

2024 (85) G.S.T.L. 468 (A.A.R. - GST - Guj.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, GUJARAT

S/Shri Amit Kumar Mishra, Member (Central Tax) and Riddhesh Raval, Member (State Tax)

IN RE : KOHLER INDIA CORPORATION PVT. LTD.

Advance Ruling No. GUJ/GAAR/R/2024/03, dated 5-1-2024 in Application No. Advance Ruling/SGST&CGST/2023/AR/19

Recovery from employees - Canteen services - Contractual agreement between employer and employee - Applicant enters into a contract with a Canteen Service Provider ('CSP') to provide canteen facilities to its workers at factory premises - Invoice is raised by CSP with applicable GST on basis of consumption by employees - A part of canteen charges is borne by applicant whereas remaining part borne by employees is collected from employee's salaries and paid to CSP by applicant - On application for advance ruling in respect of permanent employees - *HELD* : Applicant's has employed around 1500 employees who have been provided with canteen facility, having a demarcated area in factory premises, in terms of Section 46 of Factories Act, 1948 - As per C.B.I. & C. Circular No. 172/04/2022-GST, perquisites provided by 'employer' to 'employee' in terms of contractual agreement entered into between employer and employee, are not be subjected to GST when same are provided in terms of contract - Therefore, deduction made from employees availing food in factory is not be considered as a 'supply' and thus no GST is be applicable on employee's portion - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Gujarat Goods and Services Tax Act, 2017 - Section 46 of Factories Act, 1948. *[paras 13 to 15 & 19]*

Input Tax Credit - Apportionment of credit and blocked credits - Canteen facility to employees - Applicant mandated by Section 46 of Factories Act, 1948 entered into a contract with a 'CSP' to provide canteen facilities to its workers at factory premises - A part of canteen charges is borne by applicant whereas remaining part by employees - Circular No. 172/4/2022-GST clarified that, effective from 1-2-2019, based on recommendation of GST Council in its 28th meeting, proviso after sub-clause (iii) of clause (b) of Section 17(5) of CGST Act, 2017 is applicable to whole of clause 17(5)(b) - Therefore, ITC would be available to appellant in respect of food and beverages as far as provision of canteen service for employees is concerned - However, ITC charged by CSP will be restricted to extent of cost borne by appellant only - Section 17 of Central Goods and Services Tax Act, 2017 - Section 17 of Gujarat Goods and Services Tax Act, 2017 - Section 46 of Factories Act, 1948. *[paras 16 to 19]*

Ruling in favour of assessee

CASES CITED

AIA Engineering Ltd. — 2023 (74) G.S.T.L. 364 (A.A.R. - GST - Guj.) = (2023) 6 Centax 35 (A.A.R. - GST - Guj.) — *Referred* [Para 6]

Amneal Pharmaceuticals Pvt. Ltd. — 2022 (58) G.S.T.L. 382 (App. A.A.R. - GST - Guj.) — *Referred* [Para 6]

Astral Ltd. — 2023 (68) G.S.T.L. 431 (A.A.R. - GST - Guj.) = (2023) 2 Centax 154 (A.A.R. - GST - Guj.) — *Referred* [Para 6]

Cadila Healthcare Ltd. — 2023 (68) G.S.T.L. 203 (A.A.R. - GST - Guj.) = (2022) 1 Centax 274 (A.A.R. - GST - Guj.) — *Referred* [Para 6]

Cadila Pharmaceuticals Ltd. — 2023 (75) G.S.T.L. 110 (A.A.R. - GST - Guj.) = (2023) 6 Centax 15 (A.A.R. - GST - Guj.) — *Referred* [Para 6]

Emcure Pharmaceuticals Ltd. — 2022 (60) G.S.T.L. 231 (A.A.R. - GST - Mah.) — *Referred* [Para 6]

Intas Pharmaceutical Ltd. — 2022 (62) G.S.T.L. 83 (A.A.R. - GST - Guj.) — *Referred*..... [Para 6]

Munashi Auto Parts India P. Ltd. — Appeal No. HAAAR/2020-21/061, dated 31-3-2022 — *Referred* [Para 6]

Tata Motors Ltd. — 2023 (71) G.S.T.L. 302 (App. A.A.R. - GST - Guj.) = (2023) 2 Centax 238 (App. A.A.R. - GST - Guj.) — *Followed* [Paras 17, 18]

Tata Motors Ltd.— 2022 (59) G.S.T.L. 107 (A.A.R. - GST - Guj.) — *Referred*..... [Para 6]

Troikaa Pharmaceuticals Ltd. — (2023) 2 Centax 111 (A.A.R. - GST - Guj.) — *Referred*.... [Para 6]

DEPARTMENTAL CLARIFICATION CITED

Press Release dated 10-7-2017..... [Paras 6, 11]

Circular No. 172/04/2022-GST, dated 6-7-2022..... [Paras 6, 11, 14, 16, 19]

REPRESENTED BY : S/Shri Mihir Deshmukh, Advocate and Inderjeet, Manager, for the Assessee.

