,2017.

5. Whether the Company need to raise invoice on employee and make the payment of GST. The answer is “Yes” as per section 31[2] of the CGST Act,2017.

Disclaimer :

The contents of this article are solely for information and knowledge and does not constitute any professional advice or recommendation. Author does not accept any liability for any loss or damage of any kind arising out of this information set out in the article and any action taken based thereon.

About the Author:

Author is practicing chartered accountant in Gurugram[Haryana] and having practice in Goods and Service Tax . He can be reached at sanjeev.singhal@skaca.in. WWW. skaca.in