

 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Pramod Kumar Singh, Member (Central Tax)
2. Dr. Preetam B. Yashwant, Member (State Tax)

ORDER NO. RAJ/AAAR/7/2019-20 DATED 12.05.2020

Name and address of the Appellant	M/s Kalani Infrastructure Private Limited, : A-14-A, Road No. 1, Indraprastha Industrial Area, Kota (Raj.)
GSTIN of the appellant	: 08AACCK1540L1ZK
Issues under Appeal	Whether provision of hostel accommodation service : along with food and other facility is a composite supply wherein hostel accommodation is principal supply and food and other facilities are only incidental to it.
Date of Personal Hearing	: 17.03.2020
Present for the appellant	Sh. Keshav Maloo C.A., : Sh. Nikhil M. Jhanwar C.A.
Details of Appeal	Appeal No. RAJ/AAAR/APP/05/2019-20 against : Advance Ruling No. RAJ/AAR/2019-20/30 dated 09.01.2020.

(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan GST Act, 2017 (hereinafter also referred to as 'the RGST Act') on 13.2.2020 by M/s Kalani Infrastructure Private Limited, A-14-A, Road No. 1, Indraprastha Industrial Area, Kota (Raj.) (hereinafter also referred to as 'the Appellant') against the Advance Ruling No. RAJ/AAR/2019-20/30 dated 09.01.2020.



- 3.1 M/s Kalani Infrastructure Pvt. Ltd. (hereinafter referred to as appellants) is registered under GST law with GSTIN 08AACCK1540L1ZK, having their registered address at A-14-A, Road No. 1, Indraprastha Industrial Area, Kota (Raj.). M/s Fortune Icon, a unit of M/s Kalani Infrastructure Pvt. Ltd. is running a Hostel for residential accommodation of students. The appellant wish to charge a consolidated amount of Rs.17,000/- per month from the students against provision of hostel accommodation for residence purposes which would also include ancillary supply of food with certain other facilities.
- 3.2 It has been submitted that primarily the students approach for having accommodation facility and only when accommodation facility gets ensured, need for food and other allied facilities arises. Neither the appellants wish to charge any separate amount for supply of food or other general facilities from the students nor there is any bifurcation of the charges for residential accommodation along with food and other facilities provided to the students. Further, there would be no option provided to the students to opt for hostel accommodation without food or other facility. All students would pay a consolidated amount of Rs.17,000/- per month whether or not they use the food or any other facility. Similarly, there is no option for any person to take only food or any other facility without being resident of hostel.
- 3.3 Since the hostel charges recovered from the student per day does not exceed Rs.1000/-, the activity of hostel accommodation is exempt from GST under **Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017** as amended read with **CBEC Circular No. 32/06/2018-GST, dated 12.02.2018**. However, there is no specific clarification on applicability of exemption on incidental food facility if provided along with principal supply of hostel accommodation especially when no separate charge is recovered from the students.
- 3.4 In the above background, an application was filed by them before Rajasthan Authority of Advance Ruling to determine classification and taxability of hostel accommodation where food and other general facilities are also provided, and no separate amount is charged from the students for the same. Question which the Advance Ruling was sought, are as under:-
- Whether provision of hostel accommodation along with food facility to the students wherein consolidated amount is charged from the students is a composite supply where principal supply is that of rent of hostel accommodation?
 - Whether the entire charge recovered from the students would be exempt from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017 as amended if the charges per day is less than Rs.1000/-
 - To determine the taxability on supply of hostel accommodation along with food facility.
 - To determine the appropriate classification and applicable rate of GST on supply of hostel accommodation along with food facility.
- 3.5 However, the Authority did not find favour and issued the Advance Ruling holding that:-
- The provision of hostel accommodation along with food facility, Play Room, Gym, Housekeeping, Room Cleaning to the students wherein consolidated amount is charged from the students is Mixed Supply.

(b) The entire charges recovered from the students are not exempted from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017.

