

GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.



ADVANCE RULING NO. GUJ/GAAR/R/2024/05
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/13)

Date: -03.02.2024

Name and address of the applicant	:	Mangaldas Mehta & Company Ltd., House of Mangaldas, Opposite Sidi Saiyad Jali, Lal Darwaja, Ahmedabad, Gujarat – 380 001.
GSTIN of the applicant	:	24AAACM4217C1Z5
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-3, Division-1, Ahmedabad.
Date of application	:	02.05.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)
Date of Personal Hearing	:	29.08.2023 & 09.11.2023
Present for the applicant	:	Shri Soham Mashruwala (CA)

Brief facts:

Mangaldas Mehta & Company Ltd., House of Mangaldas, Opposite Sidi Saiyad Jali, Lal Darwaja, Ahmedabad, Gujarat – 380 001 [for short- ‘applicant’] runs a boutique hotel as well as a restaurant. The property is situated in the old city and has been declared as a heritage property. The applicant also holds a certificate in this regard.

2. The applicant runs restaurant in the same premises where the hotel rooms are situated. The applicant also has a banquet in the same premises. The declared tariff across all the seasons & months does not exceed Rs. 7,499/-. The details of the heritage properties which houses the strategic business unit of the applicant is as under:

Location of heritage property	Strategic business unit housed/Usage of premises
Opposite Sidi Saiyed Jali, Old City, Ahmedabad.	i) HMG [hotel rooms, spa & swimming pool] ii) Agashiye [restaurant] iii) Green House [restaurant]



	iv) Gammat [kids play area] v) Dev Viman [Banquet] vi) Style shop [Retail outlet selling antique goods & other items] vii) Kitchen viii) Concierge
Raipur, Old City	Pol Kholi (HMG-1, HMG-2 ie Hotel rooms]

3. The applicant has a demarcated area for the heritage hotel room, kitchen, courtyard & restaurant. As the declared tariff of the applicant falls below Rs. 7500/- the applicant charges 5% GST on the restaurant services.
4. The applicant by virtue of the mandatory rate of 5% GST for restaurant service, is not entitled to claim ITC for the restaurant service & provisions of section 16 of the CGST Act, 2017, do not apply to the applicant in so far as the restaurant business is concerned.
5. The applicant has further stated as follows:
- that they have to incur huge expenditure for upkeep and maintenance of heritage property;
 - that they capitalize the expenses along with GST & for revenue expenditure incurred they intend to claim ITC;
 - that there are usual running expenses which have also suffered GST;
 - that in view of the heritage status of the premises, they can neither alter, demolish or make structural alterations of the said premises;
 - that they have already claimed a sum of Rs. 6,37,769/- based on area utilized for kitchen, restaurant & other premises used as a hotel or used to run a heritage store [called as style shop].
 - that the prohibition to claim ITC is thrust by virtue of the aforementioned notification; that the embargo on the claim of ITC is not in place by virtue of section 17 but the prohibition stems from the Central Tax rate notification;
 - that when 5% GST is charged on restaurant services, section 17 has no significance & there is blanket prohibition; that by virtue of section 16(1), a restriction is enforced;
 - the applicant further feels that section 17(1) and (2) operate under specific circumstances and is therefore not applicable in the present case; that as a corollary, Rules 42 and 43 of the CGST Rules, 2017, would also not be applicable; that the prohibition of section 17(5) is also not applicable;
 - that the applicant uses the inputs for the purpose of business only and is nowhere engaged in the business of exempt supply;
 - that the applicant incurs various expenses for upkeep of property; that these expenses are in the nature of electrical repairs, housekeeping, etc;
 - that these expenses have no direct correlation with the restaurant business; that the applicant is of the view that the claim of ITC of the said expenses is admissible in toto; that when the expenditure falls outside the tentacles of section 17(5), ITC of expenditure which are general in nature is admissible since the same are exclusively for the purpose of business activity and taxable supply;
 - that as far as provisions of Rule 42 and 43 postulate the bifurcation of input tax credit in proportion of turnover, the applicant urges that the basis of the usage of



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premises for each strategic business unit is a proper barometer for the allocation of the common input tax credit;

- the applicant is of the opinion that the claim of ITC is required to be apportioned on the base of the square foot and not on the basis of pro rate turnover;
- that the restaurant service of the applicant cannot be considered as exempt supply and is a taxable supply;
- that they use the input, input services and capital goods for business purpose only and not for any other purpose;
- rate notification provides for prohibition of ITC and the said power is exercised u/s 16;
- the provisions of section 17 does not apply to restaurant business & consequently Rule 42 would not come into play.

