THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 42/2022
Date : 29-11-2022

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes . . . . Member (State)

2. Sri. Kiran Reddy T
Additional Commissioner of Customs & Indirect Taxes . . . .Member (Central)

1.	Name and address of the applicant	M/s. FEDERAL MOGUL GOETZE INDIA LTD., Khatha No.238/959/778, Doddaballapur Road, Yelahanka Bengaluru – 560 064.
2.	GSTIN or User ID	29AAACG3769M1Z1
3.	Date of filing of Form GST ARA-01	23-05-2022
4.	Represented by	Ms. Neethu James, Advocate & Authorised Representative
5.	**Jurisdictional Authority – Centre**	The Commissioner of Central Tax, Bangalore North Commissionerate, Bengaluru. (Range-BND8)
6.	Jurisdictional Authority – State	ACCT, LGSTO-151, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2903220086316 dated 16.03.2022.

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98(4) OF THE KGST ACT, 2017

M/s. Federal Mogul Goetze India Ltd., (herein after referred to as 'Applicant'), Khatha No.238/959/778, Doddaballapur Road, Yelahanka, Bengaluru – 560 064, having GSTIN 29AAACG3769M1Z1, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a manufacturer of auto components i.e. pistons, piston pins & piston rings and is engaged in manufacture, supply and distribution of the said auto components used in two/three/four wheeler automobiles. They have a factory to manufacture the auto components and have about 3200 employees working on a permanent as well as contractual basis.

3. The applicant entered into a contract with M/s Mithrapriya Enterprises (Service Provider) for supply of manpower to operate and manage canteen within the factory premises and a part of the cost of the meals provided is deducted by the applicant from the salary of the employees on a monthly basis.

4. In view of the above, the applicant has sought advance ruling in relation to applicability of GST on the deductions made from the salary of the employees in respect of the following questions:

Whether the subsidized deduction made by the applicant from the employees who are availing food in the factory would be considered as a "supply" by the Applicant under the provisions of Section 7 of the CGST/KGST Act 2017.

a. *In case answer to above is yes, Whether GST is applicable on the nominal amount being recovered by the Applicant?*

b. *Whether Input Tax Credit ("ITC") of the GST charged by the Service Provider would be eligible for availment to the Applicant?*

4.1 **Admissibility of the application** : The questions raised by the applicant are in respect of (i) determination of the 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, which are covered under Section 97(2)(e) and 97(2)(d) respectively and hence the application is admissible under Sections 97(2)(e) & 97(2)(d) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE**: The applicant furnishes the following facts relevant to the issue and having a bearing on the question/s raised:

5.1 The Applicant employed about 3200 employees in their factory, governed and is registered under the provisions of the Factories Act, 1948 and thus is required to comply with all the obligations and responsibilities cast under the provisions of the Factories Act.

5.2 The applicant, to fulfill one of the requirements under the Factories Act, provides canteen facility to all their employees including contractual employees. The said canteen is operated by the applicant and all the equipments and items essential for running the canteen such as grocery, utensils, cooking equipment etc., are arranged by the applicant. The applicant entered into a separate contract with a service provider for providing / supply of manpower required to manage the canteen operations; the service provider raises monthly invoice towards supply of manpower for canteen operations and charges applicable GST. The applicant do

not avail ITC of the GST paid to the service provider or on any other canteen expenses incurred by them.

5.3 The employees, employed by the Applicant, are largely categorised into 3 types i.e. Payroll employees, union employees and contract employees. The canteen facilities are extended to all the employees. The payroll employees including union employees are charged with Rs.50/- per month, a fixed amount towards the utilization of canteen facilities during the said month, which is deducted from the salary as a standard deduction. The contract employees are charged with Rs.10/- per meal and the total amount of subsidized charges, during the month, towards utilization of canteen facility is deducted from the salary paid through the service provider.

5.4 The aforesaid deduction is part of staff welfare and thus not disclosed in FORM 16 in case of payroll employees and the recovery from the contractual employees are booked under staff welfare in the applicant's Profit & Loss account without taking the benefit of ITC of the GST paid on the service provider's invoice.

5.5 The applicant discharges GST on the above recovery on the basis of total canteen expenses divided by number of employees availing canteen facility during the month in case of payroll employees. Further, in case of contract employees, the GST is paid on the actual amount deducted by the applicant.

