

WEST BENGAL AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata–700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX      Joyjit Banik, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called “the GST Act”), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	THE TOLLYGUNGE CLUB LIMITED
Address	120, Despran Shasmal Road, Tollygunge, Kolkata, West Bengal – 700 033
GSTIN	19AABCT3361M1Z0
Case Number	WBAAR 08 of 2024
ARN	AD190424013222K
Date of application	April 26th, 2024
Jurisdictional Authority (State)	Corporate Division, Large Taxpayer Unit
Jurisdictional Authority (Central)	Tollygunge Division, Kolkata South Commissionerate
Order number and date	09 /WBAAR/2024-25 dated 10.09.2024
Applicant’s representative heard	Mr. Gopal Agarwal, Authorized Representative Mr. Satyanarayan Gupta, Authorized Representative

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for

certain provisions. Therefore, unless a mention is made specifically to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant submits that it is one of the premier and elite clubs of Kolkata and is primarily engaged in providing inter alia Club or Association Services, Short Term Accommodation, Restaurant, Catering services etc. The applicant has its own premises and is engaged in the business of providing "composite supply of catering service along with the renting of premises". The applicant wants to know whether the lower rate of GST @ 5% leviable on the Composite supply of "outdoor catering together with renting of premises" by virtue of Notification no. 11/2017- Central Tax (Rate) dated 28.06.2017 (as amended) shall be applicable.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

1). Whether the composite supply of catering service within the club premise along with renting of premise can be construed as "Outdoor Catering service along with Renting of Premise".

2). If the answer to Q1 is "Yes", whether the composite supply of catering service within the club premise along with renting of premise shall be liable to GST @ 5% without ITC.

3). If the answer to Q1 is "No", whether the composite supply of catering service within the club premise along with renting of premise shall be liable to GST @ 18% with ITC.

4). If the answer to Q1 is "Yes", whether the club is mandatorily required to pay GST @5% without ITC or the club has the option to charge GST @ 18% with ITC considering the fact that the club being engaged in rendering Accommodation Service may increase the Room Tariff to Rs. 7,500 and above (i.e. specified premise) during the peak season.

5). What would be the applicable rate of GST on the catering service along with renting of premise, if the Room Tariff of the Club is declared Rs. 7,500 and above (i.e. specified premise) during the peak season.

1.4 An applicant desirous of obtaining an advance ruling is required to file an application on the common portal in FORM GST ARA-01 in respect of subject matter as specified in sub-section (2) of section 97 of the GST Act. The questions on which the advance ruling is sought for is found to be covered under clause (a), (b) and (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the questions as raised in the application have neither been decided nor are pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

### Submission of the Applicant

2.1 The applicant submits that it is one of the premier and elite clubs of Kolkata primarily engaged in providing Club or Association Services. In the course of business, the club also provides Short Term Accommodation, Restaurant, Catering services etc. The applicant provides standalone service of renting of premise to the members for carrying out functions, wedding, social gatherings, parties etc. as well as indoor catering services along with the renting of premise. For rendering such services, the applicant needs to provide a bundle of services including renting of premises, decorations, light, sound and indoor catering.

2.2 The applicant has made this application seeking clarification whether the service provided by the him shall attract tax @ 5% vide entry No 7 (v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 or such service would attract tax @ 18% the vide entry No. 7(vi) of the said Notification. The relevant extract of the Notification is reproduced here under:

Chapter, Section or Heading	Sl. No.	Description of Service	Rate (per cent.)	Condition
Heading 9963 (Accommodation, food and beverage services)	7(v)	Composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises' provided by any person other than-  (a)suppliers providing 'hotel accommodation' at 'specified premises', or  (b)suppliers located in 'specified premises'	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken

	7 (vi)	<p>Accommodation, food and beverage services other than (i) to (v) above</p> <p>Explanation:</p> <p>(a) for the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5), Which is a mandatory rate and shall not be levied at the rate as specified under this entry</p> <p>(b)This entry covers supply of 'restaurant service' at 'specified premises'</p> <p>(c) This entry covers supply of 'hotel accommodation' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.</p> <p>(d)This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.</p> <p>(e)This entry covers composite supply of 'outdoor catering' together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'.</p>	9	
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The expressions as used in the above mentioned entry have already been explained as follows vide Sl. No. 2 of the said schedule:

*'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.*

*'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.*

*'Declared tariff' means charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.*

2.3 Further, the applicant refers to Schedule II of the GST Act, 2017 –“ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES”

The following composite supplies shall be treated as a supply of services, namely:-

(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.

