

GST RATE ON CANTEENS-CONFUSION SETTLED

The rate of GST on food and beverages supplied in canteens/mess has been a point of dispute in the GST era as the clarification issued by the government and the ruling pronounced by the Authority for Advance Ruling have been in total contradiction to each other. The present write up seeks to discuss the ambiguity as regards the applicable rate of GST on canteens and the recent amendment made by the government vide **Notification No. 13/2018-Central Tax (Rate) dated 26.07.2018**.

The serial no. 7(1) of the notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 as substituted by Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017 w.e.f. 15.11.2017 prescribed the rate of GST applicable on supply of food or beverages by a restaurant, eating joint including mess, canteen as 5% without the facility of input tax credit. The said entry read as follows:-

S. No.	Chapter Heading	Description of service	Rate (%)	Condition
7	9963 Accommodation, food and beverage services)	Supply, by way of or as part of any service or in any other manner whatsoever, of goods, <u>being food or any other article for human consumption or drink</u>, where such supply or service is for cash, deferred payment or other valuable consideration, <u>provided by a restaurant, eating joint including mess, canteen,</u> whether for consumption on or away	2.5%	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)].

		<p><i>from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.</i></p> <p><i>Explanation.- “declared tariff” includes 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.</i></p>		
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It is submitted that although the entry 7(i) specifically mentioned canteen, mess but there was confusion as regards the GST rate to be charged by the contractors supplying food and beverages in canteen/mess established by

industrial units/hospitals/educational institutions etc. This is for the reason that the entry only covered supply of food and beverages by canteen/mess and so it was opined that contractors preparing food in such canteens were to be considered as outdoor caterer liable to GST rate of 18% according to the then entry 7(v) of the notification no. 46/2017-Central Tax (Rate) dated 14.11.2017 w.e.f. 15.11.2017 which simply covered services provided by outdoor caterers whether on occasional basis or regular basis. In this context, reference may be made to the Advance Ruling pronounced in the case of **RASHMI HOSPITALITY SERVICES PRIVATE LIMITED [2018 (13) G.S.T.L. 211 (A.A.R.-GST)]** given on 21.03.2018 wherein it was held that a contractor engaged for running canteen set up for workers/employees of a company is liable to pay GST at the rate of 18% under serial no. 7(v) as outdoor caterer as the contractor was providing services from other than his own premises as held in the case of **Indian Coffee Workers' Cooperative Society Ltd. Vs Commissioner [2014 (34) S.T.R. 546 (All.)]**. It is pertinent to mention here that while passing this decision, advance ruling also considered the clarification issued by CBIC vide Circular No. 28/02/2018-GST dated 08.01.2018 which stated that supply of food or drink provided by a mess or canteen is taxable at the rate of 5% without input tax credit (ITC) under serial no. 7(i) of the notification no. 46/2017-Central Tax (Rate) dated 14.11.2017. It is also worth noting that it was clearly mentioned in this circular read with Corrigendum dated 18.01.2018 that GST is to be payable at the rate of 5% without ITC even by the contractor appointed by the educational institution with respect to canteen services provided by such contractor. It is submitted that in spite of the clarification by the CBIC, the Authority for Advance Ruling held that contractors supplying food in canteens are required to discharge GST at the rate of 18% as outdoor caterer under serial no. 7(v) of the notification no. 46/2017-Central Tax (Rate) dated 14.11.2017 by placing reliance on the decision given in erstwhile Service Tax Laws with respect to outdoor caterer.

The GST Council Meeting held on 21.07.2018 resolved the confusion created by the Advance Ruling and has amended the serial no. 7(i) of the Notification no. 46/2017-Central Tax (Rate) dated 14.11.2017. The amendment made in serial no. 7(i) vide notification no. 13/2018-Central Tax (Rate) dated 26.07.2018 reads as follows:-

S. No.	Chapter Heading	Description of service	Rate (%)	Condition
7	9963 Accommodation, food and beverage services)	<p>Supply, by way of or as part of any service, of goods, <u>being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen,</u> whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.</p> <p>Explanation 1.- This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a</p>	2.5%	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)].

		<p><i>school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional.</i></p> <p><i>Explanation 2.- This item excludes the supplies covered under item 7 (v).</i></p> <p><i>Explanation 3.- “declared tariff” includes 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.</i></p>		
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It is submitted that the explanation to the amended entry clearly states that serial no. 7(i) includes supply of food and beverages by canteen, mess, cafeteria of an institution by such institution or any other person based on contractual arrangement with such institution with the condition that such supply is not occasional. Hence, the explanation leaves no room for doubt that

the supply of food by canteens in an institution; whether the supply is by institution or by contractors engaged by institution will attract GST rate of 5% without ITC. Moreover, entry no. 7(v) pertaining to outdoor caterers has also been amended to specify GST rate of 18% for outdoor caterers supplying food on occasional basis for events and such outdoor caterers are not covered under serial no. 7(i).

In nutshell, the amendment seeks to settle the dispute regarding applicability of GST rate on supply of food in canteens by contractors. Now, the contractors are required to charge GST at the rate of 5% to the institutions appointing them for supplying food in canteens run by such institutions. However, such institutions will not be eligible for availing the ITC of the GST paid to such contractors. Moreover, the companies maintaining canteens for their employees will again have to discharge GST at the rate of 5% on the food supplied to their employees as under GST era, employee and employer are related persons and this view was also confirmed in the Advance Ruling pronounced in the case of ***CALTECH POLYMERS PVT. LTD. [2018 (12) G.S.T.L. 350 (A.A.R-GST)]***. In such situations, the effective GST rate would be 10% (5%+5%) as no ITC is admissible to the companies.