

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)  
**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE  
OF UTTARAKHAND  
(Goods and Services Tax)**

Present:

श्री अनुराग मिश्रा (सदस्य)

**Shri Anurag Mishra (Member)**

श्री विवेकानंद मौर्य (सदस्य)

**Shri Vivekanand Maurya (Member)**

**The 22<sup>nd</sup> Day of December'2023**

अग्रिम विनिर्णय संख्या: **12(A)/2023-24**

**Ruling No: 12(A)/2023-24**

in

आवेदन संख्या . **07/2022-23**

**Application No: 07/2022-23**

1	आवेदक Applicant	M/s Tube Investment of India Limited, 230 & 231, Gangnoli, Laksar, Haridwar, Uttarakhand-247663.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. K. Sivarajan, Chartered Accountant Sh. K. Karthikeyan, Company Representative
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Sh. Deepak Brijwal, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	26.08.2022
7	सुनवाई की तिथि Date of Personal Hearing	12.09.2023 (Through video Conferencing)

**नोट:** इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**Note:** An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.



**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX  
UTTARAKHAND**

**PROCEEDINGS**

These proceedings emanate from the Order No. 05/2022-23 dated 13.03.2023 of the Appellate Authority for Advance Ruling, Goods & Service Tax, Uttarakhand, passed in appeal No. UKGSTARA02/03/23-12-22/2022-23 against Ruling No: 12/2022-23 dated 24.11.2022 of Authority for Advance Ruling, Goods & Service Tax, Uttarakhand passed in an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Tube Investment of India Limited, 230 & 231, Gangnoli, Laksar, Haridwar, Uttarakhand-247663(herein after referred to as the "applicant") and registered with GSTIN 05AADCT1398N1ZW under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. In the application dated 26.08.2022, the applicant submitted that:

- (a) That they are a leading engineering company engaged in manufacture of precision steel tubes and strips, automotive, industrial chains, car door frame and bicycles. And they have a factory in the state of Uttarakhand where in more than 500 workmen (both direct and indirect) are employed.
- (b) They have entered into agreement with the contractors to operate canteen within the factory premises to provide food to their employees.
- (c) They recover nominal amount from the employees on monthly basis and such recoveries are shown as a deduction in the monthly slip of the employees.
- (d) They do not avail input tax credit (ITC) on the expenses incurred on the services provided by the canteen service provider and are absorbing the GST charged by the canteen service provider as a cost in the books of accounts.
- (e) They discharge GST @5% on the cost of the canteen service provider total taxable value plus 10% notional mark up.

In view of the above facts, 'the applicant' is sought advance ruling as to;

- a. *"Whether the nominal amount of recoveries made by the applicant from the employees who are provided food in the factory canteen would be considered as a "Supply" by the applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017,*



b. In case answer to the above is "Yes",

- Whether GST is applicable on the amount recovered from the employees for the food provided in the factory canteen or on the amount paid by the applicant to the Canteen Service Provider?
- c. Whether input tax credit (ITC) is available to the applicant on GST charged by the Canteen Service Providers for providing the catering services of the factory where it is obligatory for the applicant to provide the same to its employees as mandated under the Factories Act, 1948, even if the answer to question (a) is "No"?
- d. Whether input tax credit (ITC) can be availed on GST charged by the Canteen service providers, the answer to the question (b) is "Yes"?"

On the basis of the facts and circumstances, the Authority ruled as under:

"a. Whether the nominal amount of recoveries made by the Applicant from the employees who are provided food in the factory canteen would be considered as a "Supply" by the applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 - **Yes, it is a supply.**

b. Whether GST is applicable on the amount recovered from the employees for the food provided in the factory canteen or on the amount paid by the Applicant to the Canteen Service Provider - **GST is applicable on both the amount i.e. amount paid to the canteen service provider and also on the nominal amount recovered from the employees.**

c. Whether input tax credit (ITC) is available to the on GST charged by the Canteen Service Providers for providing the catering services at the factory where it is obligatory for the Applicant to provide the same to its employees as mandated under the Factories Act, 1948, even if the answer to question (a) is "No"? - **Benefit of ITC is not admissible on the GST on the amount paid to the canteen service providers and also on the amount recovered from the employees.**

d. Whether input tax credit (ITC) can be availed on GST charged by the Canteen service providers, the answer to the question (b) is "Yes"? - **No, ITC is not admissible on the GST on the amount paid to the canteen service providers."**

