

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.206, 2ND FLOOR, PAPJM BUILDING , NO.1 , GREAMS ROAD,
CHENNAI -600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. T Indira, Joint Commissioner/Member(SGST), Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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Advance Ruling No.113/AAR/2023 Dated:17.11.2023

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*
- 3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.*

GSTIN Number, if any / User id	33BCLPJ8525M1Z6
Legal Name of Applicant	Smt. Natarajan Jothilakshmi
Trade Nam of Applicant(Optional)	M/s Jothi Catering Services
Registered Address / Address provided while obtaining user id	127-1, Thottasalai Veethi, Valayapalayam Pirivu, Kaduvettipalayam Post, via Karumathampatti, Coimbatore-641659
Details of Application	Form GST ARA – 01 Application Sl.No.55/2022/ARA, dated 26.09.2022.
Concerned Officer	State: Karumathampatti Assessment Circle Centre: Coimbatore Commissionerate,
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Services
B Description (in brief)	Outdoor Catering Service
Issue/s on which advance ruling required	GST HSN code and Rate of Tax for outdoor catering service.
Question(s) on which advance ruling Is required	1.Rate of Tax for Outdoor Catering Services With ITC 2.HSN code 3.Latest Notification

M/s Jothi Catering Services, 127-1, Thottasalai Veethi, Valayapalayam Pirivu, Kaduvettipalayam Post, Via Karumathampatti, Coimbatore 641659 (hereinafter called as 'the Applicant') are registered under the GST Acts with GSTIN: 33BCLPJ8525M1Z6.

2.1 The Applicant submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.2 In their application for Advance Ruling, the Applicant has stated, *inter-alia*, that they are undertaking outdoor catering services. The service receiving companies are not accepting to the notification or any details regarding the rate of tax and HSN code given by the Applicant but insisting upon them, the latest

notification for the rate of tax and HSN code for the said services. Therefore the Applicant has filed an application before the Authority for Advance Ruling, Tamil Nadu, with the said questions.

3.1 The State jurisdiction Officer viz. the Assistant Commissioner(ST), Karumathampatti Circle, has stated that supply of outdoor catering is taxable at 5% without ITC and with ITC the GST rate is 18% and the HSN code for outdoor catering is 996334. The jurisdictional Officer also remarked that no proceeding on the issue related to the question raised by the applicant is pending in her jurisdiction.

3.2 The Joint Commissioner(ST), Erode Intelligence Division has also remarked that no proceeding relating to the question raised by the applicant is pending in her jurisdiction.

3.3 The Centre Authority vide letter dated 22.09.2023, has submitted that Outdoor catering services will attract 5% GST provided that credit of input tax charged on goods or services used in supplying the services has not been taken(Reference: Explanation No.(iv)) vide Notification No.20/2019-CT(Rate) dated 30.09.2019, w.e.f. 01.10.2019 amending the principal notification No.11/2017-CT(Rate) dated 28.06.2017. He stated that the HSN code for the same is 996334 and the latest Notification in this regard is Notification No.20/2019-CT(Rate) dated 30.09.2019. Further, it was also stated that no proceeding on the issue related to the question raised by the Applicant is pending.

4. The Applicant, after consent, was given an opportunity to be heard in person on 10.10.2023. Shri C.Krishnakumar, GST Practitioner, who is the Authorized Representative of the Applicant appeared for the hearing and he reiterated the submissions made in their application. The Members directed the AR to submit sample copy of agreement executed by them with their clients and also a copy of the invoice, if any, issued by them. They stated vide their email dated 14.11.2023 that they intend to supply food to the workers of large industries and vide their email dated 15.11.2023 a copy of template of agreement to be executed with their future clients.

DISCUSSION AND FINDINGS:

5.1. We have carefully considered the submissions made by the Applicant in their application, submissions made during the personal hearing and the comments furnished by the Centre and State Tax jurisdictional officers.

5.2 In terms of Section 97(2) of the CGST/TNGST Act, questions on which advance ruling is sought under the Act, falls within the scope of Section 97(2)(a), (b) & (e) of the CGST/TNGST Act, 2017, and therefore the application is admissible.

5.3. The Applicant furnished copy of template of agreement to be executed by them with their future clients and also stated that they are proposing to supply prepared food and beverages to the workers of large industries. On perusal of the template agreement submitted by the Applicant, it is inferred that they plan to supply prepared food and beverages to their clients, deliver the same to the client's premises but not involved in the distribution of food in the client's premises. Thus the Applicant would be doing a catering service on a contract. The Applicant would charge their clients according to the quantity of food supplied. The Applicant has requested for the appropriate Tariff heading for their activity, Rate of Tax and relevant notification.

5.3 The first and foremost point to be decided is whether the said activity of the Applicant is a supply of service. Schedule II given under Section 7 of the CGST Act, 2017 lists the activities to be treated as supply of goods or supply of services. The portion relevant to the subject issue is reproduced below:

6. Composite supply: The following composite supplies shall be treated as a supply of services, namely:—

(a)

(b) 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.