5.6 The applicant pays to the service provider for the supply of manpower to manage canteen operations, along with the GST @ 18%, but do not avail ITC of the GST paid there under.

5.7 The applicant, as per Section 46 of the Factories Act 1948, in terms of which a canteen shall be provided to the employees in the factory if more than 250 workers are ordinarily employed and also as per Section 2(n) & 2(i) respectively of the Factories Act, wherein the terms 'occupier' and 'worker' have been defined respectively, is undoubtedly obligated and mandated to provide canteen facility to its employees. The contract employees, who are employed through a manpower supplier are also considered as 'workers' and hence the applicant is obligated to extend the canteen facility to the contractual employees as well.

5.8 The applicant provided the canteen facility to the employees as the factory premises is located away from the local city limits and also on considering the time and efforts required for arranging the food on daily basis to comply with the statutory requirement laid down under the Factories Act. The canteen facility has been set up in a demarcated area within factory premises wherein tables, chairs, utensils, washrooms, wash basins, storage rooms for keeping the cooked food, washing the utensils etc., and maintained the ultimate control over the factory lies with the applicant. The canteen facility is set up by the applicant out of the mandate laid down under the Factories Act.

6. **Applicant's Interpretation of Law**: The applicant furnished their interpretation of law relevant to the question/s raised, which is as under:

6.1 The applicant contends that the nominal amount deducted from the salary of the employees towards canteen facility can't be considered as *supply* as per Section 7 of the CGST Act 2017 and therefore GST can't be levied on such activity. The applicant quoting Section 9(1) and Section 7 of the CGST Act, 2017 stated that the term "Supply" includes all forms of supply (goods and / or services) and includes agreeing to supply when the **supply is for a consideration and is in the course or furtherance of business.** Thus the following criteria, inter alia, plays a crucial role to determine the GST implication on provision of canteen facility.

- There shall be a **legal intention** of both the parties to the contract to supply and receive the goods or services or both. The absence of such intention would not amount to supply within a meaning of CGST Act.
- It should involve **quid pro quo** – viz., the supply transaction requires something in return, which the person supplying will obtain, which may be in monetary terms/ in any other form except in cases of deeming provision as specified in Schedule I; and
- The Supply of goods or services or both shall be effected by a person **in the course or furtherance of business.**

6.2 The applicant, with regard to the first limb of the Supply i.e. ***legal intention***, contends that there is no legal intention to enter into any contractual relationship by the applicant and the provision of canteen facility to the employees is only due to mandatory statutory obligation.

The applicant, in this regard, wishes to rely on the judgement of **European Court of Justice (ECJ)** in the case of ***R.J. Tolsma Vs Inspecteur 'der Omzetbelasting Leeuwarden*** in case C-16/93 wherein it is held that "*there was no intention of the applicant to contract with its employees with respect to the service of food and beverages in its canteen premises – and hence, the basis requirement of qualifying as supply itself is not satisfied*".

The applicant, in the light of above judgement, submits that there must be a legal intention to enter in a contractual relationship with its recipient, which casts roles and responsibility on each of the contractual party, in order to fall under the ambit of supply under GST; unless there is an intention to provide a service, the same shall not be treated as Supply within the meaning of Section 7 of the CGST Act and contends that they are merely providing demarcated space for canteen facility, as mandated under the provisions of the Factories Act, 1948 to their employees for eating the food during the specified time; the ultimate responsibility for deduction of statutory levies (provident fund/employees state insurance etc.,) is on the applicant and there is no 'Supply' by them in the form of provision of canteen facility to their employees.

6.3 The applicant, with regard to the second limb of the Supply i.e. '***Consideration***' contends that an activity could be considered as a Supply only if it is made or agreed to be made for a consideration. The applicant, quoting the definition of 'Consideration' in terms of Section 2(31) of the CGST Act 2017, contends that *"a supply must involve* ***enforceable reciprocal obligations****. If something has been used, but there was no agreement for its supply between the relevant parties,* ***any payment subsequently received by the aggrieved party is not consideration for supply.*** *The receipt of payment is not premised on the enforcement of reciprocal obligations between parties and can't be linked to a supply for the purpose of levying GST. Hence, the deduction in employee's salary made by the Applicant would constitute a mere transaction in money between the Applicant and its employee."*

