

Treading the GST Path XLIII

Advance Ruling on Canteens – The Pandora’s (tiffin) box

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The decision of the GST Advance Ruling Authority, Kerala, to the effect that the cost recovered from employees, by the employer, towards using the canteen facility provided by the employer is a “supply” and hence liable to GST, has kicked up large scale debates throughout the country. It is seen that some of the vital arguments, which could have been advanced before the Authority, seems to have been not advanced.

It may be noted that as per the provisions of various enactments such as, the Factories Act, the employer is bound to provide canteen facility to the employees. While some of the employers provide free food, by and large subsidised food is being provided to the employees in such canteens. Provision of such facility, either free food or subsidised food is in the form of perquisites in the hands of the employee, for the services provided by the employee to the employer. It cannot be treated as an independent supply by the employer to the employee.

Reference is also invited to the Press Note issued by the Government, containing the following clarification, which signifies the intention of the Government.

Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

As per S.No.1 of Schedule III of the CGST Act, 2017, services provided by the employees to the employer are not considered as supply and hence, the subsidised food provided by the employer to the employee, by way of consideration for the services provided by the employee, cannot be subjected to GST levy.

The decision of the Advance Ruling Authority would give raise to the following issues.

It may be noted that employers and employees are treated as related persons, as per Section 15 (5) of the CGST Act, 2017. As per S.No. 2 of Schedule I of the Act, supply of goods are services between related persons, made even without consideration would be a supply. So, even if the employer provides free food to its employees, as per S.No.2 of the Schedule I of the Act, it may be considered as a supply. Since the parties are related, valuation in such case, be it free supply or subsidised supply, shall be determined as per Rule 28 of the CGST Rules, 2017, i.e. based on “open market value” or by any other method prescribed in Rules 28 to 31 *ibid*. All this would lead to unimaginable consequences.

It is strongly felt, with due respect, that the impugned decision of the Advance Ruling Authority is duly appealed against. Or, in order to put at rest the controversies, the Government may clarify the issue in more clear terms.

(Published in www.taxindiaonline.com on 12.04.2018)