BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D.No.12-468-4,Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Sri. K. Ravi Sankar, Commissioner of State Tax (Member)
2. Sri. RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No.02/AP/GST/2023 dated: .21.03.2023

1	Name and address of the applicant	M/s. Brandix Apparel India Private Limited
2	GSTIN	37AACCB6569L1Z5
3	Date of filing of Form GST ARA-01	31.05.2022
4	Personal Hearing	11.01.2023
5	Represented by	Rajitha B , Partner
6	Jurisdictional Authority – Central	Anakapalli Range , Visakhapatnam Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in parimateria and have the same provisions in like matter 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 APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Brandix Apparel India Private Limited(hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

3.1 M/s Brandix Apparel India Private Limited (hereinafter referred to as " applicant") is engaged the business of manufacture of apparels and export of the same outside India.. Applicant is having GST Registration number 37AACCB6569L1Z5.

3.2 The applicant has hired a third-party contractor for providing canteen services to the employees in the factory. The third-party contractor raises an invoice on the company for provision of canteen services and recovered amount form the employees for provisions canteen facility. The total amount charged by the canteen service provider per employee per month is Rs.1,538.25/-. Out of the total canteen expense Rs.578/- - is recovered from each employee per month and the applicant bears the cost of balance INR 960.25 per month per employee.

3.3 The applicant has hired a contractor for providing transportation services to the employees of the company transport services per employee per month. The total amount charged by the bus transport service per employee Rs.2,277/-.Out of the total transportation expense only Rs.350/- is recovered each employee per month and the applicant bears cost of balance of INR 1927/- per employee per month.

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:

1. Whether GST would be applicable on the amount recovered from employees for canteen facility provided to them.
2. Whether GST would be applicable on the amount recovered from employees for transportation facilities provided to them.

On Verification of basic information of the applicant, it is observed that the applicant is under State jurisdiction i.e., Achuthapuram Circle, Visakhapatnam Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the State jurisdictional officer concerned stating that no proceedings lying pending with the issue, for which the Advance Ruling sought by the applicant.

5. Applicant's Interpretation of Law:

5.1 The applicant submits that GST should not be applicable on recovery made from employees for canteen facility provided due to the following reasons:-

A) The Applicant submits that, according to Section 7 of the CGST Act the expression 'supply' includes-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. Hence for a transaction to qualify as supply, it should be made in the course or furtherance of business. The term 'business' has been defined under Section 2 (17) of the CGST Act, the relevant portion of which has been reproduced below

a) any trade, commerce, manufacture, profession, vacation, adventure, wager or any 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 of closure of business;
e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members
f) admission, for a consideration, of persons to any premises;
g) services supplied by a person as the holder of an office which has been accepted by him in the course of 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) The applicant submits that the above definition, the term business broadly means any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefit.

C) The applicant in the present case is engaged in the business of manufacture of apparels and not in the business of providing canteen facility. However, since employees are the vital resources to carry out day to day functioning of the business, the applicant provides the canteen facility as a welfare measure. The canteen services are not connected to apparel manufacturing.

D)The applicant further submits that, the services are not falling in the ambit of supply, hence the same shall neither be treated as goods nor services. The amount of partial cost recovered from the employees for the bus facility provided is between employer and employee in due course of employment, hence the same will not be liable to be taxed under GST taw.

E) The applicant submits various rulings by AAR & AAAR in support of his arguments. The above position finds support from the advance ruling of the Maharashtra Authority of Advance Ruling in the case of **M/s Emcure Pharmaceuticals Limited [GST-ARA-119/2019-20/B-03 dated 4 January 2022]** wherein the authority has held the following-

"We also find that the applicant is not supplying any canteen service to its employees in the instant case. Further, the said canteen facility services are also not the output service of the applicant since it is not in the business of providing canteen service. Rather, we find that, this canteen facility is provided to employees by the third-party vendors and not by the applicant. Therefore, in the subject case, the applicant is not providing any canteen facility to its employees, in fact the applicant is a receiver of such services.

Since the provision of canteen facility by the applicant to its employees is not a transaction made in the course or furtherance of business, and since in terms of Section 7 of the CGST Act, 2017, for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business, we find that the canteen services provided by the applicant to its employees cannot be considered as a "supply" under the relevant provisions of the CGST Act, 2017 and therefore the applicant is not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates"

The applicant relies on another advanced ruling passed by Gujarat Authority for Advance Ruling ,in support of his arguments, the relevant portion of the same is reproduced below for reference:

M/s. Cadila Healthcare Limited (ADVANCE RULING NO. GUJ/GAAR/R/2022/19) dated 12 April 2022.