Not satisfied with the ruling of the Advance Ruling, Goods & Service Tax, Uttarakhand, the applicant filed an appeal with the Appellate Authority for Advance Ruling, Goods & Service Tax, Uttarakhand, under section 100 of the CGST Act, 2017 and UKGST Act, 2017 and while deciding the said appeal, the Appellate Authority for Advance Ruling, Goods & Service Tax, Uttarakhand vide Order No. 05/2022-23 dated 13.03.2023, at Para 10.4 and 11 made following observations:



*"10.4. However, as is evident from the case records available before us, we find there was a recent CBIC Circular No.172/04/2022-GST dated 06.07.2022 upon which the applicant had relied heavily upon at the time of filing advance ruling application before the Authority. We find that, prima-facie; this Circular appears to have relevance and significant force in deciding the instant issue in the context of this case. Since CBIC Circulars are binding in nature, the Authority for Advance Ruling was obligated to give it its due consideration. Even if the Authority had doubts about the applicability of the said Circular to the facts of the instant case, principles of natural justice required it to elaborate upon the said reasons. But for some reason no cognizance of the said Circular was taken by the said Authority in its Order No. 12/2022-23 dated 24.11.2022 and the same was not discussed at all.*

*11. In view of our findings as at paras 9 to 9.3 and 10 to 10.4 above, I find that the Order No. 12/2022-23 dated 24.11.2022 issued by Authority for Advance Ruling suffers from fatal flaws that warrants its remand back to the Authority for giving its findings by considering CBIC Circular No.172/04/2022-GST dated 06.07.2022".*

And thereafter, the Appellate Authority for Advance Ruling, Goods & Service Tax, Uttarakhand, remanded the matter back for issuing a fresh self-contained and reasoned order. Hence, this proceeding and order.

We find that in the Order No. 05/2022-23 dated 13.03.2023, the Appellate Authority for Advance Ruling, Goods & Service Tax, Uttarakhand, has observed that no cognizance of the Circular No. 172/04/2022-GST dated 06.07.2022 had been taken by the Authority for Advance Ruling, Goods & Service Tax, Uttarakhand and hence remanded the matter with limited point of deciding the application afresh considering Circular No. 172/04/2022-GST dated 06.07.2022. Hence following the order dated 13.03.2023, we are taking up the matter again in the light of Circular No. 172/04/2022-GST dated 06.07.2022.

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 SGST Act.
4. The Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
5. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:
  - (a) Classification of any goods or services or both



- (b) Applicability of a notification issued under the provisions of this Act,
- (c) Determination of time and value of supply of goods or services or both,
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether the applicant is required to be registered
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

**5.2** In the present case applicant has sought advance ruling on the determination of the liability to pay tax on services, therefore, in terms of said Section 97(2) ( c), (d), (e) & (g) of CGST/SGST Act, 2017, the present application is hereby admitted.

**5.3** Accordingly opportunity of personal hearing was granted to the applicant on 12.09.2023 Sh. K Sivarajan, Chartered Accountant and Sh. K Karthikeyan, Company Representative, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Sh. Deepak Brijwal, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. He presented the facts and requested the authority to decide the case on merits.

