

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,
MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007**e-mail : aar@mpitax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT,2017****Members Present**

1. Shri Manoj Kumar Choubey
Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain
Joint Commissioner

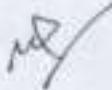
Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number, If any/User-id	23AABCB7084M1ZH
Name and address of the applicant	M/S BHARAT OMAN REFINERIES LIMITED A Block , Office Complex, Gautam Nagar, Bhopal Madhya Pradesh(462023)
Point on which advance ruling sought	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
Present on behalf of applicant	Mr s. Krishnan, Chartered Accountant
Case Number12/2020
Order dated	07/06/2021
Order Number	02/2021

PROCEEDINGS

Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017
and the Madhya Pradesh Goods & Service Tax Act, 2017)

I. M/s BHARAT OMAN REFINERIES LIMITED (hereinafter referred to as the Applicant) is the company that owns and operates Bina Refinery, located at Bina in the Sagar district of the state of Madhya Pradesh (482001). The Applicant is having a GST registration with GSTIN 23AABCB7084M1ZH.



2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE -

3.1 M/s Bharat Oman Refineries Limited (BORL) is a Company registered under the Companies Act, 1956 with Registrar of Companies, Gwalior and is carrying on the business of Refining of Crude Oil in the Refinery located at Village Agasod, Bina, District Sagar, Madhya Pradesh.

3.2 M/s Bharat Oman Refineries Limited is head quartered at Village Agasod, Bina, District Sagar (M.P.).

3.3 The applicant is registered under GST Act in the State of Madhya Pradesh, vide GSTIN : 23AABCB7084M1ZH and the principal place of business is at Gautam Nagar, Bhopal - 462023.

3.4 M/s BORL is a deemed Public Sector Undertaking, as the holding company, M/s Bharat Petroleum Corporation Limited (BPCL) has 51% paid up capital in the company.

3.5 This application u/s 97 of the Act seeking Advance Ruling is being made on the following points :

- (i) Determination of liability to pay tax on any goods or services or both.
- (ii) Admissibility of input tax credit of tax paid or deemed to have been paid.

4. QUESTION RAISED BEFORE THE AUTHORITY -

1. Whether GST is applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period under clause 5(e) of Schedule II of GST Act ?

2. Whether GST is applicable on the amount of premium of Group Medical Insurance Policy recovered at actuals from non-dependent parents of employees, and retired employees those who are covered under the said Policy ?

3. Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the Refinery at Bina when it is not a supply as per clause 1 of Schedule III of GST Act ?

4. Whether GST is applicable on recovery of telephone charges from the employees over and above the fixed rental charges payable to BSNL ?

5. Whether full ITC is available to the applicant in respect of question Nos. II, III & IV, or ITC will be restricted to the extent of GST borne by the applicant-employer ?

6. Whether the provision of canteen services to all the employees without charging any amount (free of cost) will fall under para 1 of Schedule III of GST Act and will not be subjected to GST ?

7. If reply to Q. VI is yes, whether in view of the explanation to Section 17(3) of GST Act, ITC shall be available to the applicant on the goods and services used in the activity of provision of free canteen services to the employees ?

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5. DEPARTMENT'SVIEW POINT- The jurisdictional officer's view on the questions asked by the Applicant are as following-

5.1. On Question I Whether GST is applicable on payment of notice pay by an employee to applicant employer in lieu of notice period under clause 5 (e) of schedule II of CGST Act, the jurisdictional officer is of view that GST is not applicable on payment of notice pay by an employee to applicant employer in lieu of notice period under clause 5 (e) of schedule II of CGST Act.

5.2. On Question II Whether GST is applicable on the amount of premium paid towards Group Medical Insurance Policy of non -dependent parents recovered from employees & recoveries from retired employees who are covered under the said policy, the jurisdictional officer is of the view GST is not applicable on the amount of premium paid towards Group Medical Insurance Policy of non -dependent parents recovered from employees & recoveries from retired employees who are covered under the said policy.

5.3. On Question III Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the refinery at Bina when it is no supply as per clause 1 of schedule III of CGST ACT, the jurisdictional officer is of the view GST is not applicable on recovery of nominal amount for availing the facility of Canteen at the refinery at Bina when it is no supply as per clause 1 of schedule III of CGST ACT.

