

	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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**BEFORE THE AUTHORITY OF:** *Shri. Sivaprasad .S, IRS &  
: Shri.B.S. Thyagarajababu, B.Sc, LL.M*

Legal Name of the applicant	Shri. Hazrath Valiyaparambil Azeez
GSTIN	32CBXPA6024J1ZM
Address	13, Mekkattu House, Santhigiri Kurupra Road, HMT Colony, Ernakulam, 683503.
Advance Ruling sought for	1. Whether supply of Boiled milk without sugar, Banana fresh, Bread, Cooked egg with shell to the students of ITI as per the Government scheme is taxable? 2. Whether GST registration is required for supply of goods and services of above items? 3. Whether TDS u/s.51 of the GST Act is applicable in the above supply of goods and services? 4. Whether refund of GST is eligible in the case of TDS deducted and paid u/s.51 of the GST Act?
Date of Personal Hearing	10-01-2020
Authorized Representative	M/s. Jayalekshmi & Co, Cost Accountants.

**ADVANCE RULING No. KER/74/2019 Dt.23-03-2020**

The Principal, Government Industrial Training Institute, Kalamassery awarded a contract to the petitioner for the supply of Boiled milk without sugar, Banana fresh, Bread, Cooked egg with shell to the students as per the Government scheme. In the circumstances the applicant requested advance ruling on the following:

- i) Whether supply of following goods & services by way of catering to students of Govt. Industrial Training Institute, Kalamassery as per the Govt. Scheme for Rs.12.40/- per student per day attract GST?



<u>Entry No.</u>	<u>HSN No.</u>	<u>Description of goods</u>
25	0401	Boiled milk without sugar
50	0803	Banana fresh
97	1905	Bread
28	0407	Cooked egg with shell

- ii) Whether GST registration is required for supply of goods and services of above items?
- iii) Whether TDS under Section 51 of the GST Act is applicable in the above supply of goods and services?
- iv) Whether refund of GST is eligible in the case of TDS deducted and paid under Section 51 of the GST Act?

The authorized representative of the applicant was heard. It is stated that in order to improve the nutritional status of students who are undergoing training in Govt. Industrial Training Institutes any one of the following nutritional foods are supplied to each trainees by the applicant:

1. Boiled Milk 150 ml + One Boiled egg.
2. Boiled Milk 150 ml + Banana.
3. Boiled Milk 150 ml + 2 slice brown bread.

Accordingly the contract for the supply of these items for the period 2019-20 was awarded to the petitioner @Rs.12.40/- per trainee per day. It is stated that all items supplies are exempted commodities under GST vide Notification No.2/2017 Central Tax (Rate) dtd.28-06-2017 – Exempted goods: (a) Fresh Banana Sl.No.50 HSN 0803; (b) Bread (2 slices per student (Sl.No.97 HSN 1905; (c) Boiled Milk (150 ml without sugar per student) Sl.No.25 HSN 0401; (d) Cooked Egg with Shell Sl.No.28 HSN 0407. As per Notification



No.12/2017-Central Tax (Rate) dtd.28-06-2017 – Sl.No.66 Heading 9992 or 9963 no GST is applicable for services provided to an educational institution by way of catering including any mid-day meals scheme sponsored by the Central Government, State Government or Union Territory. It is also added that the basic qualification required for ITI is 10<sup>th</sup> standard pass for majority of courses and 10<sup>th</sup> failed for some other courses, and if the students write examination of additional two papers under National Institute of Open School (NIOS), students are eligible for getting certificate equivalent to 12<sup>th</sup> or 10<sup>th</sup> for the courses listed in NIOS – ITI scheme. Hence the supply qualifies as exempted supply under the above notification.

The matter was examined in detail. The 1<sup>st</sup> issue to be decided is whether the supply of goods and services by way of catering i.e; Boiled Milk without sugar, Fresh Banana, Bread and Cooked Egg with shell to the students of ITI as per the Government Scheme is liable to GST?