**6.** From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AADCT1398N1ZW. Before proceeding in the present case, we first go through the submissions made by the applicant at various stage, which are as under:

- i. That they are a company incorporated under Companies Act, 1956 manufacturing precision steel tubes and strips, automotive, industrial chains, car door frame and bicycles in the state of Uttarakhand where in 520 workmen (both direct and indirect) are employed. And in compliance with the provisions of the Factories Act, 1948 they provide canteen facility to those employees.
- ii. They have entered into agreement with the contractors to operate canteen within the factory premises to provide food to their employees and the amount raised by the canteen operator is booked as expenses in the P & L account without taking the benefit of ITC of the GST paid by them.
- iii. They recover nominal amount from the employees on monthly basis and such recoveries are shown as a deduction in the monthly slip of the employees and the recoveries made is credited to the expense account.
- iv. Under the provisions of the Factories Act, 1948 they are obligated and mandated to provide canteen facility to its employees at the factory and considering the large number of employees working at the factory. And to cater to the above-mentioned obligations, the Applicant has set up the canteen facility in a demarcated area within its factory premises wherein tables, chairs, utensils, washrooms, wash basins, storage rooms for keeping the cooked food, washing the utensils etc. have been provided and the applicant is responsible for electricity supply essentials and



other equipment for running the canteen. This facility is available to all of the employees and it is agreed that the Applicant shall contract and pay in full to the service provider for the food served during a prescribed period on behalf of the employees and nominal amount is recovered from the employees on monthly basis and the balance amount is borne by the Applicant.

7. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed by the applicant for our consideration. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issue involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law. Now we proceed by taking up the issue:

8. We have carefully considered all the submissions made by the Applicant. The applicant is a leading engineering company engaged in manufacture of precision steel tubes and strips, automotive, industrial chains, car door frame and bicycles and wherein in a factory in the state of Uttarakhand more than 500 workmen (both direct and indirect) are employed. The applicant recover nominal amount from the employees on monthly basis to provide food to them and for same they have engaged contractors, who operates canteen within the factory premises. The applicant discharge GST @5% on the taxable value which is sum total of the cost of the canteen service provider plus 10% notional mark up. It has also been submitted by the applicant that they do not avail input tax credit (ITC) on the expenses incurred on the services provided by the canteen service provider and are absorbing the GST charged by the canteen service provider as a cost in the books of accounts.

It is seen that the Applicant had set up a canteen facility, for the benefit of its employees and workers. The clarification sought is as to whether GST is liable to be paid on that part of the amount collected from their employees towards provision of food and also that whether ITC is available on the GST paid by them on the taxable value of the canteen service. We find that the applicant has contended that since the supply of food in canteen is part of employment contract, the same shall be ousted from the scope of supply vide the Entry 1 in Schedule III of the CGST Act, 2017 and that there is no supply between the Applicant and the employees and the Applicant is not engaged in the business of provision of canteen services. Further, the amount received from the employees is in the nature of recovery and not consideration.

We observe that since the Appellate Authority for Advance Ruling, Goods & Service Tax, Uttarakhand in the Order dated 13.03.2023 observed that no cognizance of the Circular No. 172/04/2022-GST dated 06.07.2022 had been taken by the Authority for Advance Ruling, Goods & Service Tax, Uttarakhand and hence remanded the matter with limited point of deciding the application afresh considering Circular No. 172/04/2022-GST dated 06.07.2022.



We find that Circular No. 172/04/2022-GST dated 06.07.2022 with the subject "Clarification on various issue pertaining to GST" has been issued on various issues. For better perspective, the relevant portion is reproduced as under:

*"Clarification on various issues of section 17(5) of the CGST Act;*

*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 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."*

The contention by the applicant is that the supply of food at subsidized rate is not liable to GST in terms of Circular No. 172/04/2022-GST dated 06.07.2022 of CBIC, the relevant extract of the said circular is reproduced hereunder for case of reference:

S.No.	Issue	Clarification
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



		<i>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.</i>
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We find that in the clarification it has been brought out that the services by the employer to the employee, in the course of employment, are out of the purview of GST, but it is obvious that an employer pays some compensation either in monetary form or otherwise to the employee. The perks provided by the employer to its employees, as a part of compensation for the services rendered, are not an independent supply but are in connection with or in relation to the employer-employee relationship. Accordingly, in the referred circular, it has mandated that perks provided in terms of contractual agreement, are not supply under GST. It would mean if any perk is provided to the employee, in terms of contractual agreement, then such perks are outside the purview of GST.