5.4. On Question IV Whether GST is applicable on recovery of telephone charges recovered from employees over & above fixed rental charges payable to BSNL, The jurisdictional officer is of the view that GST is not applicable recovery of telephone charges recovered from employees over & above fixed rental charges payable to BSNL.

5.5. On Question V Whether full ITC is available to the applicant as per question Nos II,III,IV or ITC will be restricted to the extent of GST borne by the applicant employer on the issues –

A. Company provide canteen facility to its employees as per Factories Act, 1948. Since this is mandatory, ITC of canteen services provided to employees should be available in view of proviso to section 17(5)(h) of CGST Act. This clause is inserted - vide CGST (Amendments) Act, 2018 w.e.f. 01-02-2019. Which provides 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? The jurisdictional officer is of the view that ITC in respect of canteen services extended to employee shall be available with requirement of reversal of ITC u/r 42 & 43 as per para 1 of schedule III explanation to Sec 17 (3) of CGST Act.

B. To provide parental insurance cover is not a mandatory requirement under any law for the time being in force and therefore, non-providing parental insurance coverage would not affect its business by any means, The jurisdictional officer is of



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the view that the input tax credit in respect of such goods or services or both shall not be available

C. The applicant is recovering the telephone charges from employees over & above fixed rental charges payable to BSNL. The non-recovery of the said amount is not going to affect the business. Hence not ancillary or incidental to business also it is not obligatory on the part of applicant company to provide above services under any law for the time being in force. The jurisdictional officer is of the view that the input tax credit in respect of such goods or services or both shall not be available.

5.6. On Question VI Whether the provision of canteen services to all the employees without charging any amount(free of cost) will fall under para 1 of schedule III of CGST Act and will not be subjected to GST, The jurisdictional officer is of the view that the provision of canteen services to all the employees without charging any amount(free of cost) will fall under para 1 of schedule III of CGST Act and will not be subjected to GST.

5.7. On Question VII, If reply to Q VI is yes, whether in view of the explanation to Sec 17(3) of CGST Act ,ITC shall be available to the applicant on the goods & services used in the activity of provision of free canteen services, The jurisdictional officer is of the view that ITC in respect of canteen services extended to employee shall be available with requirement of reversal of ITC u/r 42 & 43 as per para 1 of schedule III explanation to Sec 17 (3) of CGST Act.

6. RECORD OF PERSONAL HEARING -

6.1 CA. S. Krishnan, Chartered Accountant appeared for personal hearing on 30/12/2018 He reiterated the submissions already made in the application, and attached additional submissions as follows :

At the outset we refer here various provisions of the GST Act which have been referred and relied upon by the applicant in support of their interpretation in respect of the questions raised by them in this application :

Legal provisions referred and relied upon by the Applicant :

[A] Section 2(17) of GST Act reads 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;



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- (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;"

[B] As per Section 2(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.

[C] As per Section 2(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.

[D]

"CHAPTER III

LEVY AND COLLECTION OF TAX

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, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - (b) import of services for a consideration whether or not in the course or furtherance of business; and
 - (c) the activities specified in Schedule I, made or agreed to be made without a consideration.
- (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)

Sec. 17 : Apportionment of credit and blocked credits

- (1)
- (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

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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 those specified in paragraph 5 of the said Schedule."

[F]

SCHEDULE I

[See Section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1.
2. Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business :

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

[G]

SCHEDULE II

(See Section 7)

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES.

5. Supply of services

The following shall be treated as supply of services, namely –

- (a)
- (b)
- (c)
- (d)
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f)"

SCHEDULE III

(See Section 7)

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2."

Questions raised by the Applicant :

Now let us discuss the questions raised by applicant, facts about each question, and the Applicant's interpretation of legal provisions pertaining to each question :

QUESTION I



Whether GST is applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period under clause 5(e) of Schedule II of GST Act ?

FACTS

Any employee leaving the BORL has to serve minimum 30 days notice as per terms of employment. If an employee is not able to serve full 30 days notice as per employment contract, and serves the notice of less than 30 days, he is required to pay an amount equal to his salary for the number of days for which he is not able to serve the notice.

