

2024 (84) G.S.T.L. 275 (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 : SUZUKI MOTOR GUJARAT PVT. LTD.

Advance Ruling No. GUJ/GAAR/R/2024/06, dated 3-2-2024 in Application No. Advance Ruling/SGST&CGST/2023/AR/18

Supply - Canteen services to employees - Applicant-assessee employ more than 250 employees who have been provided with canteen facility in terms of Section 46 of Factories Act, 1948 - Assessee provide canteen facility to their employees and bears 70% of cost and rest is borne by said permanent employees - *HELD* : In terms of C.B.I. & C. Circular No. 172/04/2022-GST, prerequisites provided by employer to employee in terms of contractual agreement between employer and employee will not be subjected to GST - Thus, deductions made by assessee from employees who are availing food in factory would not be considered as supply in terms of Section 7 of CGST Act, 2017 - Therefore, in instant case GST is not liable to be discharged on portion of amount recovered by assessee from it's permanent employees towards canteen facilities provided to them - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Gujarat Goods and Services Tax Act, 2017. *[paras 22 and 23]*

Supply - Canteen services to contract workers - Applicant-assessee employ more than 250 employees who have been provided with canteen facility in terms of Section 46 of Factories Act, 1948 - Assessee provides canteen facility to employees of SMC on deputation, employees of MSIL on business travel and a temporary employees including lease employees who are on third party roll within factory premises and assessee bears 70% of cost and rest is recovered by said employees/workers - *HELD* : Assessee has established canteen facilities as mandated under Section 46 of Factories Act, 1948 and supplies food at a subsidized cost through a canteen service provider - As per definition of business, supply of food by assessee to said employees/workers would come under Section 2(17)(b) of CGST Act, 2017 as transaction incidental or ancillary to main business as contractual worker are working for company to run business activity of assessee - Said supply of food by assessee is supply of service by assessee to such workers and cost recovered from workers, as deferred payment is consideration for supply - Therefore said supply of service would fall within definition of outward supply as per Section 2(83) *ibid* and therefore liable to tax as a supply under GST - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Gujarat Goods and Services Tax Act, 2017. *[paras 35 and 36]*

Input Tax Credit - Apportionment of credit - Food and beverages supplied in canteen - Applicant-assessee employ more than 250 employees who have been provided with canteen facility through a canteen service provider (CSP) in terms of Section 46 of Factories Act, 1948 - Assessee provides canteen facility to employees of SMC on deputation, employees of MSIL on business travel and a temporary employees including lease employees who are on third party roll a within factory premises and assessee bears 70% of cost and rest is recovered by said employees/workers - *HELD* : In terms of Section 17(5)(b)(i) of CGST Act, 2017, ITC is restricted in respect of supply of food and beverages - Thus, assessee is not eligible for ITC in respect of GST charged by CSP for canteen facilities provided to employees on deputation, employees on

business travel and temporary/contract workers - Section 17 of Central Goods and Services Tax Act, 2017 - Section 17 of Gujarat Goods and Services Tax Act, 2017. [para 40]

Input Tax Credit - Apportionment of credit - Kitchen utensils and equipments of canteen - Applicant-assessee employ more than 250 employees who have been provided with canteen facility through a canteen service provider (CSP) in terms of Section 46 of Factories Act, 1948 - In terms of contract with CSP assessee is obligated to provide CSP with kitchen utensils and equipments and on termination of contract, CSP will vacate premises and will handover all equipments - *HELD* : In terms of Section 17(5)(b)(i) of CGST Act, 2017 and Notification No. 13/2017-C.T. (Rate) wherein GST rate is without input tax credit on supply of food or any other article for human consumption or any drink at canteen, mess etc. - Therefore assessee is not eligible for ITC on kitchen utensils and equipments - Section 17 of Central Goods and Services Tax Act, 2017 - Section 17 of Gujarat Goods and Services Tax Act, 2017. [para 44]

Ruling in favour of department

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 10]