The applicant wishes to rely on the judgement of Bombay High Court, in the case of ***Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia Vs Suchitra*** [Commercial suit (l) No.236 of 2017] wherein it is held that *for GST to be payable on any payment, there must be the necessary quality of reciprocity to make it a 'supply'.*

The applicant contends that they deduct a nominal amount from the employee's salary as a recovery of expenses under employment relationship without any commercial objective but to maintain discipline and prevent wastage of food and resources; the said recovery is also shown as a deduction in the salary slip provided to the employees; there is no reciprocity of any activity or transaction i.e. no express or implied reciprocity i.e. quid-pro-quo, between the applicant and employee. Thus, in the absence of an identifiable supply, the activity would not constitute 'consideration' for any supply.

6.4 The applicant, with regard to the third limb of the Supply i.e. ***'the supply should be effected in the course or furtherance of business',*** quoting the definition of 'business' in terms of Section 2(17) of the CGST Act 2017 contends that their activity of canteen facility does not fall within the definition of business from Sl.No.(c) to (i).

The applicant, further, furnishing the definitions of the terms/elements of the definition of business as provided at Sl.No.(a) i.e. "trade, commerce, manufacture, profession, vocation, adventure, wager" from the Black Law's dictionary placed reliance on the case of **Cinemax India Limited Vs Union of India** *(Special Civil Appeal Nos.8032,9661,11032,11111,12933 of 2010 and 707 of 2011 decided on 23.08.2011*) wherein the term 'furtherance of business has been pointed out as under:

> *"The meaning of 'furtherance', as per Black's Law Dictionary, 6th Edition, 11th reprint, 1997, is act of furthering, help forward, promotion, advancement or progress. Furtherance of business will, thus mean, act of furthering business, helping forward business, promotion of business, advancement of business or progress of business".*

The applicant also furnished the Australian Concise Oxford Dictionary (1997) definition of the phrase 'in the course of' as during and the word 'furtherance' as to mean furthering or being furthered; the advancement of a scheme etc.,

The applicant also stated that in the case of ***Indian Institute of Technology Vs State of Uttar Pradesh & Ors.*** *[1976(38) STC 428 (All.)]* it was held that – *(a) the statutory obligation of maintenance of a hostel which involved and supply and sale of food was an integral part of the objects of the Institute; and (b) the running of the said hostel could not be treated as the principal activity of the Institute. Consequently, the Institute was held to not be doing business.*

The applicant, in the light of the above, contends that the canteen facility provided to the employees is in accordance with the mandate laid down under the Factories Act and the applicant is not in the business of providing canteen facility. Therefore, since the said activity is not in the course of the business and it can't be regarded as "Supply" under GST law and hence is not taxable under GST.

The applicant further contends that canteen services can't be treated as ancillary to the business activity of the applicant as (i) the canteen services are provided as an ingredient of wage negotiation with employer and would form part of the consideration under employment agreement, (ii) Factories Act mandates the employer to provide canteen facility to the employees and (iii) canteen can't be termed as business activity of the applicant. Thus if canteen can be termed as expenses for use in the course of business than the business activity itself, then the same can't be termed as 'supply' to be taxed under GST.

The applicant, concluding their arguments, contends that the activity of setting up the canteen facility and subsequent deduction of nominal value would not amount to Supply under Section 7 of the CGST Act, 2017.

6.5 The applicant further contends that extension of canteen facility only to the employees is in the course of employment relationship on the following grounds.

a) Schedule III to Section 7(2) of the CGST Act 2017, which provides the activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Entry No.1 of the said schedule provides that *the services by an employee to the employer in the course of or in relation to his employment* shall be treated neither as a supply of goods nor a supply of services.

b) Para 3 of the CBIC press release dated 10th July 2017 clarifies the GST implications on the services of Employer and Employee thereby providing that ***the supply by the employer to the employee in terms of contractual agreement entered between the employer and the employee, will not be subjected to GST***. The applicant, considering the said press release claims that the following common facilities provided

commonly to the employees without any recovery would not be subjected to GST, as they can't be considered as gifts.

