GSTAT

Division Bench Court No. Court II

APL/149/HYD/2026

BOILLA VENKATARAMANA REDDY ....**Appellant**

Versus

M/S SHIVENARI CANTEEN SERVICES, PARTNER, H.NO.2-7-561/1 EXCISE COLONY HANUMAKONDA SUBEDARI TGWRU 506001 ....**Respondent**

Counsel for Appellant	**Counsel for Respondent**
SHRI PVV SATYANARAYANA MURTHY	SHRI G. ASHOK KUMAR
SHRI SURESH	NONE
SHRI S. GOURI SHANKER AND SHRI G. SURESH	

Hon'ble A P Ravi, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZN560360926000249H **Date of order :** 18/09/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - APL/149/HYD/2026	Date - 08/03/2026
3.	Name of the appellant - BOILLA VENKATARAMANA REDDY , bvenkatara.g099101@gov.in , 9866197212	
4.	Name of the respondant - 1. M/S SHIVENARI CANTEEN SERVICES , INCOMETAXWGL@GMAIL.COM , 9393622549	

5.	Order appealed against -
	(5.1) Order Type - Demand Order
	(5.2) Ref Number - HYD-GST-SC-AP2-029-23-24 Date - 04/07/2023
6.	Personal Hearing - 18/09/2026 17/09/2026 11/09/2026 06/08/2026 28/04/2026 21/04/2026
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The FAA has allowed the taxpayer’s appeal on the ground that the food supplied by the taxpayer to inpatients is a composite supply and supported his findings by relying on the Board’s Circular No.32/06/2018-GST dated 12.02.2018. As supply in the hands of the taxpayer is only supply of food under an agreement with the Hospital, there is no composite supply and therefore the Board’s circular would also not apply. The impugned order is set aside and appeal of the department allowed, while extending the benefit of cum-tax under Rule 35 of the CGST Rules. The demand has also been converted from Section 74 to Section 73 of CGST Act and the proper officer has been directed to quantify accordingly and intimate the taxpayer. The FAA has allowed the taxpayer’s appeal on the ground that the food supplied by the taxpayer to inpatients is a composite supply and supported his findings by relying on the Board’s Circular No.32/06/2018-GST dated 12.02.2018. As supply in the hands of the taxpayer is only supply of food under an agreement with the Hospital, there is no composite supply and therefore the Board’s circular would also not apply. The impugned order is set aside and appeal of the department allowed, while extending the benefit of cum-tax under Rule 35 of the CGST Rules. The demand has also been converted from Section 74 to Section 73 of CGST Act and the proper officer has been directed to quantify accordingly and intimate the taxpayer.
Summary of Order	
9.	If demand order then whether demand quantified: Yes

Section-I					
Particulars	Central tax	State/UT tax	Integrated tax	Cess	Total

	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	1159675		1159675		0		0		2319350	0
(b) Interest	597743		597743		0		0		1195486	0
(c) Penalty	1159675		1159675		0		0		2319350	0
(d) Fees	0		0		0		0		0	0
(e) Others										0
(f) Refund	0		0		0		0		0	0

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Classification dispute	Order-in-Appeal dated 04.07.2023 Tax sustained: Rs. 15,324 Tax dropped: Rs. 23,04,026 Interest and penalty: Dropped to the corresponding extent.	

Signature

Place :HYDERABAD

HYDERABAD A P Ravi

Date : 18.09.2026

Designation : Member

Jurisdiction :Hyderabad

FINAL ORDER Nos.20/COURT-II/HYD/2026

Date of Hearing: 11.09.2026
Date of Pronouncement: 18/09/2026

Per: A P Ravi, Judicial Member

1. The present appeal has been instituted by the department, being aggrieved by the impugned order in Order-in-Appeal No.HYD-GST-SC-AP2-029-23-24 dated 04.07.2023, passed by First Appellate Authority (FAA). The appeal has been filed under Section 112(3) and 112(4) of the Central Goods & Services Tax Act, 2017 (the Act). The term 'Act', wherever referred to shall mean and include the State Goods & Services Tax Act, 2017 since all the provisions of both the Acts are common and that the same shall apply equally and concomitantly.