Amneal Pharmaceuticals (P.) Ltd. — 2022 (58) G.S.T.L. 382 (App. A.A.R. - GST - Guj.) — *Referred* [Para 10]

Bai Mumbai Trust v. Suchitra — 2019 (31) G.S.T.L. 193 (Bom.) — *Referred*..... [Para 10]

Bharat Oman Refineries Ltd. — [2022] 142 taxmann.com 95 (AAAR - Madhya Pradesh) — *Referred* [Para 10]

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 10]

Cadmach Machinery (P.) Ltd. — 2023 (68) G.S.T.L. 223 (A.A.R. - GST - Guj.) = (2022) 1 Centax 275 (A.A.R. - GST - Guj.) — *Referred* [Para 10]

Dishman Carbogen Amcis Ltd. — 2022 (62) G.S.T.L. 245 (AAR - Guj.) — *Referred* [Para 10]

Emcure Pharmaceuticals Ltd. — 2022 (60) G.S.T.L. 231 (A.A.R. - GST - Mah.) — *Referred* [Para 10]

Rites Ltd. — (2023) 3 Centax 205 (A.A.R. - GST - Haryana) — *Referred*..... [Para 10]

SRF Ltd. — [2022] 145 taxmann.com 3 (AAR - Guj.) — *Referred*..... [Para 10]

Tata Motors Ltd. — 2023 (71) G.S.T.L. 302 (App. A.A.R. - GST - Guj.) = (2023) 10 Centax 126 (App. A.A.R. - GST - Guj.) — *Relied on* [Para 11]

Troikaa Pharmaceuticals Ltd. — (2023) 2 Centax 111 (A.A.R. - GST - Guj.) — *Referred..* [Para 10]

Zyodus Lifesciences Ltd. — [2022] 143 taxmann.com 346 (AAR - Guj.) — *Referred.....* [Para 10]

DEPARTMENTAL CLARIFICATION CITED

C.B.I. & C. Circular No. 172/04/2022-GST, dated 6-7-2022 [Paras 19, 22, 29]

NOTIFICATION CITED

Notification No. 13/2018-C.T. (Rate), dated 26-7-2018 [Para 44]

REPRESENTED BY : Shri Rajesh Mehar Chandani, AGM - Taxation and Ms. Priyanka Kalwani, Advocate, for the Assessee.

[Order]. - Brief facts : M/s. Suzuki Motor Gujarat Pvt. Limited, Survey No. 293, Block No. 334/335, Becharaji, Village Hansalpur, Tal. Mandal, Ahmedabad (for short -applicant), is registered with the department and their registration number is 24AAUCS5797D2ZP.

2. The applicant is engaged in the manufacture of passenger cars & its parts at their factory, which is located in Gujarat and is governed by the provisions of the Factories Act, 1948.

3. As more than 250 workers are working in their factory, in terms of section 46 of the Factories Act, 1948, the applicant is obligated to run and maintain a canteen for their employees. Accordingly, the applicant is providing canteen facility to its employees at subsidized rates, within its factory premises.

4. As a part of the canteen facility, the applicant provides meals which include breakfast, lunch, dinner, tea and snacks. The applicant has entered into an agreement dated 15-7-2020 with M/s. Shashi Catering Service Private Ltd., a canteen service provider [for short- CSP], to provide food and beverages to its employees.

5. As per the aforementioned agreement, the CSP shall prepare the meals in accordance with the weekly menu specified by the applicant. Further, the applicant will provide kitchen utensils and equipment etc. (e.g. dish wash machine, work table, water cooler, table etc.), as specified in Annexure-D of the agreement to the CSP, which shall be returned to the applicant on termination of the arrangement.

6. The applicant provides canteen facilities to its employees in terms of the Meal Policy dated 1-4-2016. Article-1 of the policy specifies the objective as under :

“To provide hygienic meal to all employees of SMG as well as to SMC employees who are on deputation/business travel and to regulate this provision for other visitors. For the purpose of this policy meal shall signify tea and breakfast in the morning lunch/dinner followed by tea in the second half of the work day”.

