

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2023/16
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/58)

Date: - 31.03.2023

Name and address of the applicant	:	Kalepsh Dineshbhai Patel B-1012, Empire Business Hub, Science City Road, Sola , Ahmedabad- 380 060, Gujarat.
GSTIN of the applicant	:	Unregistered
Date of application	:	28.11.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) (b)
Date of Personal Hearing	:	28.02.2023
Present for the applicant	:	Kalpesh Patel (CA), Deval Patel and Satya Mehta

Brief facts:

Kalepsh Dineshbhai Patel, B-1012, Empire Business Hub, Science City Road, Sola, Ahmedabad- 380060, Gujarat, has filed this application for advance ruling on behalf of M/s. Khanepi Hungermall LLP, Nakhatrana, Maninagar, Kutch, Gujarat -376015. M/s. Khanepi Hungermall LLP [*here-in-after referred to as – ‘M/s. Khanepi’*] is not registered under GST.

2. M/s. Khanepi, proposes to carry on business of providing hostel facility to students undergoing graduation/post-graduation and master degree courses. Additionally, M/s. Khanepi is also engaged in providing food directly to the students studying in different Universities. Students, stay at the premises of applicant by paying monthly rent, which includes both accommodation charges as well as food charges. M/s. Khanepi maintains the premises and provides necessary facilities.

3. Further, M/s. Khanepi charges an average amount of Rs. 650/- per day per student, which includes the charges for the food. They also provide such services directly to the University in so far as taking the building of the University



on rent; developing the rooms by providing necessary furniture. They receive the payment directly from the University or from the students.

4. The application, as already mentioned above has been filed by Kalpesh Dineshbhai Patel, on behalf of M/s. Khanepe. Further, it is also observed that they have only discharged a fee of Rs. 5,000/- vide CPIN No. 22112400478502, dated 28.11.2022.

5. The aforementioned application, raises the following question, which are cryptic and lack in clarity viz

- (i) Application of GST exemption notification No. 12/2017 dated 28.6.2017.
- (ii) Applicability of GST rate if any.

6. Personal hearing was granted on 28.2.2023 wherein Shri Kalpesh Patel, Deval Patel and Satya Mehta, appeared before us and reiterated the facts as stated in the application. On being asked as to who has filed the application, Shri Satya Mehta, CA informed that they had filed the application on behalf of the M/s. Khanepe and further admitted that they had paid only Rs. 5,000/- as fee through challan.

Discussion and findings

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

8. We have considered the submissions made on behalf of M/s. Khanepe in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & their submission/interpretation of law in respect of question on which the advance ruling is sought.

9. We find that M/s. Khanepe has requested a ruling on the questions already mentioned *supra*.



10. We feel that the application needs to be rejected at the application stage itself. Before delving on the reasoning for our above view, it would be prudent to re-produce the relevant provisions for ease of reference viz

Section 95. Definitions. — In this Chapter, unless the context otherwise requires, —

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority ¹[or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100²[or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(c) "applicant" means any person registered or desirous of obtaining registration under this Act;

Section 97. Application for Advance ruling. —

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of, —

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Section 103. Applicability of advance ruling. — (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter 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.

[(1A)]

(2) The advance ruling referred to in sub-section (1) [and sub-section (1A)] shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

11. A conjoint reading of the sections 95(a) and (c), 97 and 103 of the CGST Act, 2017, depicts that advance ruling means a decision by the AAR to an applicant on matters or on questions specified under 97(2) *ibid* in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; that an applicant, means any person registered or desirous of obtaining registration under this Act; that such an applicant, may make an



application in the prescribed form with appropriate fee, stating the question on which the said ruling is sought. The questions on which the ruling is sought is however, restricted to the 7[seven] issues listed in section 97(2), *ibid*. Further, in terms of section 103, such a ruling shall be binding only on the applicant and on the concerned officer or the jurisdictional officer, in respect of the applicant.

12. We find that this application, is not filed by M/s. Khanepé Hungermall LLP, but by the Chartered Accountant in his own name. Since the person who has applied [M/s. Kalepsh Dineshbhai Patel] is not the person who proposes to undertake the supply, the question of giving an advance ruling in the matter simply does not arise. Secondly, the ruling, even if given to the person who has filed the application, will not be binding on M/s. Khanepé in terms of section 103, *ibid*. Thirdly, we also find that the application is not accompanied by the requisite fee in terms of section 97(1), *ibid* read with Rule 104 of the CGST Rules, 2017. On being pointed out during the course of personal hearing, the applicant had admitted that he has in fact filed the application in his name seeking advance ruling and that he is not the actual service provider. It was further admitted that the application was not accompanied by the requisite fee.

12.1. In view of the foregoing, we rule as under:

Ruling

The aforementioned application having been filed by M/s. Kalpesh Dineshbhai Patel and not by M/s. Khanepé Hungermall LLP who is the actual supplier and also having been filed without requisite fee, stands rejected in terms of section 98(2) of the CGST Act, 2017 read with sections 95(a), (c) and 103 of the CGST Act, 2017.

(MILIND KAVATKAR)
MEMBER (SGST)

(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 31/03/2023