2. The Appellant–Department (hereinafter referred to as "the Appellant"), being aggrieved by the order impugned herein, has preferred the present appeal. The principal contention of the Appellant is that the FAA, while passing each of the impugned orders, had erred in allowing the appeal by classifying the supply of food to the extent to in-patients of MGM Hospital by the Respondent as composite supply of healthcare service and dropping the demand of taxes, interest and penalty to the extent of food supplied to inpatient of MGM Hospital by the Respondent. The Appellants prays that the order impugned be set aside and uphold the order passed by the Adjudicating Authority (AA).

3. The short matter that is to be decided in the instant proceedings is whether the supplies made by the Respondent herein, more particularly with regard to food supplied to in-patients by the MGM Hospitals, would be liable to a levy of GST or not?

4. The Appellants in their grounds of appeal has contended that the Central Board of Indirect Taxes and Customs (the Board) vide its Circular No.32/06/2018-GST dated 12.02.2018 clarified under the context of Healthcare Services provided by a Clinical Establishment, an authorised medical practitioner, which is not applicable to the instant case as the Respondent is outsourced caterer and not healthcare provider or medical practitioner / clinical establishment. It is their submission that the benefit of the clarification is available only to healthcare or clinical establishment for the supply of food by them to the in-patients and that in the instant case, the Respondent is only supplying food to MGM Hospitals and not to in-patients, and the clarification provided by the Board would not be applicable to the Respondent's supply of food to the Hospital. The Appellant has further contended that the AA has correctly classified the impugned supply as 'Restaurant Services' which is taxable at the rate of 5% GST (2.5% as CGST and 2.5% as SGST). They have further contended that the term 'Restaurant Services' has been defined under explanation 4 (xxxii) in Notification No.12/2017-CT (Rate) dated 28.06.2017 as amended vide Notification No.20/2019-CT (Rate) dated 30.09.2019. They submit that based on the clarification of the Board, the food supplied by the Respondent is liable to tax under the category of 'Restaurant Services' since the said supply has been outsourced by MGM Hospital, Warangal. In fine, the department submits that the Respondent is liable to pay ₹23,04,026/- for the period from January 2018 to November 2021, the payment of which has been correctly appropriated by the AA. As such the Appellants has concluded that the order impugned is not legal and proper and merits to be set aside.

5. The Ld. DR submits that the supply of diet for in-patients and the hospital staff by the outdoor caterers is not eligible to be treated as healthcare provider or composite healthcare services.

6. Per contra, the Ld. Consultant Shri. G. Ashok submits that the appeal filed by the department is not maintainable and that the order impugned is well-reasoned and does not merit any interference.

7. The Respondent in their cross objections has contented that the food supplied by them to MGM Hospitals, was in terms of an agreement with the management and as per the agreement the Respondent was required to supply the food within the Hospital premises. As a result, it was contended that the said activity would not be covered under the category 'Restaurant Services' under HSN 9963. The Respondent submits that the order passed by the AA travels beyond the proposals made in the show cause notice and that the Appellant attempts to reopen settled factual narratives which lacks legal basis and sustainability. It is their submission that the clarification provided by the Board vide the said circular is clear and unambiguous and that it explicitly states that food supplied to in-patients based on the advice of the doctor's or nutritionist forms part of composite supply of healthcare services and is therefore not taxable separately. It is further contented that since the food is supplied within the precincts of the Hospital, the same cannot be categories as restaurant service. The cross objection draws reference to sl.no.74 of Notification No.12/2017-CT(R) dated 28.06.2017 read with Section 8(a) of the Act, healthcare services constitute a composite supply. It is their submission that it is legally not correct to isolate food supply from this conglomeration of services and tax is separately as 'supply of other food'. The Respondent places reliance on the Principal Accountant General's (PAG) letter (C.No.PAG (Audit)/TS/GSS-7/2018-19/AE No.29 dated 07-2018) addressed to Osmania General Hospital which clarified that the food supplied within this medical framework is not taxable; that similar letter has also been issued by MGM Hospital vide order Rc. No. Accounts/157/2018 dated 19.11.2018 highlighting the point that food when supplied to in-patients on the advice of the doctor or nutritionist are not subjected to any tax. The Respondents also contend that as per Explanation (xxiii) to Notification No.11/2017-CT(R) dated 28.06.2017 that dietary supplied within the hospital premises cannot be classified as 'outdoor catering' services. Finally, they have contended that invoking Section 74 of the Act is entirely unjustified and that the issue involves a bona-fide interpretation of an exemption notification and that they had correctly declared both the exempted and taxable supply turnover in their returns, thereby completely ruling out any intention to evade payment of tax.