7. The applicant is providing canteen facilities to :

- their employees;
- employees of Suzuki Motors Corporation (for short-'SMC') on deputation;
- employees of Maruti Suzuki India Limited (for short-'MSIL') on business travel;
- temporary workers including team lease employees, who are on third party roll working within the factory premises.

In the case of their employees, employees of SMC and employees of MSIL, 30% cost is borne by such employees while the applicant bears 70% of the cost. In the case of temporary workers, the applicant bears 70% of the cost.

8. The CSP is issuing tax invoices to the applicant and charging GST @ 5%. The applicant is raising monthly invoice and charging 5% GST on the nominal amount recovered for the meals provided to its employees.

9. The applicant believes that the canteen facilities so provided do not qualify as '*supply*' in terms of Section 7 of the CGST Act and is therefore not liable to GST. Thus, no GST is liable to be discharged on the recoveries made by the applicant towards such canteen facilities. The applicant further states that they are eligible to avail Input Tax Credit (ITC) in respect of the GST paid on the canteen services received from the CSP in terms of the proviso to Section 17(5)(b) of the CGST Act since it is obligatory for the applicant to provide such canteen facility to the employees in terms of the Factories Act. Similarly, the applicant believes that ITC is eligible in case of kitchen utensils and equipment utilized in the canteen premises for providing canteen facility to its employees, as supply of such kitchen utensils and equipment etc. has been availed in course or furtherance of business.

10. To substantiate their claim that the canteen facility provided to employees does not qualify as supply and is in the nature of perquisite the applicant has made the following submission viz.

- that there shall be a legal intention of both the parties to the contract to supply and receive the goods or services or both. The absence of such intention would not amount to supply within the meaning of Section 7 of CGST Act;
- unless there is an intention to provide a service, the same shall not be treated as supply within the meaning of Section 7 of the CGST Act;
- that it should involve *quid pro quo* i.e., the supply transaction requires something in return, which the person supplying will obtain, which may be in monetary terms/in any other form except in case of deeming provision as specified in Schedule-1;
- that the supply of goods or services or both shall be effected by a person in the course or furtherance of business;
- that though the CSP is issuing invoice to the applicant, the beneficiaries of the canteen facility are the employees of the applicant;
- that the applicant only acts as a mediator between the employees and the CSP and does not retain any profit margin while recovering the amounts from its employees;

- that the nominal amount recovered by the applicant from employees towards the meals, is only towards the expenditure/costs for providing such meals;
- that the applicant further relies on the

ruling of the Madhya Pradesh Appellate Authority for Advance Ruling in *Bharat Oman Refineries Ltd.*, [2022] 142 taxmann.com 95/[2021-TIOL 36-AAAR - GST];

ruling of the Haryana Authority for Advance Ruling in *Rites Ltd.*, (2023) 3 Centax 205 (A.A.R. - GST - Haryana) = [2023] 147 taxmann.com 416/97 GST 244/2022-VII-283-44R;

Bombay High Court judgment in the case of *Bai Mumbai Trust v. Suchitra*, [2019] 109 taxmann.com 200/2019 (31) G.S.T.L. 193 (Bom.)/2019 (9) TMI 929

Gujarat Appellate Authority for Advance Ruling [2021] 126 taxmann.com 228/2022 (58) G.S.T.L. 382 = 2021 (9) TMI 1293 ruling of 4GAAAR in the case of *Amneal Pharmaceuticals (P.) Ltd.*