The notice pay recovery is to compensate the loss to the applicant-company on account of absence of the employee from his duties. It means if an employee does not serve the notice for required period of 30 days, the applicant-company recovers from the employee the amount equal to his salary for the number of days for which he is not able to serve the notice. The requirement of notice period of 30 days from the employee who wants to quit the organization is to provide time to the organization to find out replacement of the said employee, and also to ensure that all the pending assignments are assessed and to take stock of all the work assigned to the said employee.

The applicant relied upon decision of Madras High Court in the case of GE T&D India Ltd. Vs. Dy. Commissioner of Central Excise, Chennai in W.P. Nos. 35728 to 35734 of 2016 delivered on 7.11.2019 on the applicability of identical provisions under Service Tax regime. Copy of the said judgement is as EXHIBIT 1. In the said judgment, the Madras High Court has ordered as under:

"Equally, so in my view, the employer cannot be said to have rendered any service *per se* much less a taxable service and has merely facilitated the exist of the employee upon imposition of a cost upon him for the sudden exit. The definition in clause (e) of Section 66E, as extracted above, is not attracted to the scenario before me as, in my considered view, the employer has not 'tolerated' any act of the employee, but has permitted a sudden exit upon being compensated by the employee in this regard".

Applicant's interpretation of legal provisions :

As per interpretation of applicant, the applicant is of the opinion that the payment of notice pay is covered under clause 1 of Schedule III, which is not a supply under GST. Therefore, it shall not be covered by supply of service of tolerating an act under clause 5(e) of Schedule II, as Schedule III supersedes Schedule I and Schedule II which makes it evidently clear that even if an activity is supply within the meaning of Schedule I and Schedule II, the same shall not be a supply if it is covered by any of the clauses of Schedule III.

The list of documents and case law submitted by applicant:

1. Copy of appointment letter (sample) – EXHIBIT 1
2. Copy of addendum to contract of employment – EXHIBIT 2
3. Copy of full and final settlement statement – EXHIBIT 3
4. Display document: Data Entry View – EXHIBIT 4
5. Copy of decision dated 7.11.2019 of Madras High Court in W.P. Nos. 35728 to 35734 of 2016 in the case of GE T&D India Ltd. Vs. Dy. Commissioner of Central Excise – EXHIBIT 5

QUESTION II

Whether GST is applicable on the amount of premium of Group Medical Insurance Policy recovered from the non-dependent parents of employees & retired employees at actuals those who are covered under the said Policy ?

FACTS

The applicant-company has taken a "Group Medi-claim Insurance Policy" for all its employees as a welfare measure. Employees, their spouse, children and dependent parents of employees are covered under this policy.

The applicant-company is not recovering any amount from employees for such scheme and it forms part of the cost to the company.

However, the employees are also given an option to enroll their non-dependent parents for availing the benefit of this scheme. In addition to this, retired employees are also given an option to avail this benefit. If the employees include their non-dependent parents under this scheme, the additional insurance premium paid by the applicant-company is recovered from the salary of the said employee at actuals. Similarly, the amount paid by the applicant-company on account of retired employees is recovered from them at actuals.

As per Section 7(1) of GST Act, an activity constitutes a supply when it is made by a person in the course or furtherance of business. If an activity or transaction is not in the course or furtherance of business, it shall not constitute supply within the meaning of Section 7(1) of GST Act. The expression "business" is defined u/s 2(17) of GST Act, but "in the course or furtherance of business" has not been defined anywhere under GST Act.

The applicant-company is recovering premium of Group Medical Insurance Policy at actuals pertaining to non-dependent parents of employees, and the retired employees. The applicant-company is not an insurance company and is not providing any insurance services. The service of insurance has been provided by insurance company and the applicant-company is simply collecting insurance premium at actuals for non-dependent parents and retired employees and remitting the same to the insurance company.

Applicant's interpretation of legal provisions :

As per definition of "business", the collection of premium of insurance policy is not the business of the applicant. Moreover, this activity or transaction is not in connection with or incidental or ancillary to the business of the applicant. At the same time, it is pertinent to note that the applicant is not providing any service by way of insurance, and the applicant does not possess licence to provide insurance services. The said supply of insurance services by the applicant to its employees are not in the course or furtherance of business of the applicant. Thus, the applicant is not providing such services to the employees nor the applicant is competent to provide the said services.