As per clause (b) of Paragraph 6 of Schedule II of the CGST Act, 2017; 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 (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration is a supply of services.

The supply made by the applicant falls under Service Classification Code – 9963 – 996337 - Other contract food services - as per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

As per the Explanatory Notes to the Scheme of Classification of Services this service code includes food preparation and /or supply services based on contractual arrangements with the customer, at institutional, governmental, commercial or industrial locations specified by the customer other than for transportation companies, on an ongoing basis;



food service concession services, i.e. the provision of operating services by operators of eating facilities such as canteens and cafeterias.

The exemption to catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; provided to an educational institution as per Sl No. 66 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 is not applicable to institutions other than institutions providing services by way of pre-school education and education up to higher secondary school or equivalent.

Hence the question, whether the Industrial Training Institute can be considered as an institution providing services by way of education equivalent to higher secondary will determine the eligibility of the exemption to the supply of the applicant. The qualification for different courses conducted by the institution is SSLC or below. The details are available in <http://www.itikalamassery.kerala.gov.in/academic/admission/admission-criteria>. As per the details of the academic qualifications prescribed for admission to the courses conducted by the ITI, the institute can be classified as an institution providing services by way of education up to higher secondary school or equivalent. As the exemption to catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; provided to an educational institution as per Sl No. 66 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 is applicable to the institutions providing services by way of education up to higher secondary school or equivalent, the catering services to the trainees in the Industrial Training Institute is eligible for exemption from GST.

In view of the observations stated above, the following rulings are issued:

- (i) Whether supply of following goods and services by way of catering to students of Govt. Industrial Training Institute, Kalamassery as per the Govt. Scheme for Rs.12.40/- per student per day attract GST?

<u>Entry No.</u>	<u>HSN No.</u>	<u>Description of goods</u>
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25	0401	Boiled milks without sugar
50	0803	Banana fresh
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The activity of the applicant of supply of the above items by way of catering to students of Industrial Training Institute under the scheme sponsored by the State Government is classifiable as a service falling under Service Classification Code – 9963 – 996337 - Other contract food services and qualifies for exemption from GST under Sl No. 66 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as the institution is providing service by way of education up to higher secondary school or equivalent.

(ii) Whether GST registration is required for supply of goods and services of above items?

As per Section 22 of the CGST/SGST Act, 2017; every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees. Section 23 (1) of the CGST Act, 2017 stipulates that any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax shall not be liable to registration. In view of the provisions of Section 23 of the CGST Act, 2017, the applicant is not liable to registration if the applicant is exclusively engaged in the supply of goods / services as detailed in (i) above.

(iii) Whether TDS under Section 51 of the GST Act is applicable in the above supply of goods and services?

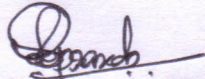
As per Section 51 of the CGST/SGST Act, 2017 a department or establishment of the State Government shall be liable to deduct tax at the rate of two per cent from the payment made or credited to the supplier of taxable goods or services or both, where the total value



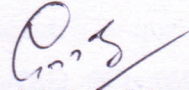
of such supply, under a contract, exceeds two lakh and fifty thousand rupees. As the activity of the applicant is exempted from GST the provisions of TDS is not attracted.

(iv) Whether refund of GST is eligible in the case of TDS deducted and paid under Section 51 of the GST Act?

The amount deducted as TDS will be credited to the Electronic Cash Ledger of the applicant on filing of TDS returns by the Deductor as the applicant is registered. Since the supply made by the applicant is exempted from GST, the applicant can claim refund of the excess balance in the Electronic Cash Ledger as per provisions of Section 54 of the CGST Act, 2017.



Sivaprasad .S, IRS  
Joint Commissioner of Central Tax  
Member



B.S. Thyagarajababu, B.Sc, LL.M  
Additional Commissioner of State Tax  
Member

To

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