Gujarat Authority for advance Ruling of [[2021] 132 taxmann.com 13/88 GST 629/2022 (62) G.S.T.L. 245/2021 (8) TMI 836] Advance GAAR in the case of *Dishman Carbogen Amcis Ltd.*

ruling of GAAR in the case of *Cadmach Machinery (P.) Ltd.*, 2023 (68) G.S.T.L. 223 (A.A.R. - GST - Guj.) = (2022) 1 Centax 275 (A.A.R. - GST - Guj.) = [2022] 140 taxmann.com 638 (AAR - Guj.) & *M/s. Emcure Pharmaceuticals Ltd.*, 2022 (60) G.S.T.L. 231 (A.A.R. - GST - Mah.) = [2022] 134 taxmann.com 74/90 GST 370 (AAR - Maharashtra)

- the applicant merely allows the CSP to use the canteen area in the factory premises for serving food to the employees and makes payment to the CSP on behalf of the employees for administrative convenience;
- that the employment agreement between the applicant and employee is for receipt of employment services during the course of employment and not for providing the canteen service by the applicant to the employees.
- the applicant submits that the basic requirements of qualifying as a 'supply' under GST are not satisfied in the instant case;
- that 'consideration' as defined u/s 2(31)(a) of the CGST Act is one of the essential elements of supply to fall within the ambit of section 7 of the CGST Act;
- any amount received towards the canteen facility *i.e.* nominal amounts recovered from the employees is not 'consideration' since it is not premised on the enforcement of any reciprocal obligation, and cannot be linked to a 'supply' for the purpose of levy of GST;
- that the applicant deducts a pre-determined amount from the employee's salary as recovery of expenses; that there is no reciprocity of any activity or transaction *i.e.*, there is no *quid pro quo* (there is no implied or express reciprocity) and direct and immediate link or nexus between the canteen services provided by the canteen service providers to the applicant and the nominal amounts recovered by the applicant from the employees in terms of the meal policy;

- that in the absence of an identifiable supply, the activity of recovering nominal amounts from the employee's salary towards the provision of meals would not constitute 'consideration' for a supply;
- that any facility provided by the employer to its employees in terms of the employer-employee relationship, would be treated as perquisite and is not leviable to GST; that this was clarified in the Press Release issued by CBIC dated 10-7-2017;
- the canteen facility provided by the applicant to its employees is in the nature of perquisite provided by the employer to the employee;
- that they wish to rely on C.B.I. & C. Circular No. 172/04/2022-GST, dated 6-7-2022;
- the applicant relies on the decision/ruling of the

GAAR in the case of *Cadila Pharmaceuticals Ltd.*, 2023 (75) G.S.T.L. 110 (A.A.R. - GST - Guj.) = (2023) 6 Centax 15 (A.A.R. - GST - Guj.) = [2023] 150 taxmann.com 32/98 GST 878/[2023] (4) TMI 298

GAAR in the case of *AIA Engineering Ltd.*, 2023 (74) G.S.T.L. 364 (A.A.R. - GST - Guj.) = (2023) 6 Centax 35 (A.A.R. - GST - Guj.) = [2023] 150 taxmann.com 73/2023 (74) G.S.T.L. 364/[2023] (4) TMI 297

GAAR in the case of *Troikaa Pharmaceuticals Ltd.*, (2023) 2 Centax 111 (A.A.R. - GST - Guj.) = [2023] 146 taxmann.com 128/[2022] (9) TMI 200

GAAR in the case of *Zydus Lifesciences Ltd.*, [2022] 143 taxmann.com 346/[2022] (10) TMI 304

GAAR in the case of *SRF Ltd.*, [2022] 145 taxmann.com 3/2022 (10) TMI 305

11. On the second issue regarding admissibility of ITC on Input service of CSP, the applicant has made the following submission viz.