8. The Ld. Consultant would submit that the food supplied by the Respondent is a composite supply and that the supplies made to in-patients are not exigible to tax. In support of his stand, reference was drawn to column 3 of the Board's circular cited supra. He would submit that while column 2 is only the query raised for which the Board had given clarification for the situation so raised in column 3 and according to him the supplies made by the Respondent falls squarely within the clarification provided. He stresses on the point that the PAG has categorically clarified that no tax is payable on food supplied to in-patients since the same would be a composite supply. He also draws attention to the Order issued by MGM Hospital on similar lines. He finally submits that the appeal filed by the department is without any merits and is therefore liable to be dismissed.

9. Before we proceed to address the issue on hand, we feel it appropriate to understand what supply constitutes a 'composite supply' within the meaning of Section 2(30) of the Act. For ease of reference, the said definition is reproduced below:

> *"Section 2(30) "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;"*

On a plain reading of the above definition, it would be clear that the following constituents must be present in order to decide whether a supply would constitute a composite supply or not.

a. There must exists two or more supplies;
b. Both the supplies must be taxable supplies;
c. Both the supplies must be naturally bundled;
d. Both supplies must be supplied in conjunction with each other in the ordinary course of business; and
e. One must be a principal supply

9.1 Apply the above to the case on hand, it would be clear that in the hands of the Respondent there is only one supply viz., supply of food. This supply is being undertaken by the Respondent to MGM Hospital under an agreement. The one and only supply undertaken by the Respondent, under the agreement, is supply of food to in-patients, outpatients, staffs and doctors, at the rates agreed upon. While the supplies to other persons are not in dispute, the food provided to in-patients have been subject to dispute with effect from January 2018 to November 2021. It is understood that the agreement between MGM Hospitals and the Respondents have been terminated during November 2021 and hence issue is confined only to the said period. It is undisputed that between July 2017 to December 2017, the Respondent was paying appropriate tax for the supply of food to in-patients. In the absence of more than one taxable supply, the supply in the hands of the Respondent fails the litmus test, as indicated above. In fine, we are of the considered opinion that supplies undertaken by the Respondent is not a composite supply *per se.*

10. Having held that the activity carried out by the Respondent, in so far as supplies to in-patients are concerned, are not a composite supply, we feel it appropriate to discuss the applicability of the Board's circular to the case on hand, which has been vehemently relied upon by both the parties. The Board vide the circular referred supra seeks to clarify certain confusions expressed by the trade in respect of certain category of supplies. As regards the healthcare services, in point no.5 of the said circular, the Board in sl.no.3 of 5th point therein has framed the issue as thus:

Sl.No. **(1)**	**Issue** **(2)**	**Clarification** **(3)**
3.	*“…….When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. ….”*	*“3. The food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.”*

On a simple reading of the above clarification of the Board, it would be clear that the said clarification was in connection with healthcare services rendered and that when the healthcare service provider provides food to an inpatient then the same would not be taxed separately, since the supply of food to in-patients would be a composite supply in the hands of the healthcare service provider. In the instant case, the healthcare service provider is MGM Hospitals, who are treating the in-patients for ailment for which among other supplies, supply of food as per the advice of the doctor or nutrition is a part of such supply. As per the said clarification, supply of food by MGM Hospitals, as a healthcare service provider, would be a ‘composite supply’ within the meaning of Section 2(30) of the Act, referred supra, and that the principal supply would be providing of healthcare services. The supply of food to in-patients, being naturally bundled would be an ancillary supply and as such the levy as applicable to the principal supply would be applicable to the food supplied by MGM Hospital to its in-patients. It would be categorically clear that the healthcare services and the food supply are both supplied in conjunction with each other. In other words, for the treatment of an ailment, the MGM Hospitals have not only to provide necessary and effective treatment but also advice the proper food that has to be administered to the in-patient. Therefore, both the supplies are inseparable and would be regarded as a 'composite supply'.