1. Telephone / Mobile services
2. Internet Services
3. Educational reimbursement for employee's children
4. Transport facilities
5. Membership of gym, health club etc.,
6. Subscription to Journals
7. Canteen facility etc.,

c) The applicant submitted that there is no independent contract between the applicant and the employees for setting up of the canteen facility at the factory, which is undertaken on account of the legal obligation casted upon the applicant for their employees only and hence the same must be considered as a part of employment contract.

d) Schedule III to Section 7(2) of the CGST Act 2017 specifies that any service provided by an employee to the employer in the course of or in relation to his employment shall be neither a supply of goods nor supply of services. In short, the consideration paid by the employer to the employee under the contract of employment shall be out of the scope of GST.

e) The canteen facility is provided due to the existing 'Employer-Employee' relationship and hence an employee is not allowed to use the canteen facility once the 'Employer-Employee' relationship ceases i.e. when the employment is terminated. This makes it evident that 'Employer-Employee' relationship is a pre-requisite to avail the canteen facility.

f) The applicant placed reliance on the ruling issued by AAR, Maharashtra in the case of M/s Tata Motors Limited [GST-ARA-23-2019-20/B-46 dated 25.08.2020] wherein it was held that *GST was not applicable to the nominal amount recovered by the applicants from their employees.*

The applicant also placed reliance on the ruling issued by AAR, Maharashtra in the case of M/s The Tata Power Company Limited [GST-ARA-99-2019-20/B-92] wherein it was held that *amounts recovered towards Top-up and parental insurance premium from the employees does not amount to a supply of any service under Section 7 of the CGST Act 2017.*

The applicant further placed reliance on the ruling issued by AAR, Maharashtra in the case of M/s Posco India Pune Processsing Center Private Limited [GST-ARA-36-2018-19/B-110 dated 07.09.2018] wherein it was held that *there is no way that the 50% amount recovered can be treated as amounts received for services rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees*

and their parents. Such recovery of 50% premium amounts by the applicant from their employees can't be supply of services under the GST laws.

The applicant also placed reliance on the similar ruling issued by AAR, Maharashtra in the case of M/s Jotun India Pvt. Ltd.,[2019 (10) TMI 482] wherein it was held that *the recovery of 50% of Parental Health Insurance premium from employees does not amount to 'supply of service' under Section 7 of the CGST Act 2017, as the assesse was not in the business of providing insurance service,*

g) The services covered under employment contract and form part of the cost to company (C2C) are not to be considered as supply. Further Section 7(2) of the CGST Act 2017 makes it amply clear that any transactions which are provided by the employee to employer in the course / relation to the employment shall be out of the scope of GST. Once the activity comes under Schedule III, then anything which contradicts or withstands this clause shall be ineffective or inoperative qua this clause.

h) The applicant, in view of the above, contends that canteen facility provided to their employees upon which they are deducting the nominal value, can't be regarded as supply under the GST Law and thus GST can't be levied on such activity.

6.6 The applicant, with regard to **'Eligibility of ITC of the GST paid to the Service Provider'** contends that the canteen facility is set up by them only out of mandate laid down under the Factories Act, 1948 and to comply with the said statutory requirement; the ITC of GST paid towards availing manpower supply services, which are used for the purpose of providing such canteen facility should be allowed as credit as the same is not restricted under Section 17(5) of the CGST Act, 2017. Further the said ITC can't be restricted since the outward service is not a 'Supply' at the first place; consequently, there is no restriction on availment or any requirement of reversal of said ITC.

PERSONAL HEARING PROCEEDINGS HELD ON 22.06.2022

7. Ms. Neethu James, Advocate & Authorised Representative of the applicant appeared for personal hearing proceedings, reiterated the facts narrated in their application and filed a memo praying this authority not to answer question (b) of the questions raised, due to commercial reasons. The Authorised Representative also furnished the written synopsis of their arguments.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific

provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant, manufacturer and supplier of auto parts, employed around 3200 employees and provides canteen facility to all employees including contractual employees. They entered into a contract with M/s Mithrapriya Enterprises (Service Provider), for supply of manpower to operate and manage canteen within the factory premises and a part of the cost of the meals provided is deducted by the applicant from the salary of the employees on a monthly basis. In view of this, the applicant has sought advance ruling in relation to applicability of GST on the deductions made from the salary of the employees in respect of the questions, mentioned at para 3 supra.