From the above, we find it is evident that the activity to be undertaken by the Applicant viz. supply of food and beverages for a consideration is 'supply of service'.

5.4 To decide the Tariff/Service code, we find that the Annexure to the Notification No.11/2017-CT(Rate) dated 28.06.2017 lists the classification of services and the relevant chapter, Section Heading or Group, the relevant portion of which is reproduced under:

Annexure: Scheme of Classification of Services

Sl.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
80	Group 99633		Food, edible preparations, alcoholic and non-alcoholic beverages serving services
		996337	Other contract food services

The explanation given in the explanatory notes to the services in respect of the heading 996337 states as follows:

“996337Other contract food services

This service code includes food preparation and/or supply services based on contractual arrangements with the customer, at institutional, governmental, commercial or industrial location/s specified by the customer other than for transportation companies, on an ongoing basis; food service concession services, i.e. the provision of operating services by operators of eating facilities such as canteens and cafeterias.”

From the above explanation, we find that the service rendered by the Applicant falls under the Tariff/Service code 996337.

5.5 The said service will not fall under 'Outdoor Catering Service' as stated by the jurisdictional Officers in their remarks, as the definition/explanation to the said term is given by Notification No.20/2019- CT(Rate) dated 30.09.2019, which amended the Notification No.11/2017-CT(Rate) dated 28.06.2017 and the same is given as under:

“(xxxiii) ‘Outdoor Catering’ means supply, by way of or as part of any service of goods, being food or any other article for human consumption or any drink, at Exhibition halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.”

From the above, we find that the activity undertaken by the Applicant will not fit into the explanation given for ‘Outdoor catering’.

5.6 The rate of tax to be adopted for the activity of the Applicant is as per Notification No.11/2017-CT(Rate) dated 28.06.2017, which notifies the Central Tax applicable on various services, which is amended by Notification No.20/2019-CT(Rate) dated 30.09.2019, which is reproduced below:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
7	Heading 9963 (Accommodation, food and beverage services)	(i) Supply of 'Hotel accommodation' having value of supply of unit accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	-
		(ii) Supply of 'restaurant service' other than at 'specified premises'	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken
		(iii) Supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or.....	2.5	-do-
		(iv) Supply of 'outdoor catering' at premises other than 'specified premises' provided by any person ...	2.5	-do-
		(v) Composite supply of 'outdoor catering' together with	2.5	-do-
		(vi) Accommodation, food and beverage services other than (i) to (v) above	9	-

The explanation given in the said Notification for various terms are as follows: -

“(xxxii) ‘Restaurant service’ means supply by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

(xxxiii) ‘Outdoor Catering’ means supply, by way of or as part of any service of goods, being food or any other article for human consumption or any drink, at Exhibition halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.

(xxxiv) ‘Hotel accommodation’ means supply by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including supply of time share usage rights by way of accommodation.

(xxxvi) ‘Specified premises’ means premises, providing ‘hotel accommodation’ services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.”

From the above definitions, it can be seen that the restaurant service covers only services provided by restaurant, mess or canteen, thereby, the activity to be undertaken by the Applicant, that providing catering service under a contract to Industries would not be covered under ‘restaurant service’. The said activity of the Applicant would not be covered under ‘outdoor catering service’ as it is not an event based or an occasional service. It will not be covered under ‘hotel accommodation’ and also not a ‘specified premises’. Thus the service to be undertaken by the Applicant does not fall under 7(i) to 7(v) of the description given in the said Notification. Therefore, we find that the catering services of the Applicant under a contract would be falling under entry No. 7(vi), being the residual entry and thereby attract 9% CGST and 9% SGST as per Notification No.11/2017-State Tax(Rate) dated 30.06.2017.

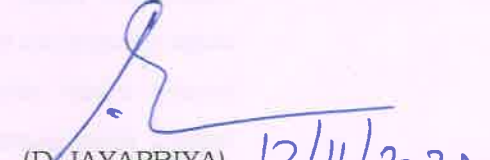
Based on the above discussions, we rule as under:

RULING

The proposed activity of supply of food by the Applicant falls under 'other contract food service' under SAC 996337 attracting 18% of GST, as per Notification No.11/2017-CT(Rate) dated 28.06.2017 amended by Notification No.20/2019-CT(Rate) dated 30.09.2019.


(T.INDIRA)
Member (SGST)




(D. JAYAPRIYA) 17/11/2021
Member (CGST)

To

M/s Jothi Catering Services, 127-1, Thottasalai Veethi,
Valayapalayam Pirivu, Kaduvettipalayam Post,
Karumathampatti, Coimbatore-641659.

//by SPAD//

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise,
Coimbatore Commissionerate,
6/7, A.T.D. Street, Race Course,
Coimbatore 641 018.
2. The Assistant Commissioner(ST),
Karumathampatti Circle
Tiruppur-II, Indira Nagar, Avinashi Salai,
Tiruppur – 641 003.
3. Master File/ Spare – 2.