Definition of "Composite Supply"

Section 2(30) - "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

Definition of "Mixed Supply"

Section 2 (74) - "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration - A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

2.4 Moreover, the Section 8 of the GST Act states that the tax liability on a composite or a mixed supplies shall be determined in the following manner, namely:-

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

In this regard, the rates were notified for different services related to outdoor catering along with the renting of premises which is mentioned in the above table of notification no. 11/2017- Central Tax (Rate) dated 28.06.2017.

2.5 Accordingly, the applicant charges GST at the rate of 18% on the entire consideration received considering all the services as composite supply of Banquet services as it provides bundled services in form of Indoor catering along with Renting of Premises, Decorations, light & Sound etc.

2.6 In regard to the query whether the composite supply of catering service within the club premises along with renting of premises can be construed as "Outdoor Catering service along with Renting of Premise", the applicant has made following submission:

The Term '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.

In view of the aforesaid definition, supply of catering service within the club premises along with renting of premises to the members should also be classified as Outdoor Catering Service.

Reliance can be placed on the Advance Ruling pronounced by AAR West Bengal in the case of Manoj Mittal [2021 (48) GSTL 197 (AAR GST WB)], wherein it was held that — The term 'catering' has not been defined under the GST Act. In Cambridge Dictionary, 'catering' is defined as any job making or serving food. In Collins Dictionary, 'catering' has been defined as the activity or business of providing food for people. However, the term 'outdoor catering', according to Explanation given in Notification No. 20/2019- Central Tax (Rate) dated

30.09.2019 means supply, by way of or as part of any service, of goods, being food or any other article or 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. Hence, the supply of services which are event based and occasional in nature must fall under the category "outdoor catering" services as per the definition.

In view thereof, catering services along with the renting of premises within the club facility shall also qualify the definition of Outdoor Catering Services.

2.7 The applicant submits that in terms of Sl. No. 7(v) of the Notification no. 11/2017-Central Tax Rate dated 28.06.2017 (as amended), Composite supply of 'outdoor catering' together with renting of premises (including hotel, convention centre, Club, pandal, shamiana or any other place, specially arranged for organising a function) at premises other than 'specified premises' would attract tax @ 5% subject to the following conditions:

(a) suppliers shall not providing 'hotel accommodation at 'specified premises', or

(b) suppliers shall not located in 'specified premises'

(c) credit of input tax charged on goods and services used in supplying the service has not been taken

In the instant case, the Club is engaged in rendering accommodation service and the room tariff is  $\leq$  Rs. 7,500/-. '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. In view thereof, since the room tariff is  $\leq$  Rs. 7,500, the club does not satisfy the definition of "specified premise".

In view thereof, the club shall be liable to pay GST @ 5% without ITC on the composite supply of catering services along with renting of premise within the club facility subject to the condition that the Room Tariff of the club never exceeds Rs. 7,500/- per unit per day or equivalent.

2.8 The applicant further contends that in a scenario where the the club does not satisfy the definition of 'specified premise' and the services of the club does not qualify as 'Composite Supply of service', the applicant can pay tax as a supplier of two separate services namely supply of "Renting of Premises" taxable @ 18% and supply of catering services taxable @5%.