11. The applicant sought advance ruling in respect of two questions as at para 3 supra. We proceed to examine and discuss one question at a time. The first question is ***whether the provision of canteen facility to the employees in the factory from whom the subsidized amounts are deducted from their salaries, would amount to supply under the provisions of Section 7 of the CGST Act 2017***. The applicant in this regard contends, on the grounds in paras 6.1 to 6.5 supra, that the amount deducted from the salary of the employees towards canteen facility is nominal and said canteen facility cannot be considered as *supply* as per Section 7 of the CGST Act 2017 and therefore GST is not attracted on such activity.

12. We proceed to examine whether the impugned activity of the applicant amounts to supply in terms of Section 7 of the CGST Act 2017. In this regard we invite reference to section 7(1)(a) which is as under:

> *7. Scope of supply.— (1) For the purposes of this Act, the expression "supply" includes—*
>
> *(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

It could be inferred from Section 7(1)(a) of the CGST Act 2017, that for any activity to qualify as *supply* under the said Act it should satisfy three limbs/parts i.e. (i) the activity must be a form of supply of goods or services or both, made or agreed to be made; (ii) for a consideration by a person (iii) in the course or furtherance of business. Now we proceed to examine whether the impugned activity satisfies the aforesaid three limbs.

13.1 The applicant, with regard to the first limb of the *supply* contends that there is *no legal intention* to enter into any contractual relationship by the applicant and the provision of canteen facility to the employees is only due to mandatory statutory obligation; they merely provide demarcated space for canteen facility, as mandated under the provisions of the Factories Act, 1948 to their employees for eating the food during the specified time; the ultimate responsibility for deduction of statutory levies (provident fund/employees state insurance etc.,) is on the applicant and there is no 'Supply' by them in the form of provision of canteen facility to their employees.

13.2 The applicant also quoted a judgement of **European Court of Justice (ECJ)** in the case of ***R.J. Tolsma Vs Inspecteur 'der Omzetbelasting Leeuwarden*** in case C-16/93 wherein it is claimed that *"there was no intention of the applicant to contract with its employees with respect to the service of food and beverages in its canteen premises – and hence, the basis requirement of qualifying as supply itself is not satisfied"*. The applicant, in the light of above judgement, submits that there must be a legal intention to enter into a contractual relationship with its recipient, which casts roles and responsibility on each of the contractual party, in order to fall under the ambit of supply under GST; unless there is an intention to provide a service, the same shall not be treated as Supply within the meaning of Section 7 of the CGST Act.

13.3 It is observed, on examination of the available documents, that the applicant is running a canteen as mandated under the Factories Act, 1948 and is involved in supply of food to the employees. They are collecting certain amounts by way of deduction from the salaries of respective employees towards the supply of food through the canteen. The contention of the applicant that they do not have any legal intention for provision of canteen is contrary to the obligation placed on the applicant under the Factories Act, 1948. Having agreed to abide by the provisions of Factories Act, 1948, providing canteen facilities to employees is legal requirement and not an option to the applicant. Further the contractual relationship is evident from the fact that the applicant is charging employees. In the applicants own submission it is stated that they charge Rs 50/- per month from the payroll and union employees and Rs 10/- per meal from contract employees. The said charges are deducted from the salaries on a monthly basis. Since the charges are pre-decided and deducted from the salaries, which are also agreed upon by the employees, contractual relationship is clearly established between the applicant and their employees. Further it is an admitted fact that the applicant themselves are running the canteen but claims that they merely provide demarcated space for canteen facility is factually incorrect.

13.4 It is also observed that the applicant has incorrectly quoted the judgement ***R.J. Tolsma Vs Inspecteur 'der Omzetbelasting Leeuwarden*** in case C-16/93, which is correctly referenced at https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61993CJ0016 wherein consideration received for *Musical performance on the public highway giving rise to payments on a voluntary*

basis of money in an unquantified amount was sought to be excluded from the value of supply as there was no legal relationship between the provider of the service and the recipient. It is evident that the facts and the underlying jurisprudence are different to the case of the applicant wherein obligations and considerations are clearly defined for provision of canteen facility to employees.

13.5 The applicant, with regard to the second limb of supply i.e. consideration, quoting the definition of consideration, under Section 2(31) of the CGST Act 2017, contends that a supply must involve enforceable reciprocal obligations and in the instant case the receipt of payment is not on the enforcement of reciprocal obligations and thus the salary deduction would constitute a mere transaction in money. Further the applicant also contended that only a nominal amount was recovered from the employees without any commercial objective.