The list of documents and case laws relied upon by the applicant:

1. Copy of appointment letter (sample) – EXHIBIT 1
2. Copy of New India Flexi Floater Group Medi Claim Policy – EXHIBIT 6
3. Copy of Adjustment Voucher issued by New India Assurance Co. Ltd. – EXHIBIT 7
4. Display document: Data Entry View showing insurance recovery – EXHIBIT 8
5. Copy of Medi Claim Policy for employees renewed with New India Assurance Co. Ltd. – EXHIBIT 9
6. Copy of mail for payment of premium by employees – EXHIBIT 10
7. Tax invoice issued by New India Assurance Co. Ltd. – EXHIBIT 11
8. Copy of Advance Ruling dated 25.08.2020 of AAR-Maharashtra in the case of Tata Motors Ltd. – EXHIBIT 12
9. Copy of Advance Ruling dated 04.10.2019 of AAR-Maharashtra in the case of Jotun India (P) Ltd. – EXHIBIT 13
10. Copy of Advance Ruling dated 07.09.2018 of AAR-Maharashtra in the case of Posco India Pune Processing Center (P) Limited – EXHIBIT 14

QUESTION III

Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the Refinery at Bina when it is not a supply as per clause 1 of Schedule III of GST Act ?

FACTS



The applicant-company at its manufacturing unit at Bina maintains industrial canteen for providing tea, coffee, breakfast, lunch and dinner to its employees. The applicant-company has engaged a contractor for managing the canteen. As per Section 46 of Factories Act, 1948, it is mandatory for the applicant-company to provide canteen facility to its employees.

For this facility the applicant-company recovers Rs. 700/- per month from the employees as a fixed amount, irrespective of whether the employee is availing the canteen facility or not. The rates charged by the canteen contractor are higher than the amount recovered by applicant from its employees.

Applicant's interpretation of legal provisions :

As per Section 46 of Factories Act, 1948, it is mandatory for the applicant to provide canteen facility to its employees, and it cannot do business without providing canteen facility to its employees. For supply of canteen services, the applicant is not charging the amount from its employees at actuals, but at a subsidised rate. The activity of supply of canteen services is in the course or furtherance of business of the applicant. It is part and parcel of employment contract between the employer and the employee. As such, it is a service by an employee to the employer in the course of or in relation to his employment. As per clause 1 of Schedule III of GST Act it is neither a supply of goods nor a supply of services. As per Section 7(2) of GST Act, Schedule III supersedes Schedule I and Schedule II.

Canteen services provided by employer to its employees are in the course or in relation to employment. The applicant is of the view that no GST is payable on supply of canteen services by employer to employees, as it is outside the purview of GST being part and parcel of employment contract.

The list of documents and case law relied upon by the applicant:

1. Copy of documents regarding deduction towards canteen services at Bina – EXHIBIT 15
2. Copy of tax invoice manifesting canteen recovery from employees – EXHIBIT 16

QUESTION IV

Whether GST is applicable on recovery of telephone charges recovered from the employees over and above the fixed rental charges payable to BSNL ?

FACTS

The applicant-company has provided telephone connections in all the flats of its Township. The employees use these telephones for official as well as personal purposes. The applicant-company pays total telephone charges to BSNL and bears fixed monthly rental. Any amount over and above the fixed monthly rental is recovered from employees at actuals.

Applicant's interpretation of legal provisions :

The recovery of telephone charges from the employees is not the business of the applicant. It is also not in the course or furtherance of business of the applicant. As such, the applicant is not required to pay GST on the said recoveries made by it from its employees. It is not business of the applicant to provide telecommunication services to its employees. The supply of telecommunication services to the employees has nothing to do with the business of the applicant. The applicant is in a position to carry on its business without providing this facility to its employees. The applicant is not competent to provide telecommunication services to its employees, as it does not possess the requisite licence for the same. It is not a supply within the meaning of Section 7(1) of GST Act, as the said activity of recovery of telephone charges from the employees is not in the course or furtherance of business of the applicant.

