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5% GST on Mess facility provided by Educational Institutions – Is it correct?

The Government of India vide **Circular no. 28/02/2018-GST dated January 08, 2018** (“**Circular No. 28**”), has issued clarification on following queries in situation when the Educational Institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/ students themselves or is outsourced to a third person:

- Whether mess facility provided by Educational Institutions is taxable in GST?
- If taxable, then what is the rate of GST applicable on mess facility provided by such Educational Institutions?

Clarification issued vide Circular No. 28:

It is clarified that supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit [Serial No. 7(i) of Notification No. 11/2017-Central Tax (Rate) as amended vide Notification No. 46/2017-Central Tax (Rate) dated November 14, 2017]. It is immaterial whether the service is provided by the Educational Institution itself or the Institution outsources the activity to an outside contractor.

Analyses of clarification provided in Circular No. 28 viz-a-viz Exemption provided to Educational Institution:

Circular No. 28 looks like not in line with the law and other similar provisions contained in GST Act and Notifications/Circulars issued thereunder. At the outset, it is worthwhile to note that clause (a) of S. No. 66 of *Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017* (“**the Exemption Notification**”) **broadly exempts services provided by an Educational Institution to its students, faculty and staff.**

In this regard, the term Educational Institution as defined under the Exemption Notification itself, covers an institution providing services by way of –

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course

Further, clause (b) of S. No. 66 exempts certain services provided to an Educational Institution (an institution providing services by way of pre-school education and education up to higher secondary school or equivalent), but, limited to services namely transportation, catering, security, cleaning, housekeeping and admission or conduct of examination.

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Apparently, services provided by an Educational Institution are exempt from GST, but, when services are supplied to an Educational Institution, exemption is restricted only for specified services and that to only for pre-school and higher secondary.

Further, since, the mess facilities provided by Educational Institutions are incidental to and/or naturally bundled for the provision of principal activity of education services, it should also be eligible for exemption by virtue of S. No. 66(a) of the Exemption Notification which, generally exempts services provided by Educational Institution.

As regards the case where such mess facility is outsourced to a third person, clause (b) of S. No. 66 of the Exemption Notification will come into the picture, which exempts catering services provided to an Educational Institution up to pre-school and higher secondary.

Hostel services provided by Educational Institutions and room rent charged to patients in hospitals were earlier made exempt on similar ground

At this juncture, it is imperative to note that earlier, the Central Board of Excise and Customs (“the CBEC”) vide Press Release dated July 13, 2017 and Circular No. 27/01/2018 – GST dated January 4, 2018 has issued following clarifications on hostel services provided by Educational Institutions and room rent charged to patients in hospitals:

No GST on hostel services provided by Educational Institutions: The CBEC vide Press Release dated July 13, 2017, has clarified that services of lodging/boarding in hostels provided by Educational Institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Thus, annual subscription/fees charged as lodging/boarding charges by such Educational Institutions from its students for hostel accommodation shall not attract GST.

No GST on room rent charged to patients in hospitals: Circular No. 27/01/2018 – GST dated January 4, 2018 clarifies that room rent in hospitals is exempt from GST.

GST Fliers on education services also exempts other services like residence from GST: The CBEC in e-version of GST Fliers on education services have discussed that 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 (**i.e. composite supply**). 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

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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.

Conclusion:

Applying inference of the above discussions and taking clue from exemption under S. No. 66 of the Exemption Notification, mess facility in Educational Institutions should also be exempt from GST, on similar line as clarified for the hostel services provided by the Educational Institution.

Undoubtedly, education is fundamental to the nation building process. GST Law recognises this and has provided exemption to Educational Institutions from levy of GST. Ideally, incidental services provided by such Educational Institutions for the purpose of education must also be exempt from GST, which was rightly done for hostel services.

Nonetheless, the question as to the Board issuing contradictory circulars/ press releases still prevails when the intention is to make GST as Good and Simple Tax.

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards,

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