We observe that normally employment agreement lists out the compensation which is agreed to be granted by the employer to the employees for their services and if any perk/privileges is mentioned in the employment contract, then it becomes binding for the employer to provide the same to the employees but anything provided beyond the employment contract, is a part of sweet will or largesse on the part of employer and cannot be insisted upon by an employee.

In this regard, we observe that consuming food at the canteen facility made available by the applicant in their premises is not mandatory and it's purely optional at the end of the employees and that while extending the canteen facility, no meal is extended free but the meals/food are provided at concessional rates and specified amount in respect of the food consumed by the employee are collected by the applicant against such consumption of food, although the provision of food in canteen is on account of the mandate prescribed in the Factories Act, 1948. We observe that as per Sl. No (1) of Schedule III of the CGST Act, 2017, only services by an employee to the employer in the course of or in relation to his employment are neither a supply of goods nor a supply of service. But in this case supplies are provided by the employer to the employees for a consideration, though nominal. We also find that CBIC vide the Press Release dated 10.07.2017 with the description "GST on gifts", clarified 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 nor supply of services). It follows that supply by the employer to the employee in terms of contractual agreement of employment (part of the salary/CTC) is not subject to GST. We are of the view that the above press release makes it clear that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST, however, in the instant case, firstly it is not mandatorily compulsory to consume the food and secondly the Canteen



facility is provided by the applicant in their factory in accordance with the mandate under the Factories Act, 1948; but in lieu of such facility, collects an amount though nominal, fixed as employee cost, therefore, the contention that the activity of supply of food for a nominal charge by them is neither a supply of goods nor a supply of service, is not legally tenable.

The other contention made is that there is no supply between the Applicant and the employees and the Applicant is not engaged in the business of provision of canteen services but has established the canteen, as required under the Factories Act. The Factories Act, 1948 on providing the facility of Canteen, states as under:

*"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 therefore;*

*(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)".*

The above said Act mandates establishing a canteen when more than two hundred and fifty workers are 'ordinarily' employed in a factory and as per sub- clause (2)(dd) above, certain expenditure are to be borne by the employer and hence the applicant established the canteen. We observe that the applicant is mandated to bear the cost on such facility. We observe that the term "business" is defined in Section 2(17) of the GST Act 2017 as:

*"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 incidents or ancillary to sub-clause (a);*

We observe that establishing a canteen facility in the factory is an activity incidental to the running of their business. The Factory Act, above mandates establishing canteen, bearing certain mandatory costs in running of the canteen by the employer in as much as the number of workers is above 250, accordingly, and the applicant has established the canteen in their premises and bears certain running cost while collecting the nominal rate, which is an activity in furtherance of their business. In this regard, the definition of



'outward supply', as per Section 2(83) of the CGST Act, 2017, has to be studied. The same is reproduced as below:

*Outward Supply' in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business".*

Thus supply made by a taxable person in the course or furtherance of business is an 'Outward supply'. It has been brought out above, that establishing canteen is in the furtherance of business of the applicant and supply of food to the employees when the same is not contractually agreed, is not an allowance as a part of the employment. Thus, the provision of food in the canteen for a nominal cost is a 'Supply' for the purposes of GST. Schedule II to the CGST Act, 2017 describes the activities 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:

*"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."*

Therefore, the supply of food is a 'Supply of Service'.

Next contention made is that the amount received from the employees is in the nature of recovery and not consideration. We observe that the applicant has chosen to run the canteen through a third party vendor in the course of furtherance of business. It is also clear that in running of such canteen, the employer is mandated to bear certain costs. The contention that the applicant only collects the employee cost and pays the third party vendor & that such employee cost is only a recovery is not tenable. Provision of canteen facility and bearing certain costs in running of canteen are mandated on the part of the employer as per the Factories Act. Accordingly, such canteens are provided.