The applicant-company relies upon the following Rulings :

1. POSCO India Pune Processing Centre (P) Limited (2019) 102 taxmann.com 21 (AAR-Maharashtra), where it has been ruled that there is no supply of health insurance by the applicant to its employees on recovery of 50% of total premium payable by the applicant to insurance company.



2. Jotun India Pvt. Ltd. (2019) 76 GST 691 (AAR-Maharashtra), where it has been ruled that there is no supply of health insurance by the applicant to its employees on recovery of 50% of total premium payable by the applicant to the insurance company under parental health insurance policy.
3. Tata Motors Limited (2020) 119 taxmann.com 106 (AAR-Maharashtra), where it has been ruled that no GST is applicable on recovery of nominal amount from employees for use of bus transportation facility by the employees in non-AC bus.

The list of documents and case laws relied upon by the applicant is as under:

1. Copy of tax invoice making telephone recovery from employees – EXHIBIT 17
2. Copy of Advance Ruling dated 25.08.2020 of AAR-Maharashtra in the case of Tata Motors Ltd. – EXHIBIT 12
3. Copy of Advance Ruling dated 04.10.2019 of AAR-Maharashtra in the case of Jotun India (P) Ltd. – EXHIBIT 13
4. Copy of Advance Ruling dated 07.09.2018 of AAR-Maharashtra in the case of Posco India Pune Processing Canter (P) Limited – EXHIBIT 14

QUESTION V

Whether full ITC is available to the applicant as per question Nos. II, III & IV, or ITC will be restricted to the extent of GST borne by the applicant-employer ?

FACTS

The facts relating to Question V are the same as are enumerated with Question Nos. II, III & IV, as this question is related to availment of ITC with regard to inward supply of goods or services or both.

Applicant's interpretation of legal provisions :

As per Section 2(93) of GST Act, the applicant is recipient of services of health insurance and telecommunication services under question 2 & 4, and the consideration for the said services is payable by the applicant to the insurance company or telecommunication company and not by the employees from whom the recovery is made. But, as per Section 2(31), the recipient or any other person may make payment of consideration to the supplier. As such, it will not affect the eligibility of the applicant to avail ITC in full in respect of above services whether the payment is made by the applicant or by the employees if the applicant fulfils the conditions for availment of ITC in accordance with Section 16(2) of GST Act. As such, the applicant is of the view that full ITC is available to the applicant on supply of above services, even if the recoveries are made from the employees or any other person.

QUESTION VI

Whether the provision of canteen services to all the employees without charging any amount (free of cost) will fall under para 1 of Schedule III of GST Act and will not be subjected to GST ?

FACTS

The applicant at its manufacturing unit at Bina maintains a Canteen for all its employees without charging any amount from the employees i.e., free of cost basis. The same is as per HR policy of the applicant-company.

Applicant's interpretation of legal provisions :

As per interpretation of the applicant, if the applicant provides canteen services to all its employees on free of cost basis without any recovery as part of HR policy/ employment contract, it is covered under para 1 of Schedule III of GST Act, and is not liable to GST, as it is neither a supply of goods nor a supply of services.

The applicant also relies on Press Release dated 10.7.2017 issued by CBIC :

"It follows, therefore, that if such services are provided free of cost to all the employees by the employer, then the same will not be subject to GST, provided appropriate GST was paid when procured by the employer".

"Provided appropriate GST was paid when procured by the employer" is irrelevant with the substitution of explanation to Section 17(3) of GST Act w.e.f. 1.2.2019. Moreover, the said proviso has been added to cover the payment of tax under RCM on procurement of URP supplies in accordance with Section 9(4) of GST Act prevalent at that point of time."

The applicant is of the view that no GST is payable on providing free canteen services to its employees, as it is covered by para 1 of Schedule III of GST Act. It is neither a supply of goods nor a supply of services. Being covered under Para 1 of Schedule III, such services are not liable to GST.

Section 7(2) of GST Act, which prescribes Schedule III, begins with the wordings "notwithstanding anything contained in sub-section (1)", which is a *non obstante* clause and should prevail over activities and transactions contained in Schedule I and Schedule II and the scope of supply as described in Section 7(1). The activity of providing canteen services to the employees on FOC basis is covered by para 1 of Schedule III.