(c) As various services provided by the applicant constitute a Mixed Supply, the rate of GST on whole supply will be the rate of supply which attracts highest rate of GST. As the highest rate amongst services provided is 18%, accordingly, rate of GST on whole supply will be 18% (SGST 9% + CGST 9%).

3.6 Aggrieved by the aforesaid Ruling above, the appellant has preferred the present appeal before this forum.

GROUND OF APPEAL

4. The appellant in its Appeal has, inter-alia, mentioned the following grounds of Appeal:

4.1 The provision of hostel accommodation, food with other general facilities shall be treated as composite supply, where principal supply is renting of accommodation

4.1.1 In the present case, the Appellants are running hostel accommodation for students in Kota. The appellants principally provide hostel accommodation alongwith incidental supply of food to all students wherein a consolidated amount of Rs.17,000/- per month is charged from the students. There is no system wherein student is provided with a choice to opt for hostel accommodation without incidental supply of food. In other words, neither there is any choice with the student to opt for standalone hostel accommodation without opting for supply of food nor there is any bifurcation of charges for food provided to the students.

4.1.2 Further, following additional amenities are also available which are part and parcel of the hostel accommodation. No separate charge is recovered from the students for the same:

- TV in dining hall
- Playroom
- Gym
- Housekeeping of entire hostel premises
- Room cleaning
- Washing/ dry-cleaning of bed sheets & linen of rooms provided by owner

None of these amenities are mandatory. These are provided as complimentary amenities and there is no obligation as such if any of these are discontinued. The hostel accommodation is inbuilt with above facilities.

4.1.3 It is submitted that there is no dispute to the fact that the provision of hostel accommodation and food falls under 'Supply' as defined under Section 9 of the CGST Act, 2017. Here the reference of CGST Act, 2017 may be treated as reference to State GST, UTGST and IGST Act also. The food is provided as an integral part and naturally bundled with the hostel accommodation and no separate amount is charged from the students. The provision of services comprises two or more components wherein principal activity is of the rental services of hostel accommodation shall be treated as Composite Supply.

4.1.4 It is pertinent to refer to the concept of 'composite supply' provided in GST law. Section 2(30) of CGST Act, 2017 defines 'composite supply' as under:



"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;

4.1.5 Perusal of the above definition implies that a supply of goods and/or services will be treated as composite supply if it fulfills the following three criteria:-

- (a) Supply of two or more goods and services together.
- (b) Goods or services are naturally bundled, i.e. they are provided together in the normal course of business, and
- (c) Value of each supply is not identifiable separately.

Further, it shows that there is no concept whether such incidental supplies results into any better enjoyment of main supply or that whether same are available independently also in the market.

4.1.6 A perusal of the example given in statute for composite supply shows that when goods are supplied along with transportation, insurance and packing material are incidental supplies whereas supply of goods is principal supply. It is common knowledge that there can be supply of goods at doorstep of supplier without any transportation or without any transit insurance or that supply of transportation service or insurance service can also be independently and commonly available outside or that quality of supply of goods would not change whether transportation and insurance is inclusive in the scope of supplier or not. Irrespective of above it is covered by composite supply of goods where the packing material, transportation, insurance is considered as incidental. The logic behind it is that basically the customer approached for supply of goods and therefore, that is the principal supply and other facilities are incidental to the principal supply hence, an example of composite supply.



4.1.7 As against this the mixed supply is defined under section 2(74) which read as under:

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;

4.1.8 Perusal of definition of mixed supply shows that here also two or more individual supply of goods or services are made in conjunction with each other for a single price where such supply is not composite supply.

The illustration of mixed supply given in statute as reproduced above shows that in case supply consists of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks

and fruit juices etc. and single price is charged then the principle of principal supply and incidental supply does not apply to these types of supplies as all supplies are independent of each other.

4.1.9 It is therefore submitted that the distinctive feature between '*composite supply*' and '*mixed supply*' is not merely that incidental supplies can also be available separately but that in case of mixed supply all components of supply are not dependent on any other and all are principal in nature and logic of principal supply and incidental supply cannot be applied to the same, where as in case of '*composite supply*' incidental supplies are dependent on '*principal supply*'.