- that the canteen services procured by the applicant from the CSP are in the nature of 'input services' u/s 2(60) of the CGST Act, 2017 since the same have been procured to be used in the course and furtherance of business;
- that under Section 46 of the Factories Act, the applicant is mandated to provide the canteen facility to the workers working within the factory premises;
- that they are entitled to avail ITC of GST paid to the CSP by virtue of the proviso to Sections 17(5)(b) & 16(1) of the CGST Act;
- in this regard, they wish to rely on the following rulings :

GAAR Ruling in *Troikaa Pharmaceuticals Ltd.* (supra) *ibid*;

Bharat Oman Refineries Ltd. (supra), *ibid*;

Cadila Pharmaceuticals Ltd. (supra);

AIA Engineering Ltd. (supra);

Tata Motors Ltd., 2023 (71) G.S.T.L. 302 (App. A.A.R. - GST - Guj.) = (2023) 10 Centax 126 (App. A.A.R. - GST - Guj.) = [2023] 146 taxmann.com 356/96 GST 286 (AAAR Gujarat)

- thus in light of the above, the applicant is eligible to avail ITC in respect of the GST paid on canteen services used for providing canteen facility to its employees as such input service is used in the course or furtherance of business of the applicant.

12. On the third issue regarding *admissibility of ITC in respect of canteen facility provided to employees on deputation and business travel and temporary workers*, the applicant has made the following submission viz.

- that the applicant is mandated to provide canteen facility to the worker in terms of Section 46 of the Factories Act, 1948;
- that Section 2(1) of the Factories Act, 1948 defines the term 'worker' to mean a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process;
- that the definition of 'worker' is broad and includes any person engaged in manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, within the factory premises;
- that in the instant case, the employees are under deputation and on business travel and temporary workers & are engaged in the activities in relation to the manufacturing process at the factory premises;
- thus, in light of the above, the applicant submits that they are eligible to avail ITC in respect of the GST paid on inward supplies used for providing canteen facility to the employees on deputation and business travel and temporary workers as, such canteen service is used in the course or furtherance of business of the applicant.

13. On the fourth issue regarding *admissibility of ITC on the kitchen utensils and equipment's* purchased for providing canteen facility to the employees, the applicant has made the following submission viz.

- the applicant is obligated in the terms of the agreement to provide them with kitchen utensils and equipment like watercooler, dishwasher, plates, worktable, table etc.;
- that on termination, the CSP shall vacate the premises and hand over all the kitchen utensils and equipment to the applicant; that in the instant case, the ownership over the kitchen utensils and equipment always remains with the applicant;
- that the canteen facility for the employees within the factory premises has been mandated in terms of Section 46 of the Factories Act, 1948; that to facilitate the preparation and serving of the meal, the applicant has purchased certain kitchen utensils and equipment; that the

inward supply of kitchen utensils and equipment is in course or furtherance of business and hence, ITC is eligible on such utensils and equipment.

14. In view of the foregoing, the applicant has filed this application for advance ruling raising the following questions viz.

- (1) Whether GST is liable to be discharged on the portion of the amount recovered by the applicant from its employees towards the canteen facilities provided to them?
- (2) Whether the applicant is eligible to avail input tax credit in respect of the GST charged by the canteen service provider for the canteen facilities provided to its employees?
- (3) Whether the applicant is eligible to avail input tax credit in respect of the GST charged by the canteen service provider for the canteen facilities provided to employees on deputation and on business travel and temporary workers?
- (4) Whether applicant is eligible to avail input tax credit in respect of the inputs *i.e.* equipment and kitchen utensils utilized for providing canteen facilities to its employees?

15. Personal hearing was held on 9-11-2023 wherein Ms. Priyanka Kalwani, Advocate and Shri Rajesh Meharchandani, AGM (Taxation) of the applicant appeared and reiterated the facts as stated in the application. They further stated that same rate/contribution is taken from the employees irrespective of whether they are permanent/temporary/on deputation or on business travel. On being asked it was informed that deputation is generally for three years. They further sought time to provide additional submission including deputation letter encompassing the terms of deputation. On the issue of ITC of kitchen equipment's it was reiterated that the ownership of the equipment remained with the applicant.

