M/s. Sodexo Food Solutions India Private Limited

Authority for Advance Ruling — Tamil Nadu

ORDER No.11/AAR/2018 DATED 27.09.2018 (the listing gives TN/11/AAR/… Dated **27.09.2018**

Q Questions Before the Authority

- Whether entry 7(i) of Notification No. 11/2017-CT (Rate), as amended by Notification No. 46/2017-CT (Rate) dated 14.11.2017, covers canteens located in any establishment.
- Whether Circular No. 28/02/2018-GST applies to canteens located in any type of establishment, so that supply of food and drink through them is liable to 5% GST under that entry.

F Facts

Sodexo operates canteens and cafeterias on the premises of corporate and institutional clients under B2B contracts, charging per plate, and also runs retail counters where employees and visitors buy food and beverages directly. It contended that canteens in factories, offices, hospitals and offshore rigs should attract the 5% rate under entry 7(i), not the 18% rate for outdoor catering under entry 7(v). The clients were refusing to bear the higher rate because they cannot take input tax credit.

H Ruling

The authority dismissed the application as withdrawn and did not decide either question on merits. The applicant had withdrawn after the Government issued Notification No. 13/2018-Central Tax (Rate) dated 26.07.2018, which substituted a new entry 7(i) covering food and beverages in canteens, messes, cafeterias or dining spaces of institutions such as schools, colleges, hospitals, industrial units and offices at 5%. Because the ruling is dismissed as withdrawn, the order contains no answer to the questions raised.

R Reasoning

The applicant sought a ruling on whether entry 7(i) and Circular No. 28/02/2018-GST extend the 5% rate to canteens in every type of establishment. It argued that the outdoor catering characterisation under entry 7(v) does not fit a permanent canteen, relying on the Supreme Court decision in Tamil Nadu Kalyana Mandapam and on the Article 301 non-discrimination argument drawn from Firm A.T.B. Mehtab Majid. After the amending Notification No. 13/2018-CT (Rate) changed the entry, the applicant withdrew, and the authority dismissed the application on that basis without reaching the legal arguments. The order's reasoning is therefore procedural only.

P Provisions Relied On

Section 98 of the CGST Act 2017 (advance ruling; heading of the order)

Notification No. 11/2017-CT (Rate), entry 7(i) and entry 7(v)

Notification No. 46/2017-CT (Rate) dated 14.11.2017

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

Notification No. 13/2018-CT (Rate) dated 26.07.2018

Circular No. 28/02/2018-GST dated 8 January 2018 and its corrigendum dated 18 January 2018

Article 301 of the Constitution of India (argued by the applicant)

Tamil Nadu Kalyana Mandapam v. Union of India, 2004-TIOL-36-SC-ST (cited by the applicant)

Firm A.T.B. Mehtab Majid v. State of Madras (cited by the applicant)

! For the Practitioner

A practitioner should not cite this order as authority on whether canteens in non-educational establishments attract 5% under entry 7(i), because the authority dismissed the application as withdrawn and gave no ruling. Its value lies in the record of the applicant's arguments, the CBEC circular of 8 January 2018 and its corrigendum, and the background to the 2018 amendment. The order does not decide the outdoor catering versus canteen distinction under entries 7(i) and 7(v), and does not address the Article 301 challenge. For those points, the amended entry 7(i) under Notification No. 13/2018-CT (Rate) and any later ruling should be checked.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> tn-11-aar-2018_sodexo_food_solutions_pvt.ltd_1.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com