"...We are not inclined to accord this canteen service facility provided by M/s Cadila to its employees to be an activity made in the course or furtherance of business to deem it a Supply by M/s Cadila to its employees.

We pass the Ruling: GST, at the hands of the M/s Cadila, is not leviable on the amount representing the employees' portion of canteen charges, which is collected by M/s Cadila and paid to the Canteen service provider"

We find that M/s Cadila has arranged a canteen for its employees, which is run by a Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by MI s. Cadila whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by M/s. Cadila and paid to the Canteen Service Provider. M/s. Cadila submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges.

The applicant submits further that the Madhya Pradesh Appellate Authority of Advance Ruling has also taken a similar view in the case of**M/s Bharat Oman Refineries Limited [Order No. MP/AAAR/07 /2021 dated 8 November 2021]**. The relevant extract is reproduced below for reference:

"...However, at point no.3 we have held that canteen services would not be leviable to GST at the hands of the employer because of our findings that the employer was merely a facilitator between the canteen service provider and the employee and that the employer was mandated to run a canteen under the Factories Act."

5.2 In the present case, the Applicant submits that canteen service facility provided to its employees should not be considered as an activity made in the course or furtherance of business to deem it a Supply. Therefore, the above advance rulings are squarely applicable to our instant case. The Applicant is not a provider of canteen facility but a receiver of such services and no profit element in the recovery of charges from employees

a) The Applicant has arranged a canteen for its employees which is run by a third-party canteen service provider. As per the arrangement, part of the canteen charges is borne by the employees of the company. The said employees' portion of the canteen charges is collected by the applicant and paid to the canteen service provider without retaining any profit margin and it is a pure reimbursement of the employees' portion of canteen charges.

b) Out of the total amount charged by the canteen service provider per employee per month amounting to INR 1,538.25/-, canteen expenses amounting to only INR 578/- is recovered from each employee per month.

c) Hence, the Applicant further submits that, Applicant is only a mere channel in between the employees and the supplier of food. In this regard, reliance is placed in the case of **M/s Amneal Pharmaceuticals Private Limited [Order No. GUJ/GAAAR/APPEAL/2021 /71 dated 8 March 2021** where it was held as below:

"We observe that the GAAR has ruled that the Goods and Services Tax is applicable on the amount recovered from employees, mainly on the premises that 'the appellant is supplying food to its employees', which would be covered under the definition of the term 'business` under Section 2(17) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017. However, the appellant has asserted before us that it is collecting the portion of employees' share and paying to Canteen Service Provider, a third party, which is nothing but the facility provided to employees, without making any profit and working as mediator between employees and the contractor / Canteen Service Provider. Under these circumstances, we hold that the Goods and Services Tax is not applicable on

the activity of collection of employees' portion of amount by the appellant, without making any supply of goods or service by the appellant to its employees."

The Gujarat Authority of Advance Ruling has taken a similar stand in the Case of **M/s Dishman Carbogen Amcis Ltd. [GUJ/GAAR/R/22/2021 dated 9 July 2021].** The relevant extract is as below:

"We have carefully considered all the submissions made by the applicant. We find that the applicant has arranged a canteen for its employees, which is run by a third party Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by the applicant whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by the applicant and paid to the Canteen Service Provider. The applicant submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. This activity carried out by applicant is without consideration. Thus, we pass the Ruling: GST, at the hands on the applicant, is not leviable on the amount representing the employees' portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider."

Further, the Gujarat Advance Ruling Authority in case of **M/s Tata Motors Limited [GUJ/GAAR/R/39/2021 dated 30 July 2021]** has taken a similar stand.

"We have carefully considered all the submissions made by the applicant. We find that the applicant has arranged a canteen for its employees, which is run by a third party Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by the applicant whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by the applicant and paid to the Canteen Service Provider. The applicant submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges This activity carried out by applicant is without consideration. GST, at the hands on the applicant, is not leviable on the amount representing the employees' portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider."

In the present case, the Applicant also submits that there is no profit margin being added in the canteen facility provided to the employees. Therefore, the above advance rulings are squarely applicable to our instant case.