16. In their additional submission dated *nil*, submitted post the hearing, the applicant submitted as following viz. :

- that the employees of group companies of the applicant, *i.e.* SMC & MSIL are deputed for a period which may vary from 1 month to 5 years; that the personnel are solely under the control, direction, and supervision of the applicant during the period of deputation and perform the duties and exercise powers which the applicant may assign;
- that such deputed personnel can avail meal facility by purchasing the coupons directly from the CSP; that 30% of the cost of the meal is borne by such personnel and 70% is borne by the applicant;
- that in terms of proviso to Section 17(5)(b), ITC shall be available in respect of goods and services or both, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force;
- in the instant case, relying on Sections 2(1) and 46 of the Factories Act, 1948. the employees under deputation are engaged in the activities in relation to the manufacturing process at the factory premises.

Therefore, in light of the above, the applicant submits that they are eligible to avail ITC in respect of the GST paid on inward supplies used for providing canteen facility to the personnel on

deputation. However, the applicant failed to provide copy of deputation letter, as stated during the course of personal hearing.

Discussion and findings

17. At the outset, we would like to state that the provisions of both the COST 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.

18. 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.

19. Before advert 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 1. 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.

• CBIC'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 employee, when the

same is provided in terms of the contract between the employer and is part and parcel of the cost-to-company (C2C).

- Circular No. 172/04/2022-GST

	Issue	Clarification
	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	1. <i>Vide</i> 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 (ii) of clause (b) of sub-section (5) of Section 17 of the COST 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 employees, under any law for the time being in force.” 3. Accordingly, it is clarified that the proviso after sub-clause (ii) 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.
	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	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 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.

20. The facts having been enumerated supra we do not intent to repeat the same for the sake of brevity.

Canteen

21. The first issue to be decided is whether the deduction of nominal amount made by the applicant from the employees who are availing canteen facilities 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 *ibid*, 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 more than 250 employees who have been provided with canteen facility in terms of Section 46 of the Factories Act, 1948.

22. 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 is 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 copy of the Meal Policy. *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 COST Act, 2017.*

23. However, the aforementioned finding is only in respect of *permanent employees*. It goes without saying that it would not be applicable to canteen facilities provided to employees of SMC on deputation, employees of MSIL on business travel and temporary workers [including team lease employees who are on third party roll working within the factory premises].

Employees of SMC on deputation, employees of MSIL on business travel and Temporary/Contract worker's portion of canteen charges

24. The applicant has submitted that they are providing canteen facilities at subsidized rate to employees of SMC on deputation, employees of MSIL on business travel and temporary workers [including team lease employees who are on third party roll working within the factory premises] *i.e.* 70% of the total amount of food is being borne by the applicant and residual 30% amount is recovered from the aforementioned employees/worker. These workers are not employees of the applicant but they are working in the company on account of either deputation or through a contract. The other employees are present in the factory premises on account of business travel. These workers are not 'employee' as they are not on the pay roll of the applicant.

25. The term 'contract labour' under Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA") means a person who is hired in or in connection with the work of an establishment by or through a contractor. It is important to note that the word 'hire', as used in the Act, has a significant connotation and it is not equivalent to an employer-employee relationship. A person, is deemed to have been employed as contract labour when he is hired in or in connection with a particular work of the principal employer. Where a person is 'hired' specifically for the work of an

establishment, his scope of work does not extend beyond the work of that establishment and he is considered to be a contract labour.

26. Section 46 of the Factories Act, 1948 stipulates the workers who are employed in the company's pay roll and not contractual workers or workers on deputation or on business travel. Section 46 of the Factories Act, 1948 is reproduced as under :

"Section 46 - Canteens

(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for, -

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

27. The term 'worker' is defined under Section 2(1) of Factories Act, 1948 which is reproduced as under :

"worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union

28. The applicant's contention is that employees of SMC on deputation, employees of MSIL on business travel and temporary workers [including team lease employees who are on third party roll working within the factory premises] are primarily engaged for carrying out the activity which is either directly or indirectly related to manufacturing activity. The contractual worker in the instant case, is under scope of definition of "Worker" as stipulated under section 2(1) to be read with Section 46 of the Factories Act, 1948.