The list of documents and case law relied upon by the applicant:

1. Copy of Press Release dated 10.7.2017 issued by CBIC – EXHIBIT 18

QUESTION VII

If reply to Q. VI is yes, whether in view of the explanation to Section 17(3) of GST Act, ITC shall be available to the applicant on the goods and services used for providing free canteen services to the employees ?

FACTS

The facts relating to Question VII are the same as the facts relating to Question VI.

7. DISCUSSIONS AND FINDINGS – We went through the argument presented by the Applicant and department's view.

Question 1 is relating to levy of GST on payment of notice pay by an employee to the applicant.

Interpretation of law by the applicant :

(1) The service of notice by the employee before leaving the organization is part and parcel of employment contract between the applicant and the employee. If the employee does not want to serve the notice for the specified period, he may quit the organization by depositing the amount equal to his salary for the number of days for which he is not able to serve the notice.

(2) As per clause 1 of Schedule III, "services by an employee to the employer in the course of or in relation to his employment" are activities or transactions which shall be treated neither as a supply of goods nor a supply of services.

(3) Schedule III has been enacted u/s 7(2)(a) of GST Act which begins with *non obstante* clause "Notwithstanding anything contained in sub-section (1)". It means Schedule III supersedes Section 7(1) of GST Act under which Schedule I and Schedule II are enacted.

(4) There is reasonable doubt in the minds of the applicant, although unfounded, that the payment for notice period is a consideration of supply of service which is covered under clause 5(e) of Schedule II of GST Act, which provides that "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" is a supply of service. However, as per interpretation of the applicant clause 5(e) of Schedule II should not be applicable to notice pay received from the employee, as it is squarely covered under clause 1 of Schedule III, which supersedes Schedule II.

(5) Similar provision also existed in the Service Tax regime, which are as under:



Service Tax was levied upon the receipt from rendition of services as defined in terms of Section 65(44) of Chapter V of Finance Act, 1994 which reads as follows :

"(44) "Service" means any activity carried out by a persons for another for consideration, and includes a declared service, but shall not include –

(a)

(b) a provision of service by an employee to the employer in the course of or in relation to his employment.

(c)

66E:Declared services

(a) to (d)

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act."

(6) Para 2.9.3 of CBECs' Guidance Notes dated 20.6.2012 states as follows :

Provision of service by an employee to the employer is outside the ambit of service.

2.9.3 Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to service tax?

Section 17(5)(b) of GST Act reads as under:-

"(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)

(b) the following supply 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."


In this regard it is important to note that except due to exclusion by Para 1 of Schedule III, the services by an employee to an employer are also covered in supply, otherwise there should have been no need for such exclusion. It is also important to note that Schedules are part of the GST Act. The Schedules contain specific provisions/exclusions, and therefore, they prevail over other general provisions of the GST Act.

Moreover, Section 7(1) is defining supply in an inclusive manner. Therefore, there can be other activities also which can be covered in supply even if they may not be a supply as per provisions of Section 7.

We also perused the case law of M/s. GE T & D India Ltd. Passed by Honourable High court, Madras. This decision relates to the dispute of Service Tax regime. The ruling is not applicable to the present case involving levy of GST.

There can be no dispute about this fact that the applicant as employer is tolerating the act or situation whereby the employee is not giving the notice for the agreed period of 30 days before leaving the service of the applicant-company. Thus, by relieving an employee without notice period or by accepting a shorter notice period, the applicant is tolerating an act or a situation created by such action of the employee, and therefore, it is covered by Para 5(e) of Schedule II, and is a supply of service liable to tax.

Question 2 is relating to premium of Group Medical Insurance Policy recovered from the non-dependent parents of employees & retired employees at actuals. As per applicant it is not covered by the scope of supply as defined u/s 7 of GST Act, as it is not in the course or furtherance of business of the applicant. It is also submitted by applicant that it is not covered by the definition of business as given in Section 2(17). However, both the contentions of the applicant are not valid.

As per clause (a) of Section 2(17) business includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not there is volume, frequency, continuity or regularity of such transaction. As per clause (b) of Section 2(17) any activity or transaction in connection with or incidental or ancillary to any activity or transaction referred in clause (a) of Section 2(17) are also covered in business.