13.6 In this regard, we invite reference to the relevant portion of the definition of "consideration" under Section 2(31) of the CGST Act 2017, which is as under:

> *(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;*

13.7 It is clearly evident from the above definition of "consideration" supra that the consideration includes *any* payment made or to be made, in response to, the supply of goods or services or both. Adequacy of consideration or otherwise is not a factor to decide whether the activity amounts to supply or not. The fact that a consideration is being charged by the applicant and paid by the employee is sufficient to establish contractual relationship with reciprocal obligations leading to supply of service. The argument of the applicant that there is no quid-pro-quo between them and the employees is factually and legally not sustainable. Thus the second limb of the supply also is fulfilled.

13.8 The applicant, with regard to the third limb of the Supply i.e. ***'the supply should be effected in the course or furtherance of business',*** quoting the definition of 'business' given under Section 2(17) of the CGST Act 2017, contends that their activity of canteen facility does not fall within the definition of business from Sl.No.(c) to (i); canteen facility is provided as per the mandate under Factories Act and running the canteen is not their business activity. In this regard we invite reference to the relevant provisions of the definition of 'business' under Section 2(17) of the Act, which are 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)

13.9 It is an undisputed fact that the applicant is a manufacturer and thus their activity is covered under Section 2(17)(a) of the CGST Act. Further Section 2(17)(b) stipulates that any activity/transaction in connection with sub-clause (a) i.e. Section 2(17)(a), is included in the business. In the instant case, the applicant is running the canteen in connection with the manufacturing activity. Thus providing canteen facility is incidental to their main activity of manufacture, and therefore covered in the definition of 'business' in terms of Section 2(17)(b).

13.10 Now we proceed to examine whether the provision of canteen facility is in the course or furtherance of the applicant's business. The applicant in their submissions held that the factory premises is located away from the local city limits and also considering the time and efforts required for arranging food on daily basis, they have provided canteen facilities. In other words, if the canteen facility is not provided, the quantity of the output products get affected as the employees will have to move out of the factory for the food, which is time consuming. Thus the canteen facility is in the course of the applicant's business. Further the term 'furtherance of business' has been pointed out as an *act of furthering business, helping forward business, promotion of business, advancement of business or progress of business* in the case of Cinemax India Limited vs Union of India, on which the applicant relied upon. The canteen facility undoubtedly helps in progress of the business, as the same provides facility to the employees who are involved in the production. Thus the said facility is useful for furtherance of business of the applicant. Thus, the third limb of the expression 'supply' also is fulfilled.

In view of the above the activity of provision of canteen facility by the applicant to supply the food amounts to supply in terms of Section 7(1)(a) of the CGST Act 2017.

14. Further, Schedule II to Section 7(1A) of the CGST Act 2017 describes the activities / transactions that constitute a supply in terms of Section 7(1) of the said Act that shall be treated either as supply of goods or supply of services. Clause 6 of the Schedule II declares the following 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."

In view of the above, the activity of providing/supply of food through the canteen, run by the applicant amounts to supply of service and liable to GST accordingly.

15.1 The applicant, quoting entry No.1 of Schedule III to Section 7(2) of the CGST Act 2017 in support of their argument contends that the services by an employee to the employer in the course of or in relation to his employment shall be treated neither as supply of goods nor a supply of services. This provision is not applicable to the instant case as the issue pertains to the services being provided by the employer to the employee and not vice-versa.

15.2 The applicant further quotes para 3 of the CBIC press release dated 10.07.2017 wherein the GST implications on the services of employer and employee have been clarified and provided that *the supply by the employer to the employee in terms of contractual agreement entered between the employer and the employee will not be subject to GST.* The extract of the said press release is appended below:

CBIC Press Release dated 10th July 2017

> *3. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company* (C2C).

In the instant case the supplies by employer to employee are not free of charge. The applicant is recovering consideration for supply which is deducted from the salary on a monthly basis, hence the press release will not aide the case of the applicant.

16. The applicant referred to the rulings of various advance ruling authorities and appellate authorities, wherein the canteen facilities were provided by the third parties and collection of employee's share and paying to canteen service provider without profit was held as not amounting to supply by the employer. It is pertinent to mention here that in the instant case the applicant themselves are providing the canteen facility and hence the advance rulings are not relevant to facts of the case. Further, advance rulings are extended to the applicants only and can't be

generalized and applied to all. Thus the case laws relied upon by the applicant are not deliberated individually.