6. In light of the foregoing submissions, the applicant has sought advance ruling on the below mentioned question viz

- (i) Whether the applicant is entitled to claim input tax credit of the expenses incurred for the general expenses of the Company which are meant for the purpose of business?
- (ii) Whether the applicant is entitled to enjoy the benefit of the input tax credit based on the square foot & area of usage of the premises?
- (iii) Whether the provisions of Rule 42/43 of the CGST Rules, read with SGST Rules are not applicable to the claim of the input tax credit of the applicant as the declared tariff of the hotel rooms never exceeds Rs. 7499/- at any time during the year.

7. Personal hearing in the matter was held on 29.08.2023 wherein the applicant was represented by Shri Soham Mashruwala, CA and Shri Bipin Mistry, Deputy Finance Officer of the applicant. They reiterated the submission made in the application. A further hearing in the matter was held on 9.11.2023 wherein Shri Soham Mashruwala, CA appeared along with Shri Bipin Mistry, Deputy Finance Officer of the applicant and sought 15 days time to submit additional submissions.

8. In the additional submission dated 29.12.2023 the applicant stated as follows:

- that they discharge GST under restaurant service @ 5%; that they do not avail any ITC on restaurant business;
- that they wish to claim various credit now;
- that the restriction on ITC is placed through a rate notification utilizing the powers under section 16 & hence the question of entering provision of section 17 does not arise;
- that none of the limbs of section 17 apply in the present case;
- that it can be sagely concluded that the restaurant service which attracts 5% GST is never an exempt supply;



The additional submission, we find are a repetition of the submissions made with the application.

Discussion and findings

9. 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.

10. We have considered the submissions made by the applicant 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 & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

11. Before dealing with to the submissions made by the applicant, we would like to reproduce the relevant sections for ease of reference:

[Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017]

Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC)

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table :-

TABLE				
Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
7	Heading 9963 (Accommodation, food and beverage services)	(i) 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 drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, neither having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year nor having licence or permit or by whatever name called to serve alcoholic liquor for human consumption.	6	-
		(ii) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or	6	

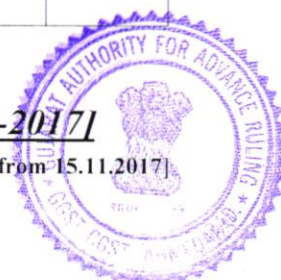


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		lodging purposes having declared tariff of a unit of accommodation of one thousand rupees and above but less than two thousand five hundred rupees per unit per day or equivalent. <i>Explanation.</i> - "declared tariff" includes charges for all amenities 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.		
		(iii) 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, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, having licence or permit or by whatever name called to serve alcoholic liquor for human consumption.	9	-
		(iv) 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, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.	9	-
		(v) Supply, by way of or as part of any service or in any other manner whatsoever in outdoor catering wherein goods, being food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), as a part of such outdoor catering and such supply or service is for cash, deferred payment or other valuable consideration.	9	-
		(vi) Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of two thousand five hundred rupees and above but less than seven thousand five hundred rupees per unit per day or equivalent. <i>Explanation.</i> - "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.	9	-
		(vii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, including but not limited to food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) together with renting of such premises.	9	-
		(viii) Accommodation in hotels including five star hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation of seven thousand and five hundred rupees and above per unit per day or equivalent.	14	-
		<i>Explanation.</i> - "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.		
		(ix) Accommodation, food and beverage services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above.	9	-

➤ **[Notification No. 46/2017-C.T. (Rate), dated 14-11-2017]**

[effective from 15.11.2017]



GST Rates for services by restaurants, Job work on Handicraft goods and Works contract for specified Construction services — Amendment to Notification No. 11/2017-C.T. (Rate)

In the said notification, in the Table, -

- (ii) against serial number 7, -
- (a) for item (i) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely :-

(3)	(4)	(5)
“(i) 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 drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, 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. <i>Explanation.</i> - “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.	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 <i>Explanation</i> no. (iv)]”;

- (b) for item (iii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely :-

(3)	(4)	(5)
“(iii) 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, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, 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>Explanation.</i> - “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.	9	”;

- (c) the item (iv) in column (3) and the entries relating thereto in columns (3), (4) and (5), shall be omitted;
- (d) in item (ix), in column (3), for the entry, the following entry shall be substituted, namely :-

“(ix) Accommodation, food and beverage services other than (ii), (iii), (v), (vi), (vii) and (viii) above.