4.1.10 The other examples of composite supply commonly available in the business environment are as under:

- a) Hotel principally provides room but it has to keep the housekeeping of hotel and room in tidy condition, all bed sheets and linen of room needs to be washed /dry-cleaned, TVs are provided in common areas as well as in rooms, breakfast, gym rooms, swimming pool are also provided as incidental to stay etc. There can be situations where independent breakfast may also be available in the same hotel still it is considered as '*composite supply*' and that the entire supply is considered as that of supply of hotel accommodation and accordingly classified and taxed. It is never argued that gym facility can be taken outside also or that swimming pool facility can be available outside also or that accommodation facility can be provided without gym, TV, laundry, swimming pool also.
- b) Medical treatment is provided in many hospitals where in many cases the consideration includes rooms for patients as well as attendants, housekeeping of entire premises & rooms, laundry of bed sheets, linen of rooms, supply of food for patients, TV in rooms and common area etc. Here also medical services are considered as principal supply because that is the purpose for which a patient comes to hospital and all other are incidental supplies/facilities. Even though incidental supplies are individually liable to GST, but medical services as a whole are not made liable to GST being principal supply.



This is inspite of the fact that in many cases the same hospital or other hospitals may not provide medical services under the single package but may be charging separately for doctor services, medicines, rooms etc. and inspite of that it is a settled law that where all these are part of a package then it is an example of composite supply where medical services are principal supply and no GST is payable on entire package.

- c) Airlines are providing air travel services along with certain free refreshment/meals during transit and also provides in flight entertainment services on TV Screen etc., keeps aeroplane neat and clean through housekeeping service and also washes and dry-cleaning seat covers etc. These are undisputedly considered as a composite supply where principal supply is that of travel by air and accordingly classified and taxed.

This is inspite of the fact that many airlines are not supplying any snacks/refreshments as a part of package but charges separately for such supply of food. However, those airlines where snacks/ meals are part of ticket price, it is

considered as composite supply of air travel service because basically the passenger approaches airline for air travel service and rest are only incidental.

Above criteria and principles can be squarely applied in the present case also where the student comes to hostel principally for availing accommodation service and for providing such service in today's time, the entire premises are to be kept clean, bed sheet and linen in the room are to be washed/ dry-cleaned, general facilities of TV, Gym and playroom etc. are provided and food facility is also provided. However, the fact remains that student principally wishes to take hostel accommodation and rest are incidental. Hence, a perfect example of composite supply where principal supply is that of accommodation service. This situation is very close to the services of hotel accommodation, hospital, etc. and all elements are same and therefore, same principal needs to be applied. There is no cogent reason to treat hostel accommodation service differently so far as concept of composite and mixed supply is concerned.

- 4.1.11 In the present case, food and other facilities are provided along with principal activity of hostel accommodation and they cannot be separated in normal course of the business. Bundling has not been defined in GST law; hence, reference can be taken from CBEC Education Guide issued after introduction of negative list in erstwhile service tax regime when concept of bundling was introduced for the first time. The relevant extracts of the Guide are reproduced below: -



"Bundled service" means a bundle of provision of various services where in an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different."

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'

- 4.1.12 Further, CBIC has elaborated in its E-flyer issued on 'Composite and mixed supplies' after introduction of GST as under:

'Hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expects such services to be provided as a package, then such a 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.

- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business

4.1.13 If current nature of transaction in question is tested based on above factors, it would be amply clear that the provision of hostel accommodation along with food and other facilities is a 'composite supply' where hostel accommodation is the principal supply and food and other facilities are ancillary to it which are not means in itself but a means for better enjoyment of the principal supply i.e. 'hostel accommodation services'. The same is explained below in detail:



Indicative Factors (as mentioned in the Education Guide)	Applicability in current case
There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use	In the current case, a consolidated price of Rs.17000/- is charged from all students whether or not they actually receive or use food & other facilities
The elements are normally advertised as a package and the different elements are not available separately	Applicant does not provide any facility wherein the student can avail hostel accommodation without food or other facilities or vice versa. Stay alongwith such facilities are advertised as a package. This is supported from the copy of the brochure enclosed as Annexure-5
The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected	Hostel accommodation is the principal supply here. In absence of hostel accommodation services, there would be no existence of food and other facilities

4.1.14 The term '*principal supply*' has been defined under Section 2(90) of the CGST Act, 2017 as the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. Here, the principal supply is the renting of hostel accommodation services and food & other facilities are ancillary to principal supply of hostel accommodation services. Thus, the accommodation facility at hostel is the only principal supply and all the other facilities are interrelated as they are provided exclusively to the occupants of hostel only, without any extra charge. It is reiterated that no other charges other than above amount of Rs.17,000/- is collected from the occupants on account of other allied facilities being provided.

4.1.15 It can be seen from the above that all factors which are relevant to determine the scope of '*composite supply*' are fulfilled in the present case of hostel accommodation

along with food & other facility. It is submitted that need for food facility cannot arise unless there is need of hostel accommodation. The appellants do not provide food to the student on independent basis. Accordingly, as per interpretation of the appellants, the provision of hostel accommodation along with food and other facility should be treated as 'composite supply' and applicability of GST would be determined as per Section 8 of the CGST Act, 2017 which provides that tax liability on a composite supply would be that of what is applicable on principal supply. Hence, the same tax treatment would apply to entire package as applicable to hostel accommodation services.

- 4.1.16 It is further submitted that the Hon'ble Chattisgarh Authority for Advance Ruling under GST, Raipur in the matter of Kamal Kishor Agarwal, has issued an Advance Ruling No. STC/AAR/11/2018-Raipur dated 02.03.2019 reported at 2019 (24) G.S.T.L. 496 (A.A.R. - GST) on the similar issue of the ancillary services of food and parking provided to the students by the Charitable Trust along with hostel accommodation. The ARA held as under:

"Hostel run by charitable trust - Providing residence to students on rent - Nominal lump sum amount of ₹ 7000 and ₹ 6000 per month per bed depending upon number of beds per room, charged for giving residence - Ancillary services such as food, parking also provided without charging any amount over and above lump sum charges - As per C.B.E. & C. Circular No. 32/06/2018-GST, dated 12-2-2018, hostel accommodation service would not fall within ambit of charitable activities as defined in para 2(r) of Notification No. 12/2017-C.T. (Rate) - However, services by a hostel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent exempted under Serial No. 14 of said notification. No ambiguity as regards fact that primarily occupants approach Hostel facility providers for having accommodation facility and only when accommodation facility gets ensured, need for other allied facilities arose - No other charges collected from occupants for allied services provided."

- 4.1.17 The same principle has been applied by Hon'ble Authority for Advance Ruling, Kerala in the case of M/s. Ernakulam Medical Centre Pvt. Ltd. vide Advance Ruling No. KER/16/2018, dated 19-9-2018 [2018 (18) G.S.T.L. 142 (A.A.R. - GST)], to hold that supply of medicines and allied items like food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of health care service and not separately taxable.

- 4.1.18 In the case of M/S. ALL RAJASTHAN CORRUGATED BOARD AND BOX MANUFACTURERS ASSOCIATION, reported at 2019 (7) TMI 847 - AUTHORITY FOR ADVANCE RULING, RAJASTHAN, the question before Rajasthan Advance Ruling authority was whether the Service provided by the applicant to the delegates and exhibitors wherein all-inclusive registration fees is charged for technical seminars, access to exhibition, hotel room accommodation, airport pickup and drop, cultural programmes etc. is a composite supply or not. The authority answered in affirmative and held that the supply is composite supply with principal supply being organizing conference.