It has been established that the supply of food in the canteens are 'Supply of Service' by the applicant. 'Consideration' is defined in Section 2(31) of the CGST Act 2017 as:

*'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"*

We opine that the applicant supplies food to their employees at a nominal cost and recover such cost, which is a consideration for such supply made on which GST is liable to be paid. The recovery of cost from the salary as deferred payment does not alter the fact of the service provided and the person providing the said supply. The supply of food by the



employer, i.e. the applicant to their employees is composite supply of food held as 'Supply of service' as per Schedule-II of the GST Act and the amount collected by the applicant is a 'Consideration' on which GST is liable to be paid

We find that it has been claimed that they are adding 10% mark up cost on the cost of service provider for payment, but did not provided the components of such "mark up cost" or what are the constituents, even though they are silent on the issue of cost of the area and the infrastructure, which admittedly includes tables, chairs, utensils, washrooms, wash basins, storage rooms for keeping the cooked food, washing the utensils provided by them to the canteen service providers i.e. contractors. We also find that the electricity and other equipment for running the canteen is also supplied by the applicant, but the cost incurred or capitalized in the books of accounts have not been charged from the contractors for using and utilizing the infrastructure of the applicant as discussed supra, which ought to have been the cost for the contractors to be included in the taxable value.

To sum up, the applicant has established canteen facilities as mandated under Factories Act, 1948 and supplies food at a cost through third-party-vendor and that the supply of food by applicant is 'Supply of Service' to their employees, as the same is not a part of the employment contract and the canteen facility is provided as mandated under Factories Act. The cost although nominal is recovered from the salary as deferred payment is 'consideration' for the supply and GST is liable to be paid. The Kerala Authority of Advance Ruling, Kerala in the case of Caltech Polymers Pvt. Ltd., held that if the company's canteen services are covered under "outward supply" under Section 2(83) of the Central Goods and Services Act, 2017, GST will be payable on food expenses collected from employees.

Now, coming to the issue whether input tax credit (ITC) is available to the applicant on GST charged by the service provider on the canteen facility provided to employees working in the factory or otherwise? Before deliberating on this issue, it would be prudent to refer to the Section 17(5) (b) of CGST Act, 2017, which pertains to blocking of ITC:

*'Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

*(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. "*  
(emphasis supplied)

The reading of the above provision makes it clear that provisions of blocked credit under Section 17(5) (b), inter-alia on food and beverages, do not apply only where, it is obligatory for an employer to provide goods and services or both to the employee under any law for the time being in force. Since, the proviso carves out an exception to the Rules/ Provisions, a strict interpretation is required to be adopted for examining its applicability. Since the contract workers are not employees of the applicant, therefore, the benefit of the above proviso will not be applicable in respect of contract workers but will be limited only with respect to the employees. We observe that the above Section 17(5) (b) was amended on 01.02.2019. The Press Note issued on the recommendations of the 28th meeting of the GST Council meeting stated that the scope of input tax credit is being widened and it would now be 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.

We also observe that that Circular No. 172/04/2022-GST dated 06.07.2022 has been issued, by the CBIC, wherein clarifications on various issue pertaining to GST have been provided. In the above Circular, at S. No. 3 of Para 2, clarification has been provided on the issue as to whether the proviso at the end of clause (b) of Section 17(5) of CGST Act is applicable to the entire clause (b) or only to sub-clause (iii) of clause (b). It has been clarified by the Board that vide the CGST (Amendment Act), 2018, clause (b) of Section 17(5) was substituted with effect from 01.02.2019 on the recommendation of GST Council's 28th meeting and accordingly, the proviso after sub-clause (iii) of Section 17(5)(b) of CGST Act, is applicable to whole clause (b) of Section 17(5). The relevant portion of above clarification is reproduced below:

<b>Clarification on various issues of section 17(5) of the CGST Act</b>		
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)?	<p>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:</p> <p><i>"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."</i></p> <p>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 281, 23 meeting. The intent of the said amendment in subsection (5) of section 17, as recommended by</p>



		<p>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."</p> <p>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.</p>
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In view of above legal position clarified by CBIC, as second proviso to Section 17(5)(b) inserted vide CGST Amendment Act, 2018, effective from 1.2.2019, is applicable to the whole of clause (b) of sub-section (5) of Section 17 of the CGST Act, 2017, therefore, the clarification implies that the Input Tax Credit will only be available in respect of its direct employees, that too upon fulfillment of the terms and condition of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.