5.3 Subsidised food supplied is obligated under Factories Act as a welfare measure

a) As per The Factories Act, 1948 a canteen facility is required to be provided to workers wherein 250 or more workers are ordinarily employed. The number of workers in the factory of the Applicant are 11,887 and hence the above provision of the Factories Act is applicable on the Applicant. The canteen facility has been provided under a mandate by the Factories Act as a welfare measure. Relevant extract of the provision is iterated below for your ease of reference.
The Factories Act, 1948; Section 46 - Canteens (1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Hence, the activity of recovery of canteen charges from employees would not be a supply under GST, In addition to the above, recovery made from the employees is towards for supply of food which is solely to comply with the mandate under Factories Act. Basis the above it can be inferred that when any service is provided by employer to employee which becomes part of the cost to company then such services can be said to be provided under employer-employee relationship and would be outside the purview of GST. Once employee ceases to be in employment with Applicant, he/she is not authorized to use the canteen facility. In other words, employer-employee relationship is must to avail this facility.

b) The Applicant would like to rely on the judgement by the Andhra Pradesh High Court in the case of M/s Bhimas Hotels Pvt Ltd. vs the Union of India, Ministry of Finance [2017 (4) TMI 860] under the Service Tax regime wherein the High Court had held that food supplied by an employer to its employees at a subsidized rate forms part of the wages under the Industrial Disputes Act, 1947 and should not be taxable as a service, The relevant extract of the judgement has been highlighted below for reference-"As a matter of fact, any supply of subsidized food to the workers by the management of a Company, has to be seen as part of the pay package that the workers have negotiated with the employer. Under the Factories Act, 1948 and even under the Industrial Disputes Act, 1947, the expression wages would include within its purview, anything that is supplied at a subsidized rate. Section 2(rr) of the Industrial Disputes Act, 1947 defines wages to mean, all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment. Interestingly, the definition of the expression wages under Section 2(rr) of the Industrial Disputes Act, 1947 is both an inclusive as well as exhaustive definition. Once the activity undertaken by the petitioner in the form of supply of food to its workers at a subsidized rate is understood to be part of their industrial obligation, it is unthinkable that the same can be construed as

service falling within the definition of the expression service under Section 658(44) of the Finance Act".

In the present case, the Applicant submits that recovery made from the employees is towards supply of food which is also to comply with the mandate under Factories Act. Therefore, the above advance rulings are squarely applicable to our instant case.

5.4 GST should not be applicable on recovery made from employees for bus transportation services

The submissions made by the Applicant in respect of canteen recovery equally applies so far as the bus transportation is concerned. Therefore, bus transportation facility is excluded from the purview of 'supply' in terms of Section 7 (2) (a) read with Schedule-III to the CGST Act. Further, the Applicant is not engaged in the business of bus transportation neither there is any profit element in the recovery made from employees and accordingly, the said facility provided by the Applicant to its employees cannot be said to be made in the course or furtherance of business. Some of the judicial precedents which have held that GST is not applicable on such employee recoveries on bus transportation of employees is as under-

1) Maharashtra Authority of Advance Ruling in case of M/s Tata Motors Limited [GST-ARA-23/2019-20/B-46 dated 25 August 2020] -

"Applicant has submitted that they issue pass only to their employees, so that the transportation facility can be used by such employees, for which amount is recovered on monthly basis. They have also submitted that once, employee ceases to be in employment with Applicant, he/she is not authorized to use the transportation facility. In other words, employer-employee relationship is must to avail this facility....

In the subject case, the transaction between the applicant Ft their employees, due to "Employer-Employee" relation as stated by the applicant in their submissions, is not a supply under GST Act. To answer the second question we now refer to Schedule Ill to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services As per clause 1 of the said Schedule-Ill, Services by an employee to the employer in the course of or in relation to his employment shall he treated neither as a supply of goods nor a supply of services. Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion that GST is not applicable on the amounts recovered by Applicants from their employees in the subject case."

2) Uttar Pradesh Authority of Advance Ruling in case of M/s North Shore Technologies Pvt Ltd. [Order No. 59 dated 29 June 2020]

"From the details/ documents provided by the party, we observe that the applicant is transferring the entire amount collected from their employees, to the third-party vendor who is providing transport services to their employees. We also observe that the applicant, in his application; has informed that apart from subsidized amount collected from the employees, they are also adding up a considerable amount into it and then paying it to the third-party vendor. The applicant is not retaining any amount collected from the employees towards said transportation charges. We further observe that the applicant is in the business of software development and staff augmentation services and not in the business of providing transport service. Rather, this is a facility provided to their employees under the obligation of Law of the Land. Moreover, this activity is not integrally connected to the functioning of their business...

From the aforesaid discussions, we observe that arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service in the course of furtherance of business"

3) Maharashtra Authority of Advance Ruling in case ofM/s Integrated Decisions and Systems India Pvt Ltd. [GST-ARA-116/2019-20/B-113 dated 16 December 2021].