- 4.1.19 The same principle is applicable to health care services provided to in-patients wherein food, medicines, rooms, T.V. in rooms/common area, air-conditioning in room/common area, parking facility etc. are also provided to in-patients as part of the treatment. In this case also, health care services are treated as principal component of

composite supply and entire treatment is treated as exempt supply. Reliance is placed on following case-laws in this regard:

- In the case of M/s KIMS HEALTH CARE MANAGEMENT LTD., Kerala AAR held that Composite supply - Health care services - Medicines, consumables and implants used in the course of providing health care services to in-patients for diagnosis or treatment hospital or clinical establishment - Indispensable items of treatment and naturally bundled in ordinary course of business with health care services - Clarification in C.B.I. & C. Circular No. 27/01/2018-GST, dated 4-1-2018 that room rent in hospital is exempted - Also clarifications issued based on approval of 25th GST Council Meeting [F. No. 354/17/2018-TRU, dated 12-2-2018] that food supplied to inpatients as advised by doctor/nutritionist part of composite supply of health care and not separately taxable - Same principle applicable in case of dispensing of medicine also - Said supplies amounted to composite supply and eligible for exemption under category "health care services". - Nature of the various services in a bundle of services will help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and other services combined with such service are in the nature of incidental or ancillary services which help in better utility of main service then the various elements of the service are said to be naturally bundled in the ordinary course of business. [paras 5, 6, 7, 8, 9]

4.1.20 The similar analogy is applicable to renting of residential dwelling along with furnished facility, AC, wardrobes etc. Here, the principal component is renting of residential dwelling which includes additional facilities. There is no dispute that entire lease rentals for residential dwelling is treated as exempt supply. The relevant case law is reproduced below:



- In the case of RAGHAVA ESTATES & PROPERTIES LTD., 2016 (45) S.T.R. 573 (A.A.R.), it has held that Construction of Individual Residential House - Services of obtaining local sanctions - Bundled service - Exemption - There being a common agreement for obtaining necessary plan sanctions from Local self-Government bodies and then building individual house for customer, said bundled activity exempted from Service Tax, construction of individual house being prime service - Had there been separate agreement, services provided for obtaining sanctions, would have been taxable

4.2 The Composite Supply of that hostel accommodation along with food facility would be exempt as per Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017 as amended.

4.2.1 A perusal of above facts shows that hostel accommodation along with food facility would be treated as composite supply, it is relevant to determine the taxability on such composite supply. Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28/06.2017 as amended provides that services of rental accommodation having value of supply upto Rs.1000/- per day would be exempted from GST. The relevant extract is reproduced below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition

14	Heading 9963	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having "value of supply" of a unit of accommodation below or equal to one thousand rupees per day or equivalent.	Nil	Nil
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4.2.2 In the present case, since the rent charged for residential accommodation in hostel from the student along with food facility is Rs.17,000/- for full month the per day charges does not exceed Rs.1000/-, the entire activity of hostel accommodation along with food & other facility would be exempt from GST under aforesaid Notification.

4.2.3 It has been further clarified by CBIC vide Circular No. 32/06/2018-GST, dated 12th February 2018 that accommodation services in hostels having declared tariff below Rs.1000/- is exempt from GST. The relevant extract is reproduced below:



1. Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-C.T. (Rate)?	Hostel accommodation service do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-C.T. (Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-C.T. (Rate) refers]
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4.3 In view of the above facts and appellants' interpretation and understanding of the same, it has been submitted that the provision of hostel accommodation along with food & other facility is a composite supply which is exempt from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017 as amended read with CBIC Circular No. 32/06/2018-GST, dated 12th February, 2018.

5. PERSONAL HEARING

A personal hearing in the matter was held on 17.03.2020. Sh. Keshav Maloo C.A., authorised representatives of the appellant and Sh. Nikhil M. Jhanwar C.A., appeared for personal hearing on 17.03.2020 on behalf of the appellant and reiterated the written submission. They submitted additional submission of CBEC Flyer No. 40 dated 01.01.2018 and Service Tax Education Guide. The relevant portion which has been stressed upon by the appellant are reproduced below:

Composite and Mixed Supply in so far as Education is concerned.