Explanation. - For the removal of doubt, it is hereby clarified that, 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 drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, 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 shall attract central tax @ 2.5% without any input tax credit under item (i) above and shall not be levied at the rate as specified under this entry.”;

➤ [Notification No. 13/2018-C.T. (Rate), dated 26-7-2018]

[effective from 27.7.2018]

CGST Rates on intra-State supply of specified services — Amendment to Notification No. 11/2017-C.T. (Rate)

In the said notification, in the Table, -

- (i) against serial number 7, in column (3),-
- (a) for item (i) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely :-

(3)	(4)	(5)
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“(i) Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, 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	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)]
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>Explanation 1.</i> - This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a 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>Explanation 2.</i> - This item excludes the supplies covered under item 7(v). <i>Explanation 3.</i> - “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.		

- (b) in items (ii), (vi) and (viii),-
- (A) for the words “declared tariff” wherever they occur, the words “value of supply” shall be substituted;
- (B) the Explanation shall be omitted;
- (c) for item (v), and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely :-

(3)	(4)	(5)
“(v) 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.	9	-”;

➤ **[Notification No. 20/2019-C.T. (Rate), dated 30-9-2019]**

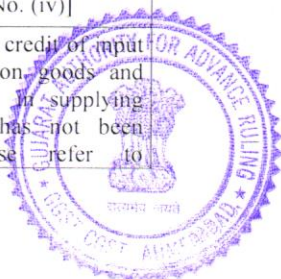
[effective from 1.10.2019]

CGST rates for intra-State supply of specified services — Amendment to Notification No. 11/2017-C.T. (Rate)

In the said notification, -

- (i) in the Table, -
- (a) against serial number 7, for the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, -

(3)	(4)	(5)
“(i) Supply of ‘hotel accommodation’ having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6	-
(ii) Supply of ‘restaurant service’ other than at ‘specified premises’	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)]
(iii) Supply of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms.	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)]
(iv) Supply of ‘outdoor catering’, at premises other than ‘specified premises’ provided by any person other than - (a) suppliers providing ‘hotel accommodation’ at ‘specified premises’, or	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



(b) suppliers located in 'specified premises'.		Explanation (iv)]
(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 [Please refer to Explanation (iv)]
(vi) Accommodation, food and beverage services other than (i) to (v) above Explanation : (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. (b) This entry covers supply of 'restaurant service' at 'specified premises' (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. (d) This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises'. (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'.	9	-";

- (iii) in paragraph 4 relating to explanation, after clause (xxxi), the following clauses shall be inserted, namely :-
- “(xxxii) **‘Restaurant service’** 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, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.
- (xxxiii) **‘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.
- (xxxiv) **‘Hotel accommodation’** means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.
- (xxxv) **‘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.
- (xxxvi) **‘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.”.

➤ [Notification No. 3/2022-C.T. (Rate), dated 13-7-2022]

[effective from 18.7.2022]

CGST Rates on intra-State supply of specified services — Amendment to Notification No. 11/2017-C.T. (Rate)

- In the said notification, -
- (A) in the Table, -
- (II) against serial number 7, in column (3), in item (i), the words “above one thousand rupees but” shall be omitted;

CENTRAL GOODS AND SERVICES ACT, 2017 [relevant extracts]

➤ **Section 2. Definitions.-**

(17) "business" includes -

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);



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- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) ⁵[activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

(108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

➤ **Section 16. Eligibility and conditions for taking input tax credit.-**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

¹[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

²[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

³[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of ⁴[section 41 ⁵[***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39;

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

➤ **Section 17. Apportionment of credit and blocked credits.-**



- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

12. We find that the first question on which ruling is sought is whether they are entitled to claim ITC of the expenses incurred for the general expenses of the Company which are meant for the purpose of business. The applicant has stated that they are providing restaurant services and discharging GST @ 5% by availing the benefit of notification 11/2017-CT (Rate) as amended. The notification along with its amendment are reproduced *supra*. What is in vogue today is notification No. 20/2019-CT (Rate) dated 30.9.2019, effective from 1.10.2019, [amending basic notification No. 11/2017-CT (Rate)] which states as follows:

(ii) Supply of 'restaurant service' other than at 'specified premises'	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 <i>Explanation No. (iv)</i>]
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From a bare reading of the condition stipulated above it is evident that the benefit of the exemption notification is available only if credit of ITC on goods and services used in supplying the service has not been taken. This is also subject to the condition that the restaurant service is other than at the specified premises, which in terms of notification 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. The applicant is on record stating that he runs a boutique hotel as well as a restaurant; that the restaurant is in the same premises where the hotel rooms are situated; that the declared tariff [which 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], throughout the year remains below Rs. 7,499/-. Further explanation (iv) to basic notification states as under:

- (iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,-



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- (a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and
- (b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

13. A conjoint reading of the facts mentioned above with the wording in the notification under which the applicant discharges GST, depicts that the applicant by virtue of providing restaurant service at a premises other than at a specified premises is eligible for availing the benefit of the notification subject to the condition that input tax charged on goods and services used in supplying the service has not been taken.