10.1 Now, applying the above to the case on hand, it would be apparently clear that the Respondent is providing only food to the in-patients and that too under a contracted agreement with MGM Hospitals. Apart from supply of food, there is no other supply in the hands of the Respondent and as such the provisions of Section 2(30) of the Act cannot be applied to the instant case. Similarly, the Board in the circular discussed above has only clarified the levy of a separate tax, for food supply, in the hands of the healthcare supplier viz., MGM Hospital in the instant case, and such a clarification would have no bearing on the Respondent, whatsoever. We are also of the considered opinion that the Respondent had supplied food to MGM Hospitals, under the agreement, though the said food was to be ultimately consumed by the in-patient. In fine, we are of the considered opinion that the Respondent was under the mistaken belief that the clarification issued by the Board has favourable effect on the food supplied by them to MGM Hospital.

10.2 Further, we are also unable to subscribe to the submission of the Respondents that the PAG as well as the management of MGM Hospitals have clarified that there is no levy of any tax for supply of food by the Respondent, in the instant case. Both the PAG as well as MGM Hospitals have only tried to enunciate what is clarified by the Board and that they have not in categorical terms held that the Respondent or for that matter supplier of food for in-patients, are exempted from any tax. We are also not able to appreciate the Ld. Consultant's reliance being placed on these orders issued, since both PAG and MGM Hospitals are not the proper authority to provide any clarification of their own and that even if such clarifications are so provided, the same would have no bearing and cannot be followed under any context. It cannot only be a guiding factor that too explaining the clarification, in simple words, provided by the Board to the concerned persons to whom the same would apply. By any stretch of imagination, the Board's clarification is not connected with the supplies made by the Respondents to the MGM Hospitals.

11. We are of the considered opinion that the FAA, without understanding the clarification of the Board, has erred in concluding that the supplies in the hands of the Respondent is that of composite supply. As such the order impugned is liable to be set aside.

12. Having held that the Respondent's activity is not a 'composite supply' within the meaning of Section 2(30) of the Act, and that the clarification issued by the Board is not relevant to the case on hand, we wish to dwell upon the final plea of the Respondent, which is, there has been no suppression with any intent to evade payment in order to invoke the provisions of Section 74 of the Act.

12.1 It is true that the Respondent had totally relied upon the Board's circular albeit mistakenly, it cannot be said that they had deliberately chosen not to pay tax. It is a gross error in understanding the provisions of law as well as the clarification extended by the Board. In order to invoke the provisions of Section 74 of the Act, there must be ingredients embedded in it, and that the same has to be established in clear terms. In the instant case, even though the department has sought to invoke the provisions of Section 74 of the Act, nothing concrete has been established necessitating invoking the said section. Further, even the proposal of penalties under Section 122 of the Act has been dropped by the AA, which only further fortifies that the Respondent has not deliberately opted against payment of tax for supply of food for in-patients. Except for the gross error in understanding the law and the clarification provided by the Board, we don't find any reason for invoking the provisions of Section 74 of the Act. We are unable to comprehend that the Respondent's act was with any mala-fide intention. Though the demand of tax was within the normal period, we are of the considered opinion that a relook into invoking Section 74 of the Act is very much essential especially with regard to the penal actions proposed.

12.2 At this juncture, we feel it appropriate to consider invoking the provisions of Section 75(2) of the Act, which reads as follows:

> *"(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73."*

Section 75(2) of the Act empowers, the Tribunal, amongst others, to deem as if the show cause notice was issued under Section 73(1) of the Act instead of Section 74 of the Act. As already discussed above, we find that no ingredients, enshrined in Section 74 of the Act, has been established by the

Appellants beyond doubt and hence the invoking the provisions of Section 74(1) of the Act is not sustainable. With the powers vested under Section 75(2) of the Act, we are of the opinion that the show cause notice shall be deemed to have been issued under Section 73(1) of the Act and accordingly direct the proper officer to determine the tax payable, consequently determine the penalty payable by the Respondent.