29. The term 'employed' is not defined under the GST, therefore, we refer to the dictionary meaning. The Law Lexicon says that the word 'employed' means engaged or occupied in the performance of work or hired to perform labour. Contractor pays the salary to the

temporary/contractual worker. In respect of workers on deputation/business travel also it is not the claim of the applicant that they pay the salary that these workers are on their payroll. These workers are supplied by the contractor to the applicant for carrying out activity in the factory premises. CBIC *vide* its Circular No. 172/04/2022-GST, dated 6-7-2022 has 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 is provided in terms of the contract between the employer and employee. In the present case contractual agreement is between *contractor* and *contract workers* being employer and employee respectively. Likewise, there is no contract between employees on deputation, employees of others/sister concern on business travel with the applicant. Further, the test for establishing an employer-employee relationship as laid down by the Apex Court in *Balwant Rai Saluja v. Air India Ltd.* is complete administrative control, which is decided by several factors, including, among others

who appoints the workers;

who pays the salary/remuneration;

who has the authority to dismiss;

who can take disciplinary action;

whether there is continuity of service; and extent of control and supervision i.e. whether there exists complete control and supervision.

30. It is evident that the instant case in respect of temporary/contract workers, employees on deputation and employees on business travel, does not pass the test of employer-employee relationship and therefore does not fall within the ambit of entry I of Schedule III of COST Act, 2017.

31. We find that the term, 'outward supply', is defined in section 2(83) of the CGST Act, 2017, as under :

(83) "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

32. The term "business" is defined in Section 2(17) of the CGST Act, 2017 as under :

(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);

(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) 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 :

From the plain reading of the definition of “business”, it can be safely concluded that the supply of food by the applicant to its contractual worker, employees of SMC on deputation, employees of MSIL on business travel, would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business as the contractual worker are working for the company to run the business activity of the applicant.

33. Schedule II to the COST Act, 2017, describes the activity to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service :

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely :-

- (a) works contract as defined in clause (119) of section 2; and
- (b) 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.

34. Thus, even though, there is no profit as claimed by the applicant on the supply of food to its contractual worker, employees of SMC on deputation, employees of MSIL on business travel, there is indeed a “supply”, as provided in Section 7(l)(a) of the CGST Act, 2017. The applicant would definitely come under the definition of “supplier”, as per sub-section (105) of Section 2 of the CGST Act, 2017.

35. The term ‘consideration’ is defined in Section 2(31) of the COST Act, 2017, which is extracted below :

(31) “consideration” in relation to the supply of goods or services or both includes -

- (a) any payment made or to be made, whether in money or otherwise, in respect of in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of in response to or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government :

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply:

Since the applicant recovers the cost of food from their contractual worker, employees of SMC on deputation, employees of MSIL on business travel, there is 'consideration', as defined in Section 2(31), *ibid*. To summarize, the applicant has established canteen facilities as mandated under Section 46 of the Factories Act, 1948 and supplies food at a subsidized cost through CSP. The supply of food by the applicant is 'supply of service' by the applicant to such worker/s, the cost, which is recovered from the workers, as deferred payment is 'consideration' for the supply and GST is liable to be paid.

36. In view of the above we hold that recovery of amount from such employees/worker on account of third party canteen services provided by the applicant to employees of SMC on deputation, employees of MSIL on business travel and temporary workers [including team lease employees who are on third party roll working within the factory premises] would fall within the ambit of the definition of 'outward supply' as per Section 2(83) of the COST Act, 2017 and is therefore, liable to tax as a supply under GST.

Input Tax Credit (ITC)

[in respect of permanent employees of applicant]

37. The next question on which the applicant has sought ruling is whether ITC of GST charged by the CSP can be availed 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 more than 250 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 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*.

38. In view of the foregoing, we hold that ITC will be available to the applicant in respect of food and beverages as canteen facility is to be obligatorily 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 applicant 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 *Tata Motors Ltd. Ahmedabad*.