The issue which is flowing out of Para 12.5 above is, whether ITC available on GST charged by the canteen service provider, on canteen facility provided to its employees working in their factory, will be restricted to the extent of cost borne. We find that the ITC on GST charged by the canteen service provider will only be available to the extent of cost borne by the applicant only upon fulfillment of the terms and condition of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. However, as per the provisions of the Factories Act, 1948 as extracted in Para 11.4, the applicant has the legal responsibilities to provide & maintain the canteen. The applicant has accordingly, instead of maintaining the canteen himself, has engaged another person (hereinafter called as Canteen Contractor), who is providing canteen services to the workers of the applicant on behalf of the said applicant. The service so provided is rightly classifiable as "Restaurant Service" as already clarified under Circular No. 164/20/2021/GST dated 06.10.2021 where-under, vide Point No. 3 & 4, it has been clarified that cooking & supply of food will only be covered under Restaurant Service and in case there is no cooking but only supply of food then GST rate as applicable on supply of Goods would be attracted. In other words, if the cooking of food & supply of the same food is made as a single transaction, then the said transaction is the Restaurant Service and is liable to 5% of GST in terms of entry no. 7 (ii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 which was amended by the Notification No. 20/2019-C.T. (Rate) dated 30.09.2019, effective from 01.10.2019.

We observe that the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, notified the GST rate on such service and by issuance of amending Notification No. 20/2019-C.T. (Rate) dated 30.09.2019, which came into effect from 01.10.2019; effective GST rate was notified, subject to the condition. For better perspective, the relevant portion



of the amending Notification No. 20/2019- Central Tax (Rate) dated 30th September, 2019 is reproduced as under:

*"In the said notification, - (i) in the Table, - (a) against serial number 7, for the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely,*

(3)	(4)	(5)
<i>"(i) Supply of "hotel accommodation" having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.</i>	<i>6</i>	<i>-</i>
<i>(ii) Supply of "restaurant service" other than at "specified premises"</i>	<i>2.5</i>	<i>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]</i>
<i>(iii) ....</i>	<i>...</i>	<i>...</i>

And that Specified premises has been defined as under:

*"(xxxvi) "Specified premises" means premises providing "hotel accommodation" services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent."*

From the facts of the case, it is clear that in the instant case, the Canteen Contractors are providing Restaurant Service at a non-specified premises at the rate 5% to the applicant, and opted for Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended, and as per the condition the service providers are not eligible to avail the ITC.

Accordingly, the canteen service providers are providing the service to the workers of the applicant through applicant and paying Tax at reduced rate of 5% in terms of the Notification *ibid*. The applicant is also recipient of service when viewed in terms of definition of recipient of service, as defined in Section 2(93)(a) of the CGST Act, 2017, which is reproduced below:-

*"(93) "recipient" of supply of goods or services or both, means  
(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;"*

So in the instant case, the flow of the transaction is that the Canteen Contractor is providing service to the applicant, which is classifiable as Restaurant Service and the applicant himself is also providing same service to its worker, as mandated in the Factories



Act, 1948 i.e. he is also providing a Restaurant Service to its worker. As already brought out above, the Restaurant Service, compulsorily attracts GST rate of 5% without ITC, in a non-specified premises and the applicant's premises is not a specified premises in terms of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. Therefore, though the Section 17(5) of the CGST Act, 2017, does not debar availment of ITC in entirety, but in the present case availment of ITC is debarred in terms of provisions of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019.

We are of the view that there is another way of looking at the transactions, that, had the applicant not engaged any Canteen Contractor but decided to run the 'canteen' himself, as mandated in the Factories Act, 1948, then also he had to compulsorily pay 5% of GST without availment of any ITC in terms of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 supra. Therefore, just by engaging, a Canteen Contractor, he can't be allowed to adopt an interpretation for availing ITC which is not available to him in a case of direct supply of Service.

