

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2023/12
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/49)

Date: - 31.03.2023

Name and address of the applicant	:	M/s. AIA Engineering Limited, 115, GVMM Estate, Odhav Road, Ahmedabad - 382410.
GSTIN of the applicant	:	24AABCA2777J1ZO
Date of application	:	11.10.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)(e)
Date of Personal Hearing	:	22.12.2022 and 28.02.2023
Present for the applicant	:	Ms Khusboo Kundalia (C.A.), Shri Nrupesh Machchhar (C.A.) and Shri Anil H Shah (Manager)

Brief facts:

M/s. AIA Engineering Limited, GVMM Estate, Odhav Road, Ahmedabad-382410 [for short –‘applicant’] is registered under GST and their GSTIN is 24AABCA2777J1ZO.

2. The applicant is engaged in the manufacturing of high chrome grinding media balls and parts of machinery for grinding and crushing. The applicant has employed more than 250 employees and is also registered under the Factories Act, 1948.

3. The applicant provides canteen facility to its employees at their Moraiya-Sanand factory. The primary reasoning for provision of the aforementioned facility is that in terms of section 46 of the Factories Act, 1948, they are mandated to provide and maintain canteen for their employees.

4. The applicant has arranged canteen service providers [for short - **CSP**] on contract basis. As per the arrangement with the CSP, the applicant provides utensils like tea urns, glass tumblers, eating plates, steel bowls and other utensils necessary for the preparation of food & serving the same. The CSP raises invoices

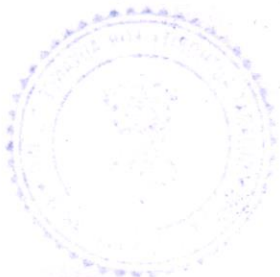


along with applicable GST [if registered] for its canteen services. The invoices are based on the consumption, tracked on the biometric punching by the employees, availing the canteen facility. The employees bear 50% canteen charges while the remaining 50% is borne by the applicant on behalf of their employees. Further, it is the applicant's contention that the amount collected from the employees is without any commercial objective, without profit margin and is credited to expense account while the applicant treats the canteen expense by booking it as an expense in their P&L account.

5. The applicant, relying on the press release dated 10.7.2017 & CBIC's Circular no. 172/4/2022-GST has further contended that

- perquisites, though not defined are benefit or facility provided by the employer to their employee in terms of contractual agreement entered into between them on the basis of the employment policy;
- that there is only one supply *ie* supply from CSP to employees and not from the CSP to the applicant, as the food gets consumed only by the employees;
- that the ultimate recipient of the canteen facility is the employee;
- that the applicant is only collecting the employees portion of the amount of canteen charges & pays the consolidated total amount which includes the applicant's share, to the canteen service provider;
- that the applicant neither keeps any margin in this activity of collecting employees portion of amount nor makes any separate supply to the employees;
- that they wish to rely on the below mentioned case law/rulings viz
 - M/s. Amneal Pharmaceuticals [Guj/GAAAR/Appeal/2021/07 dtd 8.3.2021]
 - M/s. Tata Motors Ltd [Guj/GAAR/R/39/2021 dtd 30.7.21]
 - M/s. Emcure Pharmaceuticals Ltd [Guj/GAAR/R/2022/38 dtd 10.8.22]
 - M/s. Musashi Auto Parts I P Ltd [HAAAR/2020-21/16 dtd 31.3.2022]
 - M/s. Cadila Healthcare Ltd [Guj/GAAR/2022/19 dtd 12.4.2022]
 - M/s. Astral Ltd [Guj/GAAR/R/2022/1 dtd 7.3.2022]
 - M/s. Intas Pharmaceuticals [Guj/GAAR/R/2022/3 dtd 7.3.2022]
- in terms of the circular dated 6.7.2022, the proviso at the end of clause (b) of sub section 5 of section 17 of the CGST Act, 2017, is applicable to the entire clause (b); that as far as availment of ITC is concerned, they would like to rely on the case of Troikaa Pharmaceuticals [Guj/GAAR/R/2022/38 dtd 10.8.22].

6. The applicant submitted additional submission dated 12.1.2023 consequent to the personal hearing held on 22.12.2022, wherein they enclosed the copy of the factory license and the evidence of the number of employee/workers working in the factory premises. In the additional submission, they raised the following averments viz



- that as per the employment contract and the HR policy, [a copy of which has been enclosed], it is evident that they provide canteen facility at a subsidized rate and recover only the employees portion in the canteen charges on cost to cost basis and finally make the payment to the CSP on behalf of the employees for administrative convenience;
- that there should not be any GST applicability on mere recovery of employees portion from employee's salary and payment thereof to CSP;
- that vide the present application, ruling is sought qua the applicants own employees and not for third party contractors workers - both in respect of taxability and input tax credit eligibility;
- that as per the Factories Act read with the Gujarat Factories Rules, 1963, the applicant is statutorily mandated to ensure that the canteen facility is made available within its factory premises;
- that the ruling in the case of Tube Investment of India Ltd [2022-VIL-298-AAR] is not applicable to the facts of their case.

