M/s Elior India Catering LLP (Elior)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 34/2019, Date: 12-09-2019 Dated **12.09.2019**

Q Questions Before the Authority

- Whether, in the facts and circumstances of the case, the services rendered by the applicant under the cash & carry model are in the nature of 'services provided by canteen' under Sl. No. 7(i) or 'outdoor catering services' under Sl. No. 7(v) of Notification No. 11/2017 - Central Tax (Rate) [as amended vide Notification No. 46/2017-CT (Rate) dated 14.11.2017]?
- If the services supplied under the cash & carry model are classifiable as 'services provided by canteen', whether CGST and KGST be chargeable at the rate of 2.5% in terms of entry 7(i) of Notification No. 11/2017-CT (Rate) [as amended vide Notification No. 46/2017-CT (Rate) dated 14.11.2017]?

F Facts

Elior provides catering under a contract with CBRE South Asia Pvt Ltd, which was appointed by Cisco to procure catering support at Cisco's Bengaluru premises. Under the cash & carry model, Elior runs a counter at the Cisco premises, prepares food there from inputs it procures and stores on site, and sells it to Cisco employees at menu prices, invoicing each employee under its own GSTIN. The applicant's other models (business catering and corporate/social events) were not before the authority.

H Ruling

Whether cash & carry model services fall under entry 7(i) (canteen) or entry 7(v) (outdoor catering) of Notification 11/2017-CT (Rate)	****Covered under amended entry 7(i)** of Notification 11/2017-CT (Rate) dated 28.06.2017, as amended by Notification 13/2018-CT (Rate) dated 26-07-2018**	Entry 7(v) does not apply because the supply is neither event based nor occasional. Explanation 1 to entry 7(i) was held not to fit the arrangement, but the main entry still covers it, and ownership of the premises is irrelevant.
Rate of tax if the supply is classified as canteen supply under entry 7(i)	****2.5% CGST and 2.5% SGST****	Subject to the proviso that credit of input tax charged on goods and services used in supplying the service has not been taken.

The authority held that food supplied under the cash & carry model, where the items are prepared in the same premises from which they are supplied, falls under the amended entry 7(i) of Notification 11/2017-CT (Rate), as amended by Notification 13/2018-CT (Rate) dated 26-07-2018, and not under entry 7(v). It further held that the applicable rate is 2.5% CGST and 2.5% SGST, provided credit of input tax on goods and services used in supplying the service has not been taken.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The authority read entry 7(i) as covering supply of food by a restaurant, eating joint, mess or canteen, and found that the entry does not require the premises to be owned by the supplier. Because Elior prepares the food at the Cisco premises and sells it there, the authority treated the activity as a sale of food for consumption on or away from the premises. Entry 7(v) was rejected because the cash & carry supply is not event based or occasional. The authority also held that Explanation 1 to entry 7(i) is clarificatory and does not limit the main entry, so the absence of a direct contract between Cisco and Elior did not take the supply out of entry 7(i). The applicant's Explanation 1 and CBRE contract arguments were therefore not decisive.

P Provisions Relied On

- Section 9 of the CGST Act and KGST Act (levy of tax at notified rates)
- Section 7 of the CGST Act and KGST Act (scope of supply)
- Entry 6 of Schedule II of the CGST Act (composite supplies treated as supply of services, including supply of food under clau…
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, entry 7(i), entry 7(v) and entry 7(ix)
- Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017
- Notification No. 13/2018-Central Tax (Rate) dated 26.07.2018, which amended entries 7(i) and 7(v) and inserted Explanation…
- Section 98(4) of the CGST Act and KGST Act (power to pass the advance ruling order)
- Circular No. 28/02/2018 dated 08.01.2018 (with corrigendum of 18.01.2018), cited by the applicant on canteens of educationa…
- Chapter V of the Finance Act, 1994 (definitions of caterer and outdoor caterer), cited by the applicant; not decisive

! For the Practitioner

This ruling is useful for caterers who operate a canteen or counter service inside a client's premises and sell to individual employees, showing that such sales can fall under the canteen entry at 2.5% plus 2.5% when no input tax credit is taken. It also shows that the Notification 13/2018 explanation does not confine entry 7(i) to contractual arrangements made directly with the institution. The ruling does not decide the rate for business catering or corporate event models under the same contract, and it does not resolve the question of outdoor catering under entry 7(v) for event-based supplies. It also does not address cases where input tax credit has been availed, since the concessional rate is conditional on that.

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Source

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Original order: www.gstcouncil.gov.in -> kar_aar_34_2019_eliorindiacateringllp.pdf

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