In this regard, we also find that the Himachal Pradesh Appellate Authority for Advance Ruling its order No. HPAAAR Order-in-Appeal No. HP/AAAR/RP-DY/FM/01/2023, dated 26th September, 2023 in the case of M/s Federal-Mogul Anand Bearings India Limited, Plot No. 5, Sector 2, Tehsil Kasauli, Parwanoo, Solan, H.P., upheld the Advance Ruling Order No. HP-AAR-21/2021-7865-68 dated 22.03.2023, passed by the Himachal Pradesh Authority for Advance Ruling. We observe that vide the Order-in-Appeal No. HP/AAAR/RP-DY/FM/01/2023, dated 26th September, 2023, following has been held:

***“Question 1: Whether the subsidized-deduction made by the Appellant from the Employees who are availing food in the factory would be considered as a "supply" by the Appellant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Himachal Pradesh Goods and Service Tax Act, 2017? And;***

***Question 2: Whether GST is applicable on the nominal amount deducted from the salaries of its employees? And;***

***Question 3: Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?***

***Answer: Supply of food to the employees and contract workers is a supply under the provisions of Section 7 of the CGST Act, 2017 and the Himachal Pradesh Factories Rules, 1950 and accordingly, it is leviable to the GST.***

***Question 4: Whether Input Tax Credit (ITC) of the GST charged by the Canteen Service Provider would be eligible for availment to the Appellant?***

***Answer : Input Tax Credit will not be available to the Appellant on GST charged by the canteen service provider, in terms of provisions of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019, as discussed above.”***



We also find that the Authority for Advance Ruling, Gujarat in the case of M/s Tata Motors Limited held that Input Tax Credit on Goods & Services Tax charged by canteen service provider will not be available even when the same is obligatory in terms of Factories Act, 1948. We observe that the applicant has referred to the rulings of various advance ruling authorities and appellate authorities, wherein it is held that the collection of employees share and paying to canteen service provider without profit is not a supply. We are of the opinion that prima-fade Advance Ruling extended to one applicant cannot be generalized and applied to all cases. Furthermore, in the case at hand, as brought out in the Para supra, the applicant who runs factory, wherein more than 250 workers are employed is mandated to provide the canteen facility in the premises and bear certain costs & the provision of food at nominal rate and recovery of such nominal rate is not as per the employment contract. In view of the stated factual matrix of the case, we find the case laws relied upon by the applicant do not have even persuasive values to this case and therefore not elaborated individually. Hence we hold that Input Tax Credit will not be available to the applicant on GST charged by the canteen service provider, in terms of provisions of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019.

9. In view of the discussions held above, we rule as under:

#### **RULING**

**A. *Whether the nominal amount of recoveries made by the Applicant from the employees who are provided food in the factory canteen would be considered as a "Supply" by the applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017?***

**Answer:** Yes, it is a "Supply" under the provisions of Section 7 of the CGST Act, 2017.

**B. *Whether GST is applicable on the amount recovered from the employees for the food provided in the factory canteen or on the amount paid by the Applicant to the Canteen Service Provider?***

**Answer:** Yes, GST is applicable on both the amounts i.e. amount paid to the canteen service provider and also on the nominal amount recovered from the employees.

**C. *Whether input tax credit (ITC) is available on the GST charged by the Canteen Service Providers for providing the catering services at the factory where it is obligatory for the Applicant to provide the same to its employees as mandated under the Factories Act, 1948; even if the answer to question (a) is "No"?***


*Handwritten signature and initials*

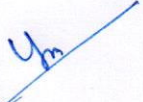


**Answer:** Input Tax Credit will not be available on GST charged by the canteen service provider, in terms of provisions of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019.

**D. Whether input tax credit (ITC) can be availed on GST charged by the Canteen service providers, the answer to the question (b) is "Yes"?**

**Answer:** No, Input Tax Credit is not available in terms of provisions of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019.

  
**ANURAG MISHRA**  
(MEMBER)

  
**VIVEKANAND MAURYA**  
(MEMBER)

**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX: UTTARAKHAND  
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND  
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

**F. No.: 7/S.Tax-UKD/GST/Sec-97/2022-23/DDN/ 6963 Date: 22.12.2023**

**Copy to:**

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Range-I, CGST, Roorkee for information and necessary action.
5. The Assistant Commissioner, Sec-2, SGST, Roorkee for information and necessary action.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.