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8 of the CGST Act, 2017. Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle. In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Service Tax Education Guide

9.2 Taxability of 'bundled services'.

'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.



Two rules have been prescribed for determining the taxability of such services in clause (3) of section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of section 66F, viz a specific description will be preferred over a general description as explained in para 9.1.2 above.

9.2.1 Services which are naturally bundled in the ordinary course of business

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' Illustrations –

- A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

- A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

- Accommodation for the delegates

- Breakfast for the delegates

- Tea and coffee during conference

- Access to fitness room for the delegates

- Availability of conference room

Business centre

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. However it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

9.2.2 Services which are not naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.' Illustrations –

- A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

9.2.3 Significance of the condition that the rule relating to 'bundled service' is subject to the provisions of sub-section (2) of section 66F.

Sub-section (2) of section 66 lays down : 'where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description' (refer para 9.1.2 above). This rule predominates over the rule laid down in sub-section (3) relating to 'bundled services'. In other words, if a bundled service falls under a service specified by way of a description then such service would be covered by the description so specified. The illustration, relating to a bundled service wherein a pandal and shamiana is provided in combination with catering service, given in the second bullet in para 9.1.2 above explains the operation of this rule.

9.2.4 Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a 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.

- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –

- There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- The elements are normally advertised as a package.
- The different elements are not available separately.
- The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected. No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.



6. DISCUSSION AND FINDINGS

6.1 We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the Authority for Advance Ruling, Rajasthan (AAR, Rajasthan in short), written as well as oral submissions made by the authorized representative(s) of the Appellant at the time of personal hearing held on 17.03.2020. We find that the appellant vide its Application dated 11.11.2019 filed before AAR, Rajasthan, had requested for Advance Ruling as to:-

- Whether provision of hostel accommodation along with food facility to the students wherein consolidated amount is charged from the students is a composite supply where principal supply is that of rent of hostel accommodation?
- Whether the entire charge recovered from the students would be exempt from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017 as amended if the charges per day is less than Rs.1000/-.
- To determine the taxability on supply of hostel accommodation along with food facility.
- To determine the appropriate classification and applicable rate of GST on supply of hostel accommodation along with food facility.

6.2 In pursuance of the aforesaid Application dated 11.11.2019, the Authority for Advance Ruling, Rajasthan in its Ruling No. RAJ/AAR/2019-20/30 dated 09.01.2020 has pronounced its ruling as under:-

- (a) The provision of hostel accommodation along with food facility, Play Room, Gym, Housekeeping, Room Cleaning to the students wherein consolidated amount is charged from the students is Mixed Supply.
- (b) The entire charges recovered from the students are not exempted from GST under Sr. No. 14 of the CGST (Rate) Notification No. 12/2017 dated 28.06.2017.
- (c) As various services provided by the applicant constitute a Mixed Supply, the rate of GST on whole supply will be the rate of supply which attracts highest rate of GST. As the highest rate amongst services provided is 18%, accordingly, rate of GST on whole supply will be 18% (SGST 9% + CGST 9%).

6.3. The appellant is not satisfied with the above Ruling and has therefore filed the present appeal before this forum. The appellant has stressed that the supply of Hostel Accommodation service is their principal service and the other services like supply of food, TV in dining hall, Playroom, Gym, Housekeeping of entire hostel premises, Room cleaning and Washing/ dry-cleaning of bed sheets & linen of rooms are ancillary services, naturally bundled with the principal service of Accommodation service. Accordingly, the appellant has requested to set aside/ modify the impugned Advance Ruling passed by the Rajasthan Authority of Advance Ruling and declare the impugned package a composite supply wherein Hostel Accommodation is principal supply and food and other facilities are only incidental to it.