[Order]. - Brief facts : M/s. Kohler India Corporation Private Limited (for short - 'applicant'), Plot No.-828, GIDC, Mega Estate, Valla Road, Jhagadla, Nr. Talodara, Bharuch, Gujarat, 393110 is registered with the department and their registration Number is 24AABCK214SE1Z3.

2. The applicant is engaged in the manufacturing of plumbing products for kitchen & bathrooms. Their manufacturing facility is in Gujarat and is governed by the provisions of the Factories Act, 1948.

3. In terms of Section 46 of the Factories Act, 1948, as more than a specified number of workers are employed, it is mandatory for the applicant to provide canteen facilities. To comply with this requirement, the applicant entered into a contract with a canteen service provider (for short - 'CSP') to provide canteen facilities to their workers at their factory premises.

4. As per the agreed arrangement with the CSP, the applicant allows the CSP to use utensils like tea urns, glass tumblers, eating plates, steel bowls and other utensils necessary for the preparation of food and serving food items at the canteen. The CSP raises the invoice along with applicable GST for its canteen services. The invoice is raised by the CSP on the basis of the consumption by the employees of the applicant, which is tracked based on employees of the applicant who avail the canteen facility. A part of the canteen charges is borne by the applicant whereas the remaining part is borne by their employees.

5. The employees' portion of canteen charges is collected from employee's salaries and paid to the CSP by the applicant on behalf of employees. The amount so collected is without any commercial objective, or profit margin and to maintain discipline. The applicant accounts the canteen expense basis the invoice raised by the CSP in its statement of profit and loss account. Further, the amount collected by the applicant from its employees, is credited to the expense account in which the canteen expenses are booked.

6. The applicant further states that GST should not be applicable on the amount representing the employee's portion of canteen on the following grounds viz. :

- In order to constitute a 'supply', the following elements are required to be satisfied :

- § there should be supply of 'goods' and/or 'services';

- § Supply for 'consideration';

- § supply is made 'in the course or furtherance of business';

- § the activity under consideration shall not fall within the scope of Section 7(2) of the CGST Act, 2017 (*i.e.* Schedule III to the CGST Act, 2017).

- that any activity which is listed under Schedule III to the CGST Act, 2017 would not be considered as supply under the GST law;

- In terms of *press release dated 10-7-2017*, supply by employer to the employee, in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST;

- as per *Circular No. 172/04/2022-GST, dated 6-7-2022*, perquisites provided by the employer to the employee in terms of the contractual agreement entered into between the employer and employee are in lieu of the services provided by employee to employer in relation to his employment & hence will not be subjected to GST when the same are provided in terms of the contract between the employer and employee;

- that in the present case there is only one supply *i.e.* the supply from the CSP to the employees & not from the CSP to the applicant as the food is consumed only by employees; the supplier is the CSP & invoice is raised on the applicant but the ultimate recipients of such canteen facility are the employees of the applicant;

- the applicant allows the CSP to use its demarcated area [canteen area] for serving food to the employees & make payment to the CSP on behalf of the employees for administrative convenience;

- the applicant collects the employees portion & pays the consolidated total amount which includes the applicants share also; the applicant neither keeps any margin nor makes any separate supply to the employees; that there is no supply from the applicant to its employees: that the applicant is not in the business of provision of canteen facilities & recovers the employees share without keeping any profit margin; that no independent contract exists between the applicant & the employees for setting up of canteen facility;
- that they wish to rely on the ruling in the case of

M/s. Amneal Pharmaceuticals P. Ltd. [Appeal No. Guj/GAAR/ Appeal/2021/07, dated 8-3-2021] [2022 (58) G.S.T.L. 382 (App. A.A.R. - GST - Guj.)],

M/s. Tata Motors [Ruling No. Guj/GAAR/R/39/2021, dated 30-7-2021] [2022 (59) G.S.T.L. 107 (A.A.R. - GST - Guj.)],

M/s. Emcure Pharmaceuticals Ltd. [Ruling No. GST-ARA-119/2019-20/B-03, dated 4-1-2022] [2022 (60) G.S.T.L. 231 (A.A.R. - GST - Mah.)],

Troikaa Pharmaceuticals Ltd. [Ruling Number Guj/GAAR/R/2022/ 38, dated 10-8-2022] [(2023) 2 Centax 111 (A.A.R. - GST - Guj.)],

M/s. Munashi Auto Parts India P. Ltd. [Appeal No. HAAAR/2020-21/061, dated 31-3-2022],