Had the services been provided by applicant as pure agent as per Rule 33 of GST Rules, then there would have been no liability to pay GST. But, the applicant has not provided the insurance service to the non-dependent parents of employees & retired employees as an agent of the Insurance Company. Therefore, the premium of Group Medical Insurance Policy recovered by applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST.

Question 3 is relating to applicability of GST on recovery of nominal amount for availing canteen facilities by the employees. The applicant has himself accepted that the activity of supply of canteen services is in the course or furtherance of business of the applicant. It is part and parcel of employment contract between the employer and the employee. It is wrongly interpreted by the applicant that this transaction is covered by clause 1 of Schedule III. Clause 1 of Schedule III stipulates "Services by an employee to the employer in the course of or in relation to his employment". But here employee is not providing any service rather employer is providing services to employees.

The transaction would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business of the applicant, and therefore the recovery from the employees for canteen facilities (though at a nominal cost) falls within the definition of 'outward supply' and is liable to tax.

As per Section 15(1) of GST Act, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply. However, if the transactions are between related persons then value of supply is to be determined as per Rule 28. The employer and employee are related person as per Explanation to Section 15, and therefore, the valuation of canteen facility provided by applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by applicant from its employees.

Question 4 is relating to applicability of GST on telephone charges recovered by applicant from its employees over and above the fixed rental charges payable by applicant to BSNL. It is covered in the definition of 'business' given in Section 2(17), as it is an activity or transaction in connection with or incidental or ancillary to the business of the applicant. Moreover, it is a supply as per inclusive

definition of 'supply' given under Section 7. Accordingly, the applicant-company is liable to pay GST on the amount recovered from its employees towards telephone charges at actuals.

Question 5 is relating to availability of ITC to the applicant in respect of inputs and input services pertaining to supply as per question Nos. II, III & IV.

As far as Input Tax Credit in respect of premium of Group Medical Insurance Policy is concerned, it will be governed by provisions of clause (b)(i) of Section 17(5), and accordingly Input Tax Credit for the same shall be available if its inward supply is used for making supply of the same category of goods or services, or as an element of a taxable composite or mixed supply.

The recovery of premium of Group Medical Insurance Policy from the non-dependent parents of employees & retired employees at actuals is a supply of the said services by the applicant. It is an activity or transaction in connection with or incidental or ancillary to the main activity of the applicant, and therefore, it is covered in business as defined in Section 2(17) of GST Act. As per said section business includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not there is volume, frequency, continuity or regularity of such transaction. As per clause (b) of Section 2(17) any activity or transaction in connection with or incidental or ancillary to any activity or transaction referred in clause (a) of Section 2(17) are also covered in business.

Thus, the transaction of supplying Group Medical Insurance services to the non-dependent parents of employees & retired employees, and recovery of premium for the same, is a transaction which is in connection with or incidental or ancillary to the main business of the applicant, and therefore, the applicant shall be eligible to claim Input Tax Credit in respect of premium paid to insurance company to the extent of its further supply.

Input tax credit in respect of Canteen services :

As per clause (ii) of Sl. No. 7 of Notification No. 11/2017-Central Tax (Rate), dt. 28.6.17, as substituted by Notification No. 20/2019-Central Tax (Rate), dt. 30.9.19, w.e.f. 10.10.19, Canteen services are taxable at the reduced rate of 5% (2.5+2.5) and no Input Tax Credit is available thereon.

The said clause (ii) of Sl. No. 7 reads as under :

(3)	(4)	(5)
(ii) Supply of "restaurant service" other than at "specified premises"	2.5	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)]

As per clause (xxxii) of Paragraph 4 relating to explanation given in Notification No. 11/2017-Central Tax (Rate), as inserted by Notification No. 20/2019-Central Tax (Rate), dt. 30.9.19, w.e.f. 10.10.19, canteen services are covered in Restaurant service.

Clause (xxxii) of Paragraph 4 reads as under :

"(xxxii) "Restaurant service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."

 The above interpretation is strengthened by Explanation to Sl. No. 7 of Notification No. 11/2017-Central Tax (Rate), dt. 28.6.17, which is inserted by Notification No. 20/2019-Central Tax (Rate), dt. 30.9.19, w.e.f. 10.10.19, which reads as under :

"(a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to

conditions specified against them in column (5), which is a mandatory rate and shall not be levied at the rate as specified under this entry."