17. The applicant further sought advance ruling, on the valuation of the impugned supply if their activity is treated as supply, by way of the question which is as under:

In case answer to above is yes
Whether GST is applicable on the ***nominal amount*** *being recovered by the Applicant?*

17.1 Thus the applicant also seeks to know on what value of supply GST is to be discharged. Thus we proceed to examine as to whether GST is liable to be paid on the 'nominal amount' or on any other value for the taxable supplies made by the applicant. In this regard we invite reference to Section 15 of the CGST Act 2017, which deals with the value of taxable supply and the relevant provisions are reproduced as under:

15. Value of Taxable Supply.— (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) .....
(3) .....

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) .....

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

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(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related

17.2 It could be seen from the above that the employer and employee are related persons in terms of explanation (a)(iii) to Section 15 of the CGST Act 2017. In the instant case the supplier of the service i.e. the applicant is the employer and the recipients of the said services are employees and thus they are related persons.

17.3 Section 15(1) supra deals with the valuation of the taxable supply where the supplier and the recipient are not related and the price is the sole consideration for the supply. In the instant case the supplier and the recipients are related and price is not the sole consideration and thus Section 15(1) of the Act is not relevant to the instant case. Further Section 15(4) of the Act stipulates that in the cases *where the value of the supply of goods or services or both cannot be determined under section 15(1), the same shall be determined in such manner as may be prescribed.*

17.4 Section 2(87) of the CGST Act 2017 defines "prescribed" to mean *prescribed by rules made under the said Act on the recommendations of the Council.* Thus we invite reference to the rules prescribed under Chapter IV of the CGST Rules 2017, which deals with the determination of value of supply. Rule 28 deals with the value of supply of goods or services or both between distinct or related persons, other than through an agent and the same is as under:

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;
(b) If the open market value is not available, be the value of supply of goods or services of like kind and quality.
(c) If the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order;

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person

Provided further that the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

18. In the instant case, the applicant and their employees are related persons and the supply is of canteen services (SAC 996333), wherein open market value and the value of like kind and quality are not available from the facts furnished by the applicant and thus clauses (a) and (b) are not applicable and clause (c) alone is applicable, in accordance to which the value of impugned supply has to be determined by the application of rule 30 or rule 31 of the CGST Rules 2017 and the said rules are as under.

Rule 30 : Value of supply of goods or services or both based on cost – where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this chapter (i.e. rules 27,28 & 29), the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of the acquisition of such goods or the cost of provision of such services.

Rule 31 : Residual method for determination of value of supply of goods or services or both – where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

In view of the above, the applicant has to discharge the GST liability on the impugned services on determination of the value of the said supply in terms of either rule 30 or 31, at the applicant's option.

19. Now we proceed to examine and discuss the second question i.e. *eligibility to avail the ITC of the GST paid on the manpower service utilized for running the canteen facility.* In this regard the applicant contended that the canteen facility is provided out of mandate laid down under the Factories Act 1948 and to comply with the said statutory requirement; the GST paid on manpower supply services, that are used for providing canteen facility should be allowed as credit of the same is not restricted under Section 17(5) of the CGST Act, 2017 and there is no restriction on availment or any requirement of reversal of said ITC.

20. In this regard, we find that the services of the applicant are covered under services provided in canteen and other establishments and merit classification under SAC 996333. The said services attract GST @ 5%, without ITC in terms of Sl.No.7 of the Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as

amended. Thus the applicant is not entitled to ITC of the GST paid on manpower supply services that are used for providing canteen facility.

21. In view of the foregoing, we pass the following

RULING

a) *The subsidized deduction made by the applicant, from the employees who are availing food in the factory, would be considered towards "supply" of canteen service by the Applicant under the provisions of Section 7 of the CGST/KGST Act 2017. GST is liable to be paid by the applicant on the value of the said supply to be determined under Rule 30 or 31 of the CGST Rules 2017.*

b) *The applicant is not eligible to avail Input Tax Credit ("ITC") of the GST paid on the manpower supply services used for providing canteen facility.*

(Dr. M.P. Ravi Prasad)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

(Kiran Reddy T)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place : Bengaluru

Date : 29-11-2022

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bengaluru North Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-151, Bengaluru.
5. Office Folder.

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