M/s. Cadila Health Care Ltd. [Ruling No. Guj/GAAR/R/2022/19, dated 12-4-2022] [2023 (68) G.S.T.L. 203 (A.A.R. - GST - Guj.) = (2022) 1 Centax 274 (A.A.R. - GST - Guj.)],

M/s. Astral Ltd. [Ruling No. Guj/GAAR/R/2022/01, dated 7-3-2022] [2023 (68) G.S.T.L. 431 (A.A.R. - GST - Guj.) = (2023) 2 Centax 154 (A.A.R. - GST - Guj.)],

M/s. Intas Pharmaceutical Ltd. [Ruling No. Guj/GAAR/R/2022/03, dated 7-3-2022] [2022 (62) G.S.T.L. 83 (A.A.R. - GST - Guj.)],

M/s. AIA Engineering Ltd. [Ruling No. Guj/GAAR/R/2023/12, dated 31-3-2023] [2023 (74) G.S.T.L. 364 (A.A.R. - GST - Guj.) = (2023) 6 Centax 35 (A.A.R. - GST - Guj.)],

M/s. Cadila Pharmaceuticals Ltd. [Ruling No. Guj/GAAR/R/ 2023/14, dated 31-3-2023] [2023 (75) G.S.T.L. 110 (A.A.R. - GST - Guj.) = (2023) 6 Centax 15 (A.A.R. - GST - Guj.)].

7. The applicant has filed this application for advance ruling raising the following questions viz.:

- Whether the subsidized deduction made by the applicant from the employees who are ultimate recipient of canteen facility provided in factory/corporate office would be considered as 'supply' under the provisions of Section 7 of the CGST Act, 2017 and the GGST Act, 2017?
- If the answer to the above is affirmative, the value at which the GST is payable?
- Whether the Company is eligible to take the ITC for the GST charged by the CSP for canteen services, where the canteen facility is mandatory in terms of Section 46 of the factories Act, 1948.

8. Personal hearing was held on 9-11-2023 wherein Shri Mihir Deshmukh, Advocate along with Shri Inder Jeet, Manager (Tax) of the applicant appeared and reiterated the facts as stated in the application. On being asked they informed that they employ around 1500 employees. They sought some time to submit additional submission in the matter. Thereafter, *vide* their letter dated 16-11-2023, the applicant informed that they have posed the questions on which ruling is sought is only in respect of permanent employees *i.e.* employees who are on the payroll of the applicant. Further, the applicant submitted an extract of their HR policy by which all the employees are governed at a subsidized rate. The relevant portion of the same is extracted below :

HR Manual Revision No. 5 - as on 30 March, 2011

• **CANTEEN :**

Canteen facility is provided to all workmen at subsidized rates. The charges for meals to different employee are as given below (these are the current rates which can be revised) :

		All wo me	T r a i n e e s
	Meal- Lunch/ Dinner	Rs .8/- (Ei ght Rs) pe r da y	R s .2 / - (T w o R s .) p e r d a y
	Tea-	Rs	N

	Served Twice in a day	2/- (Two Rs) per day	il
	Snack as per Menu	Base d on Sn ac ks- co up on s	B a s e d o n S n a c k s - c o u p o n s

- **Snackes - Coupon :**

The snacks coupons are distributed by Finance and HR teams on three working days during the month especially, 8th, 9th and 10th from HR-Help-desk. All workmen are required to collect it personally from the HR Help-desk. The Snacks coupon is chargeable to employee on subsidized basis. Each coupon costs INR 1.50/- (One Rupee and Fifty paisa) and is recovered from workman from his salary.

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 advertizing to the submissions made by the applicant, we would like to reproduce the relevant sections, circular, press release etc., for ease of reference :

• **Section 7. Scope of supply -**

(1) For the purposes of this Act. the expression -

“supply” includes -

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or *vice versa*, for cash, deferred payment or other valuable consideration.

Explanation. - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court. tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(d) xx xx xx

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1). -

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council.

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may. on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

• **Section 17. Apportionment of credit and blocked credits.- [relevant extracts**

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :-

(a), (aa) & (ab) xx xx xx

(b) [the following supply of goods or services or both -

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance :

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession :

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force]

• **C.B.I. & C.'s press release dated 10-7-2017**

Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17(5)(b)(ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

• **Circular No. 172/04/2022-GST**

	Is s u	Clarification
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	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under : “Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”	1. Vide the Central Goods and Services Tax (Amendment Act), 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 1-2-2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under : “Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.” 2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21-7-2018. It had been clarified “that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its

	e C G S T A c t i s a p p l i c a b l e t o t h e e n t i r e c l a u s e (b) o r t h e s a i d p r o v i s o i s a p p l i c a b l e o n	employees, under any law for the time being in force.” 3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.
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	y to s u b- cl a u s e (ii i) of cl a u s e (b)?	
	W h e t h e r v a r i o u s p e r q u i s i t e s p r o v i d e d b y th e	1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. 2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows there from that perquisites provided by the employer to the employee in terms of

	m pl o y er to it s e m pl o y e e s in te r m s of c o n t r a c t u a l a g r e e m e n t e n t er e d in to b et w e e n th	contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.
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12. The facts having been enumerated supra we do not intent to repeat the same for the sake of brevity.