7. The applicant has filed this application for advance ruling to ascertain the GST implication on the existing arrangement of canteen facility being provided to the employees at the factory by raising the following question for advance ruling viz

(i) Whether GST is applicable on the amount representing the employee's portion of canteen charges recovered/collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee.

(ii) Whether the Company is eligible to take the input tax credit for the GST charged by the canteen service provider for the canteen services for its employees where the canteen facility is mandatory in terms of section 46 of the Factories Act, 1948.

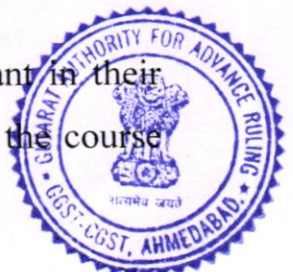
8. Personal hearing was granted on 22.12.2022 and 28.2.2023 wherein Ms Khusboo Kundalia, Nrupesh Machchhar and Anil H Shah appeared on behalf of the applicant and reiterated the facts as stated in the application. During the course of personal hearing it was further stated

- that as of now they are discharging GST;
- that as far as contractual employees is concerned, they will continue to pay GST on the same.

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 advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions/circular 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;*

¹*[(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; ²[and]*

(c) *the activities specified in Schedule I, made or agreed to be made without a consideration; ³[****]*

(d) ⁴*[****].*

⁵*[(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 ⁶[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*

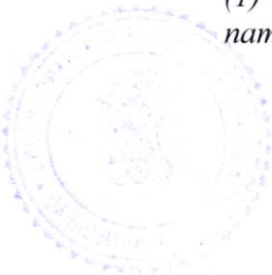
(b) *a supply of services and not as a supply of goods.*

• **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:-*

²*[(a);*

(aa);



(ab)

(b) ³[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 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

S. No.	Issue	Clarification
3.	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. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. 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 subsection (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 21.07.2018. 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 (iii) of clause (b) of subsection (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of subsection (5) of section 17 of the CGST Act.
5	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.

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

13. The first issue to be decided is whether the subsidized deduction made by the applicant from the employees, who are availing food in the factory 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 persons who are full time employees and who have been provided with canteen facility in terms of section 46 of the Factories Act, 1948 read with Gujarat Factories Rules, 1963. We find that the applicant is paying GST @ 5% in terms of the invoices raised by the CSP. The applicants primary role is that he provides a demarcated space and that the amount is paid by him to the CSP [a part of which is collected from the employees] on behalf of the employees for administrative convenience.

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 read with the Gujarat Factories Rules, 1963 is concerned; and [b] the applicant has provided a sample photocopy of the appointment letter to their employees wherein at para 8 it is stated as follows:

8. You will be entitled to other benefits as per our discussion and as per the rules of the company in force from time to time.

Further in terms of the Human Resource Manual, the relevant extract of which is provided, it is observed as follows:

Canteen Tea Policy:

Employees will also be provided Meal & Tea facilities for convenience, employees need to punch in the punching system placed in the canteen to avail meal facilities. The value will be deducted from the salary depending on the meals availed during the month considering current meal rate.

Employees need to take Tea coupon from the time office to avail the facility of Tea from the canteen, the value will be deducted from the salary depending on the tea coupons taken during the month considering current tea rate.



In view of the foregoing, we hold that the subsidized 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.

Input Tax Credit

15. The next question on which the applicant has sought ruling is whether Input Tax Credit of GST charged by the CSP for the canteen services for its employees where the canteen facility is mandatory in terms of Section 46 of the Factories Act, 1948 read with Gujarat Factories Rules, 1963. In this connection, before proceeding further, certain factual aspects deserve to be mentioned, though at the cost of repetition are viz

- that the employees of the applicant, working in its factory premises exceed 250;
- 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 read with Gujarat Factories Rules, 1963 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*.

16. 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 full time/direct employees working on permanent basis at the factory is concerned. It is further held that the ITC on GST charged by the canteen service provider 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.

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

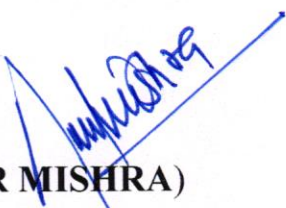


RULING

1. GST is not leviable on the amount representing the employee's portion of canteen charges recovered/collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee since it would not be considered as a supply under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.

2. 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 direct 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 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 direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.


(MILIND KAVATKAR)
MEMBER (SGST)


(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 31/03/2023