2.9 In regard to the query whether the club is mandatorily required to pay GST @ 5% without ITC or the club has the option to charge GST @ 18% with ITC considering the fact that the club being engaged in rendering Accommodation Service may increase the Room Tariff to

Rs. 7,500 and above (i.e. specified premise) during the peak season, the applicant submits as follows:

Reliance is placed on the Karnataka AAR ruling in the matter of Coffee Day Global Limited [2018 (17) G.S.T.L. 121 (A.A.R. – GST)], wherein the AAR held that the explanation in the services rate notification removed any kind of ambiguity on issue and thus, restaurant cannot seek to pay GST at 18% (instead of 5% without ITC) and claim ITC. Further, the right to avail ITC is not an absolute right and conditions and restrictions may be prescribed for its availment.

The applicability of GST on the Service of Outdoor Catering & Restaurant and the conditions/restrictions of ITC are same and hence the ruling issued for the “Restaurant Service” will squarely be applicable for “Outdoor Catering Services”. In view of the aforesaid ruling, the applicants shall be mandatorily required to charge GST @ 5% without ITC when ‘catering along with renting of premise’ is being provided in a premises other than specified premise.

However, if the applicant increases the Room Tariff to Rs. 7500 and above and satisfy the definition of specified premises, the applicant shall be liable to pay GST @ 18% with ITC on the service of “Catering along with renting of premise”.

2.10 The applicant submits that during the peak season, the applicant may consider increasing the Room Tariff to Rs. 7,500/- and above. In such cases, the applicant shall be construed to be a supplier located at “Specified premise” for the period during which the declared Room Tariff exceeds Rs. 7,500/- & above. Since the taxability of outdoor catering service depends on the Room Tariff, then the applicant shall be liable to pay GST @ 18% with ITC only during the period when the declared tariff exceeds Rs. 7,500/- and again GST @ 5% without ITC when the declared tariff is below Rs. 7,500/-.

In this regard, reliance can be placed on the Circular No. 27/01/2018-GST dated 04.01.2018 wherein it was clarified-

Clarification sought – Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then?

Clarification- In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the services of accommodation is provided shall apply.

2.11 Thus by virtue of aforesaid circular, it has been clarified that the applicable rate of GST depends on the declared Tariff value at the time of rendition of service. Reliance is also



placed on the Advance Ruling pronounced by AAR Gujarat in the case of Mangaldas Mehta and Co. Limited [2020 (36) G.S.T.L. 140(A.A.R.-GST-Guj.)] wherein clarification was given that in case different room tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service is provided shall apply. GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the amount charged for restaurant services from the guest/customer.

2.12 In the view of the aforesaid clarification and the ruling, it can be said that the applicant shall be liable to pay GST @ 5% without ITC during the period when the declared tariff is less than Rs. 7,500/- and GST @18% with ITC during the period when the declared tariff is Rs. 7,500/- or above.

#### Submission of the Revenue

3.1 The officer concerned from the revenue has not expressed any view in this regard.

#### Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during the course of personal hearing.

4.2 The applicant submits that he provides banquet / lawn facility on rent along with catering services to their members. We first proceed to examine the issue whether such supply would be considered as composite supply of 'outdoor catering' together with renting of premises so as to attract tax @ 5% vide entry no 7(v) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended. The term 'outdoor catering', according to Explanation given in Notification No. 20/2019- Central Tax (Rate) dated 30.09.2019 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. The applicant, vide this application, has sought advance ruling where food are supplied at event-based functions, which are occasional in nature. We are therefore of the view that the supply of food or any other article for human consumption or any drink, as provided by the applicant at any event-based function qualifies to be an 'outdoor catering'.

4.3 The applicant submits that in the normal course of business, the banquet services provided by him involves bundle of services such as renting of premises, decorations, light, sound and indoor catering etc. The applicant thus submits that the services includes mainly two components; firstly renting of banquet and secondly indoor catering which are naturally bundled. The aforesaid submission of the applicant thus indicates that the applicant primarily

provides renting of banquet to the recipients (members of the club in the instant case). Supply of food at the function is an ancillary services to renting of premises. In this context it may be mentioned that in course of personal hearing, the authorized representative of the applicant has submitted that the recipient of banquet services is always at liberty to select the supplier of catering services. The recipient member, while booking the banquet services for an event, may ask the applicant to provide food supply services at the said event or the recipient member may approach to any other catering service provider to supply food on the event. However, when the applicant agrees to provide renting of premises along with supply of food, such are in the form of naturally bundled and supplied in conjunction with each other. The concept of 'naturally bundled' supplies is not defined under the GST Act. However, the 'Education Guide' issued by the Central Board of Excise & Customs ('CBEC') in the year 2012 explains the 'Bundled service' to mean a bundle of provision of various services wherein an element of one service is combined with an element or elements of any other service or services. The rule is – 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'. Although it has been observed in the CBEC Education Guide that 'No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business', such normal and frequent practices adopted in a business can be ascertained from several indicators which inter alia includes as follows:

- If a large number of service recipients of such bundle of services reasonable expect such services to be provided as a package, then such package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

4.4 The applicant contends that he provides the banquet services together with catering services in the ordinary course of business and therefore such supply would attract tax @ 5%. To decide the issue, we would like to refer the 'Agenda for 37th GST Council Meeting- Volume-3' where in regard to proposal for 'Request to reduce GST rate on outdoor catering services to 5% without ITC' the Fitment Committee has recommended inter alia as follows:

- The rate of taxation for composite supply of renting of a premise and catering therein may also be reduced to 5% without ITC from 18%.
- Therefore, GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs. 7500 and above may be reduced to 5% without

ITC. Catering in premises with daily tariff of unit of accommodation is Rs. 7500 and above shall remain at 18%.

4.5 We are therefore of the view that where the applicant provides renting of premises along with supply of food at any event, such supply would attract tax @ 5% with the restriction of input tax credit and subject to the condition that the Room Tariff of the club does not exceed Rs. 7,500/- per unit per day or equivalent. Clarification given in the CBIC Circular 27/01/2018-GST dated 04.01.2018 as referred by the applicant in para 2.10 supra is to be followed in order to determine whether the applicant is located in 'specified premises' or the supply is provided at 'specified premises'.

In view of the above discussions, we rule as under:

### RULING

Q.1. Whether the composite supply of catering service within the club premise along with renting of premise can be construed as Outdoor Catering service along with renting of premises.

- Ans. Yes. Composite supply of catering services within the club premises along with renting of premises falls under "outdoor catering service together with renting of premises" arranged at premises other than 'specified premises'.

Q.2 If the answer to Q1 is "Yes", whether the composite supply of catering service within the club premises along with renting of premises shall be liable to GST @ 5% without ITC.

- Ans. Yes. GST is payable against whole consideration of the composite supply @ 5% without ITC subject to condition as mentioned herein above against answer to Q1.

Q.3. If the answer to Q1 is "No", whether the composite supply of catering service within the club premise along with renting of premise shall be liable to GST @ 18 % with ITC.

- Ans. Not applicable since the answer to Q 1 has been given in affirmative.

Q. 4 If the answer to Q1 is "Yes", whether the club is mandatorily required to pay GST @5% without ITC or the club has the option to charge GST @ 18% with ITC considering the fact that the club being engaged in rendering Accommodation service may increase the Room Tariff to Rs. 7,500/- and above (i.e. specified premise) during the peak season.

- Ans. Tax is payable by the applicant @ 5% without ITC subject to the condition that the Room Tariff of the club does not exceed Rs. 7,500/- per unit per day or

equivalent. However, when the tariff is declared above Rs. 7,500/- per unit per day, the applicant shall be liable to pay tax @ 18%.

Q.5 What would be the applicable rate of GST on the catering service along with renting of premise, if the 'Room tariff' of the club is declared Rs. 7,500/- and above (i.e. specified premise) during the peak season.

- Ans. Already given to Q 4 above.

(Dr.TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJITBANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 10<sup>th</sup> September, 2024

To,

The Tollygunge Club Limited

120, Despran Shasmal Road, Tollygunge,

Kolkata, - 700 033, West Bengal

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Special Commissioner, Large Taxpayers Unit, 14, Beliaghata Road, Kolkata-700015
- (4) The Commissioner, CGST & CX, Kolkata South Commissionerate, 180, Shantipally, R.B.Connector, Kolkata-700107
- (5) Office Folder