6.4.1 Before examining the contention of the appellant it is imperative to go through the relevant provision of the CGST Act which defines the term Composite supply and Mixed supply. We find that as per section 2(30) of CGST Act, 2017 "*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;

In the above illustration, it is obvious that the packing material or the insurance cannot be supplied separately if there is no transportation of goods. As such, for the transportation of goods, the supply of packing material and the insurance is a composite supply, wherein the supply of goods is a principal supply. Accordingly, from the above definition, we are of the view that a composite supply can be determined on the basis of following 3 main criteria:

- (i) Supply of 2 or more goods or services or combination of both.
- (ii) The supply is made in a natural bundle, i.e. the goods and/ or services are provided as a combination in the natural course of business.
- (iii) The individual items (goods and/or services) cannot be supplied separately.

6.4.2 We further note that as per Section 2(74) of the CGST Act the term "*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.

From the definition it emerges that a mixed supply is two or more independent products or services which are offered together as a bundle but can also be supplied separately.


6.5 We find that in the instant case the appellant is supplying various services like supply of food, TV in dining hall, Playroom, Gym, Housekeeping of entire hostel premises, Room cleaning and Washing/ dry-cleaning of bed sheets & linen of rooms along with Hostel Accommodation service. In view of the discussion of above para 6.4.1 and 6.4.2, we are of the view that supply of various other services as detailed above with Hostel Accommodation service is not naturally bundled in normal course of business. Each service is an independent service and can be supplied separately. It is obvious that a person can live on the hostel without availing other services like food, TV, gym, etc; but to make ones stay more comfortable, the said ancillary services are availed by him. We find that the Rajasthan Authority of Advance Ruling has held that *naturally bundled services are those services wherein one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. If current nature of supply of services is tested based on above factors, it can be ascertained that the provision of hostel accommodation could be a principal supply but ancillary services like food, gym, housekeeping, play room, cannot be said to arise naturally with the principal service of hostel accommodation and therefore are not bundled naturally with principal supply.* Rajasthan Authority of Advance Ruling has placed reliance on the ruling of West Bengal Authority for Advance Ruling in the case of *Sarj Educational Centre* involving similar facts and circumstances, wherein the applicant was engaged in supplying food and other services, etc and it was held that they are not naturally bundled with the lodging service. All these components are independent of each other. The said ruling has been upheld by the Appellate Authority of Advance Ruling of West Bengal.


6.6 The appellant has also placed reliance of various case laws passed by Advance Ruling authorities. We have examined the case laws and are of the opinion that these orders have been passed in different facts and circumstances and not applicable to the present case. Further, each case has to be examined individually in the backdrop of several factors,

6.7 We find that contentions of the appellant have already been examined by the Rajasthan Authority of Advance Ruling and a well reasoned order has been passed with detailed findings. We do not find any infirmity in the Advance Ruling pronounced by Rajasthan Authority of Advance Ruling.

6.8 In view of above facts and discussion, we uphold the Advance Ruling pronounced by the Rajasthan Authority of Advance Ruling and reject the appeal filed by the appellant.




Pramod Kumar Singh
Member (Central Tax)
Rajasthan Appellate Authority
on Advance Ruling


Dr. Preetam B. Yashvant
Member (State Tax)
Rajasthan Appellate Authority
on Advance Ruling

SPEED POST

✓ M/s Kalani Infrastructure Private Limited,
A-14-A, Road No. 1, Indraprastha Industrial Area,
Kota (Raj.)-324005

F. No. IV(16)AAAR/RAJ/05/2019-20/3294

Dated: 12.05.2020

Copy to:-

1. The Chief Commissioner of CGST & Central Excise (Jaipur Zone), NCR Building, Statue Circle, Jaipur- 302005.
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur- 302005.
3. Commissioner, Central Tax, CGST and Central Excise, Udaipur, Rajasthan-313002
4. Deputy/Assistant Commissioner, Circle-B, Kota- Ward 1, DCM Road, Chhatrapura, Dhanmandi, Kota, Rajasthan-324007.
5. The Member, Rajasthan Authority for Advance Ruling, Goods & Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur- 302005.
6. Guard File.


(Umesh Kumar Agarwal)
Superintendent