Canteen

13. The *first issue* to be decided is whether the deduction of nominal amount made by the applicant from the employees who are availing food in the factory premises would be considered as a 'supply' under the provisions of Section 7 of the CGST Act, 2017. Now, in terms of Section 7 of the CGST Act, 2017, supply means all forms of 'supply' of goods/services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. The exception being Schedule I, which includes the activities made or agreed to be made without a consideration and Schedule III, which includes activities which shall be treated *neither* as a supply of goods or services. The applicant's case is that they employ around 1500 employees [informed during PH] who have been provided with canteen facility in terms of Section 46 of the Factories Act, 1948. Further, the applicants primary role is that he has set up a canteen facility, having a demarcated area in the factory premises, pursuant to & in compliance with the Factories Act; that the said

canteen facility is in a demarcated area. Further, the applicant has also informed that the ruling is in respect of permanent employees.

14. Now in terms of Circular No. 172/04/2022-GST, it is clarified that perquisites provided by the 'employer' to the 'employee' in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. We find that factually there is no dispute as far as [a] the canteen facility is provided by the applicant as mandated in Section 46 of the Factories Act, 1948 is concerned; and [b] the applicant has provided a sample copy of the HR Manual [only one page] reproduced supra. In view of the foregoing, we hold that the deduction made by the applicant from the employees who are availing food in the factory would not be considered as a 'supply' under the provisions of Section 7 of the CGST Act, 2017.

15. Since the answer to the above is not in the affirmative, the ruling sought in respect of the second question is rendered infructuous.

Input Tax Credit

16. The next question on which the applicant has sought ruling is whether Input Tax Credit of GST charged by the CSP would be eligible for availment by the applicant. In this connection, before proceeding further, certain factual aspects which we would like to mention, though at the cost of repetition are viz. :

- that they employ 1500 employees;
- that Section 17(5)(b) *ibid*, was amended on 1-2-2019, and is reproduced supra;
- that the applicant is mandated *vide* Section 46 of the Factories Act, 1948 to provide canteen facility to its employees within the factory premises;
- that Circular No. 172/4/2022-GST clearly clarifies that post substitution, effective from 1-2-2019, based on the recommendation of the GST Council in its 28th meeting, the proviso after sub-clause (iii) of clause (b) of Section 17(5) of the CGST Act, 2017 is applicable to the whole of clause 17(5)(b), *ibid*.

17. In view of the foregoing, we hold that Input Tax Credit will be available to the appellant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 as far as provision of canteen service for employees is concerned. It is further held that the ITC on GST charged by the CSP will be restricted to the extent of cost borne by the appellant only. Our view is substantiated by the Ruling of the Gujarat Appellate Authority for Advance Ruling Order No. GUJ/GAAAR/Appeal/2022/23, dated 22-12-2022 in the case of *M/s. Tata Motors Ltd., Ahmedabad* [2023 (71) G.S.T.L. 302 (App. A.A.R. - GST - Guj.) = (2023) 2 Centax 238 (App. A.A.R. - GST - Guj.)= [2023] 146 taxmann.com 356/96 GST 286 (AAAR - Gujarat)].

18. In view of the foregoing, we hold that Input tax Credit will be available to the appellant in respect of canteen facility which is obligatory under the Factories Act, 1948, read with Gujarat Factories Rules, 1963. It is further held that the ITC on GST charged by the TSP will be restricted to the extent of cost borne by the appellant only taking the analogy from the ruling of the GAAAR *vide* its *Tata Motors Ltd., Ahmedabad*.

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

RULING

(a) The deduction of amount by the applicant from the salary of the employees who are availing facility of food provided in the factory premises would not be considered as a 'supply' under the provisions of Section 7 of the CGST Act, 2017 and the CGST Act, 2017.

(b) Since the answer to the above is not in the affirmative, the ruling sought in respect of the question listed at 1(a) is rendered infructuous.

(c) Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its employees other than contract employees working in their factory, in view of the provisions of Section 17(5)(b) as amended effective from 1-2-2019 and clarification issued by C.B.I. & C. *vide* Circular No. 172/04/2022-GST, dated 6-7-2022 read with provisions of Section 46 of the Factories Act, 1948 and read with provisions of Gujarat factory Rules, 1963. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.