39. In view of the foregoing, we hold that Input “tax Credit will be available to the applicant 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 CSP will be restricted to the extent of cost borne by the applicant only taking the analogy from the ruling of the GAAAR *vide* its Order No. GUJ/GAAAR/Appeal/2022/23, dated 22-12-2022 in the case of *Tata Motors Ltd., Ahmedabad* (supra).

Input Tax Credit (ITC)

[employees of SMC on deputation, employees of MSIL on business travel and temporary workers including team lease employees who are on third party roll working within the factory premises]

40. In respect of the findings recorded in para 36 supra, wherein we have held that recovery of amount from such employees/worker on account of third party canteen services provided by the applicant to employees of SMC on deputation, employees of MSIL on business travel and temporary workers [including team lease employees who are on third party roll working within the factory premises] would fall within the ambit of the definition of ‘outward supply’ as per Section 2(83) of the CGST Act, 2017 and therefore, is liable to tax as a supply under GST. However, in terms of Section 17(5)(b)(i), ITC is restricted in respect of supply of food and beverages. Thus, the applicant is not eligible for ITC’ in respect of the GST charged by the CSP for the canteen facilities provided to employees on deputation, employees on business travel and temporary/contract workers in terms of Section 16 of the CGST Act, 2017.

Input Tax Credit (ITC)

[on equipment, kitchen utensils utilized for providing canteen facilities to its employees].

41. The applicants contention as listed supra is that they are obligated under the terms of the agreement to provide the CSP with kitchen utensils and equipment like watercooler, dishwasher, plates, worktable, table etc.; that on termination, the CSP shall vacate the premises, hand over all the kitchen utensils and equipment; that ownership of the kitchen utensils and equipment always remains with the applicant; that the inward supply of kitchen utensils and equipment is in course or furtherance of business and hence, ITC is eligible on such utensils and equipment.

42. We have already held that the nominal amount deducted by the applicant from their permanent employees who are availing food at their canteen is neither a supply of goods nor service in terms of section 7, *ibid*. In this background, the aforementioned submission needs to be examined.

43. Section 17(2) and 17(3), states as follows :

Section 17. Apportionment of credit and blocked credits -

(1) xx xx xx

(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.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation. - For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, [except,

- (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and
- (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule;

Section 17(5), *ibid* has already been reproduced above.

44. In terms of Section 17(5)(b)(i) of the CGST Act, 2017 and notification No. 13/2018-C.T. (Rate), dated 26-7-2018 wherein the GST rate is without input tax credit on supply of food or any other article for human consumption or any drink at a canteen, mess etc., we hold that the applicant is not eligible for ITC on kitchen utensils and equipment like watercooler, dishwasher, plates, worktable, table etc.

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

RULING

(1) GST is not liable to be discharged on the portion of the amount recovered by the applicant from its permanent employees towards the canteen facilities provided to them in terms of paras 22 & 23. However, recovery of amount from employees of SMC on deputation, employees of MSIL on business travel and temporary workers [including team lease employees who are on third party roll working within the factory premises] would fall within the ambit of the definition of ‘outward supply’ as per Section 2(83) of the CGST Act, 2017 and therefore, is liable to tax as a supply under GST in terms of para 36.

(2) The applicant is eligible to avail input tax credit in respect of the GST charged by the canteen service provider for the canteen facilities provided to its permanent employees in view of the provisions of Section 17(5)(b) as amended effective from 1-2-2019 and clarification issued by CBIC *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 as mentioned in para 39.

(3) The applicant is not eligible to avail ITC in respect of the GST charged by the canteen service provider for the canteen facilities provided to employees of SMC on deputation, employees of MSIL on business travel and temporary workers [including team lease employees who are on third party roll working within the factory premises in terms of para 40.

(4) The applicant is not eligible to avail ITC in respect of the inputs *i.e.* equipment and kitchen utensils utilized for providing canteen facilities in terms of para 44.