14. So, the applicant is not eligible to claim ITC incurred in respect of restaurant service. The applicant has sought a ruling as to whether they are entitled to claim ITC of the expenses incurred for the general expenses of the Company. Here we find that explanation (iv) reproduced supra would come to play meaning thereby that credit of input tax charged on goods or services used exclusively in supplying restaurant service is not eligible. Further, credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for ITC, is reversed as if supply of such service is an exempt supply attracting provisions of section 17(2) of the CGST Act, 2017 and the rules made thereunder. The applicant has not mentioned as to what **other supplies** are being made by them. Non mentioning of the details of such other supplies, if any, by the applicant has resulted in a situation wherein we can only state that if/since they are **only** providing restaurant services the question of availing ITC in respect of expenses incurred for general expenses of company, does not arise. However, if they are engaged in providing certain **other supplies** eligible for ITC, information of which we are not privy to, in such a situation explanation (iv) (b) of the basic notification No. 11/2017-CT (Rate) would apply and credit would be eligible subject to the same.

15. The second question on which ruling is sought by the applicant is whether they are entitled to enjoy the benefit of the input tax credit based on the



square foot & area of usage of the premises. In view of our finding in paragraph 14, if the applicant is engaged in providing certain **other supplies** eligible for ITC, information of which we are not privy to, in such a situation explanation (iv) (b) of the basic notification No. 11/2017-CT (Rate) would apply and credit would be eligible subject to the same. The credit however, shall be restricted in terms of section 17(2) of the CGST Act, 2017. The manner of determination of ITC in respect of inputs or input services and reversal thereof would clearly be governed by Rule 42 of the CGST Rules, 2017. Likewise, in the manner of determination of ITC in respect of capital goods and reversal thereof would clearly be governed by Rule 43 of the CGST Rules, 2017.

16. The applicant has stated that section 17 of the CGST Act, 2017 would not be applicable to the present case. However, we do not find any merit in the argument more so since we find that the argument is made ignoring explanation (iv) of the basic notification no. 11/2017-CT(Rate) dated 28.6.2017.

17. Moving on to the last question of the applicant, whether the provisions of Rule 42/43 of the CGST Rules, read with SGST Rules are **not** applicable to the claim of ITC of the applicant as the declared tariff of the hotel rooms never exceeds Rs. 7,499/- at any time during the year, we find that the same is already answered in para 15. The provisions of Rule 42/43 of the CGST Rules, read with SGST Rules are applicable to the claim of ITC of the applicant.

18. We would also like to rely on the judgement of the Constitution Bench of the Hon'ble Supreme Court in the case of Dilip Kumar & Company [2018 (361) ELT 577 (SC)] wherein it was held as follows:

52. *To sum up, we answer the reference holding as under -*

- (1) *Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
- (2) *When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*
- (3) *The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled.*



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19. In the light of the foregoing, we rule as under:

RULING

- (i) Whether the applicant is entitled to claim input tax credit of the expenses incurred for the general expenses of the Company which are meant for the purpose of business?

The ruling is in terms of para 14 above.

- (ii) Whether the applicant is entitled to enjoy the benefit of the input tax credit based on the square foot & area of usage of the premises?

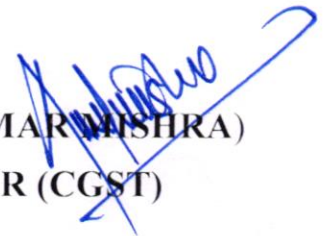
The ruling is in terms of para 15 and 16 above.

- (iii) Whether the provisions of Rule 42/43 of the CGST Rules, read with SGST Rules are not applicable to the claim of the input tax credit of the applicant as the declared tariff of the hotel rooms never exceeds Rs. 7499/- at any time during the year.

The ruling is in terms of para 17 above.



(RIDDHESH RAVAL)
MEMBER (SGST)



(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 03.02.2024