The words "shall attract", the words "which is a mandatory rate" and the words "shall not be levied at the rate as specified under this entry" clearly indicate that the rate of 5% (2.5+2.5) for canteen services without ITC is mandatory without any option for the applicant to pay tax at full rate and claim ITC on the related inputs and input services.

In respect of telephone charges paid to BSNL, the applicant shall be eligible to claim Input Tax Credit, because it is a further taxable supply by the applicant. The said transaction comes under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business of the applicant, and is liable to tax. Moreover, telephone charges are not covered by the provisions of Section 17 relating to blocked credit. Therefore, the applicant is eligible for ITC in respect of such telephone charges.

Question 6 is relating to levy of GST on canteen services provided to the employees without charging any amount (free of cost). As per discussion in reply to question 3, it is clear that transactions between employer and employee are covered by clause 2 of Schedule 1. It does not fall under para 1 of Schedule III as that clause is pertaining to "Services provided by an employee to the employer.....", while in case of supply of canteen services by the applicant to its employees, there is supply from the employer to the employee. Therefore, canteen services provided to the employees are to be treated as supply, even if there is no consideration. It will be liable to tax as per value determined in accordance with Rule 28.

Question 7 is relating to eligibility for ITC in respect of canteen services provided by applicant to its employees without charging any amount (free of cost). Reply to this question is duly covered by reply to Q. No. 5, and the applicant shall not be eligible to claim Input Tax Credit in respect of canteen services in view of specific provision of clause (ii) of Sl. No. 7 of Notification No. 11/2017-Central Tax (Rate), dt. 28.6.17, as substituted by Notification No. 20/2019-Central Tax (Rate), dt. 30.9.19, w.e.f. 10.10.19 read with clause (xxxii) of Paragraph 4 relating to explanation given in Notification No. 11/2017-Central Tax (Rate).

8. Ruling

8.1 In respect to Question Number 1, We are of view that GST is applicable on payment of notice pay by an employee to applicant employer in lieu of notice period under clause 5 (e) of schedule II of CGST Act.

8.2 In respect to Question Number 2, We are of view that the premium of Group Medical Insurance Policy recovered by applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST.

8.3 In respect to Question Number 3, This Authority holds that as per Section 15(1) of GST Act, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply. However, if the transactions are between related persons then value of supply is to be determined as per Rule 28. The employer and employee are related person as per Explanation to Section 15, and therefore, the valuation of canteen facility provided by applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by applicant from its employees.

8.4 In respect to Question Number 4, the applicant-company is liable to pay GST on the amount recovered from its employees towards telephone charges at actuals.



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8.5 Question number 5 is relating to availability of ITC to the Applicant in respect of inputs and input services pertaining to supply as per Question number 2,3 and 4. On this question the authority is of the view that –

- (A) The applicant shall be eligible to claim Input Tax Credit in respect of premium paid to insurance company to the extent of its further supply.
- (B) The Applicant shall not be eligible for the ITC on in respect of canteen services.
- (C) In respect of telephone charges paid to BSNL, the applicant shall be eligible to claim Input Tax Credit, as telephone charges are not covered by the provisions of Section 17 relating to blocked credit.

8.6 In respect of question number 6 canteen services provided to the employees are to be treated as supply, even if there is no consideration. It will be liable to tax as per value determined in accordance with Rule 28.

8.7 In respect of question number 7, the reply to this question is already duly covered by reply to question number 5, and the applicant shall not be eligible to claim Input Tax Credit in respect of canteen services in view of specific provision of clause (ii) of Sl. No. 7 of Notification No. 11/2017-Central Tax (Rate), dt. 28.6.17, as substituted by Notification No. 20/2019-Central Tax (Rate), dt. 30.9.19, w.e.f. 10.10.19 read with clause (xxxii) of Paragraph 4 relating to explanation given in Notification No. 11/2017-Central Tax (Rate).

8.8 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

SK
(Manoj Kumar Choubey)
(Member)

CK
(Virendra Kumar Jain)
(Member)

Copy to: *No. 17/2020/A.A.R/28/04*

INDORE dated 07/06/2021

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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