13. It is also an admitted fact that from January 2018 to November 2021, the Respondent had not raised any invoice with tax. In other words, the invoices for the supplies made for consumption by in-patients were admittedly without having any reference to tax. This fact can be deduced from the workings contained in the show cause notice. In as much as the Respondents have not collected any amount representing tax in the invoices raised for the supply of food to in-patients, the value represented in the said invoices would have to be considered as inclusive of tax.

13.1 The invoices issued by the appellants must, therefore, be understood as reflecting the total consideration received from the recipients, without any separately identifiable tax component. The question that arises is whether the differential tax should be calculated on the entire value declared in those invoices or whether the benefit of the cum-tax principle under Rule 35 of the Rules should be extended to the appellants.

Rule 35 provides as follows:

"Rule 35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.—Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,—

Tax amount = (Value inclusive of taxes × tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) / (100 + sum of tax rates, as applicable, in %)"

13.2 The present case falls within the scope of Rule 35. Since the appellants had not collected tax separately from the recipients, and the Department has not alleged that they had, in fact, collected any tax over and above the invoice value, the value declared in the invoices must be treated as inclusive of tax.

13.3 The tax component must consequently be worked out in accordance with the formula prescribed under Rule 35. Tax cannot be calculated on an amount which already includes the tax component. The benefit of cum-tax valuation is, therefore, required to be extended while determining the differential tax liability.

14. It may be observed that the appellants did not specifically claim the benefit of Rule 35 either before this Bench or before the authorities below. In our view, this omission cannot disentitle them from receiving a benefit available under the Act and the Rules, particularly when the relevant facts are already available on record.

14.1 Rule 35 is intended to ensure that tax is calculated on the value of the supply exclusive of the tax component. The authorities are required to determine the correct tax liability in accordance with law. They cannot collect tax in excess of what is legally payable merely because the taxpayer did not specifically claim a statutory benefit.

15. It is a settled principle that the Department must collect the tax legally due—neither more nor less. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in *M/s. Unichem Laboratories Limited* *v. Collector of Central Excise, Bombay*, reported in 2002-TIOL-237-SC-CX, wherein it was observed:

> *"13. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law - no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."*

15.1 The above principle applies to the present case. The appellants are entitled to the benefit of Rule 35, even though they did not specifically claim it. Extending this benefit would not amount to granting any concession outside the statute; it would merely ensure that the tax is correctly calculated in accordance with the prescribed rule.

15.2 Accordingly, the proper officer is directed to recompute the differential tax liability by treating the declared value as cum-tax and by applying the formula prescribed under Rule 35.

16. In fine, it is held that the FAA had erred in allowing the appeal filed by the Respondent herein. The Respondent is held to be liable to pay tax on the food supplied by them to MGM Hospital, under the agreement, which was consumed by the in-patients. The poser referred in paragraph 3 supra is accordingly answered.

17. The order of the FAA is, therefore, set aside. However, in view of the above discussions, the proper officer is directed to re-determine the liability, and consequently, interest, if any, and penalties considering the demand to have been made under Section 73(1) of the Act. The proper officer is also directed to re-compute the demand after extending the benefit of cum-tax in terms of Rule 35 of the Central Goods & Service Tax Rules, after verifying the relevant invoices, and after ascertaining that the Respondent had not collected any amount as tax during the period January 2018 to November 2021 for the supplies made for in-patients. Such determinations shall be completed by the proper officer within a period of 4 weeks from the date of receipt of this order and the Respondent shall be intimated within two weeks therefrom.

18. On the above terms, the appeal filed the department is allowed, subject to modification mention supra.

19. No order as to costs.

(Order pronounced in the open court on 18.09.2026)

Digitally signed by A P RAVI
Date:18-09-2026 19:10:57 PM

(A P Ravi)

Digitally signed by DUVVURI KRISHNA SRINIVAS
Date:19-09-2026 06:03:58 AM

(Duvvuri Krishna Srinivas)

Dated: 18.09.2026