"We also observe that the partial amounts recovered by the applicant from its employees in respect of use of such transport facility are a part of the amount paid to the third-party vendors__ Therefore, in the subject case, the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services. Accordingly, we are of view that for applicant, arranging the transport facility for their employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function. As we are of the view that arranging transport facility to its employee is not a supply of service, accordingly the remaining questions become redundant and merit no discussion."

In the present case, the Applicant submits it is not engaged in the business of bus transportation neither there is any profit element in the recovery made from employees and accordingly, the said facility provided by the Applicant to its employees cannot be said to be made in the course or furtherance of business. Therefore, the above advance rulings are squarely applicable to our instant case.

In light of the above submissions, we pray for the following to hold that GST is not payable on canteen and bus transportation recovery made from employees. The Applicant request you to grant personal hearing. Further, the Applicant craves leave of your goods self to any additional submissions during and before personal hearing.

6. Personal Hearing:

The proceedings of Personal Hearing were conducted on11.01.2023, for which the authorized representative, Rajitha B, partner attended and reiterated the submissions already made.

7. Discussion and Findings:

We have considered the submissions made by the applicant in their application for Advance Ruling. We have considered the issues involved from which Advance Ruling is sought by the applicant and the relevant facts along with arguments made by the applicant and also their submissions made during the time of the personal hearing. We analyse the applicant's submission and pass our ruling accordingly in the following paras.

7.1 The first issue is regarding provision of canteen services to the employees of the applicant by the third-party service provider. It is seen that the service provider, a third-party, is charging Rs 1538.25 per employee per month which is being paid by the applicant. Out of this amount, Rs 578 is being recovered from the employees from their salaries by the applicant. The applicant further submits that this is as per the requirements of Factories Act, 1948 which stipulates for a canteen facility with work force of more than 250. The applicant's work force is well over 11000 and therefore they are mandated to provide the canteen facility as per the Factories Act, 1948. It is clearly seen that the provision of service of canteen is by the third-party to the applicant and not by the applicant to their employees. As per Section 7 of the CGST ACT, supply includes all forms of supply of goods or services for a consideration by the person in the course or furtherance of business. The applicant is involved in the supply of manufacture of apparel and not in the activity of provision of canteen service. The canteen service is not an output service of the applicant as it is in the business of apparel manufacture. In fact, the canteen services are being received by the applicant from the third-party providers. Therefore, it can be concluded that the provision of canteen facility by the applicant to the employees is not a supply as it is not in the course or furtherance of business. Further, the applicant is merely collecting a part of the canteen expenses from the employee and this does not tantamount to supply as per Section 7 of the CGST and SGST Act.

Further, even if we analyse the transaction between the applicant and its employees, a reference to the GST Policy wing Circular 172/04/2022 dated 6th July 2022, para 2, serial no 5, clarifies that any perquisites provided by the employer to its employee in are in lieu of the services provided by the employee to the employer in relation to the employment and therefore the

perquisites provided by the employer to the employee will not be subjected to GST. As provision of canteen facility is a mandate as per Factories Act, 1948, we see that even considering the employee and employer transaction solely, GST is not applicable.

We therefore hold that the applicant is not liable to pay GST on the recoveries from the employees for the canteen services provided to them.

7.2 The second issue pertains to the provision of transportation services by a third-party to the employees of the applicant. The service provider is charging Rs 2,277 from the applicant per month per employee. The applicant is recovering Rs 350 per employee per month and bearing Rs 1927 on their account. As quoted in above para 7.1, the main business of the applicant is manufacture of apparel and they are not engaged in the business of bus transportation. The transportation services is not a supply for the applicant made in the course or furtherance of business and the recoveries made by the applicant from their employees does not fall under the definition of supply under Section 7. Further, the transportation services are being supplies by the third-party to the applicant and they are receiver and not supplier of the same. Therefore, it can be concluded that the GST is not applicable for the recoveries from the employees for the transportation services provided to them.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question1: Whether GST would be applicable on the amount recovered from employees for canteen facility provided to them?

Answer: Negative

Question2: Whether GST would be applicable on the amount recovered from employees for transportation facilities provided to them?

Answer: Negative

Sd/-K. Ravi Sankar
Member

Sd/-RV Pradhamesh Bhanu
Member

//t.c.f.b.o//

Deputy Commissioner (ST)
Registrar
Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijayawada.

To

M/s. Brandix Apparel India Private Limited, Plot No-18 Pudimadaka Road, Atchutapuram Mandal, Vishakhapatnam.
(By Registered Post)

Copy to

1. The Assistant Commissioner of State Tax, Achuthapuram Circle, Vishakhapatnam Division. **(By Registered Post)**

2. The Superintendent, Central Tax, CGST Anakapallel Range, Vishakhapatnam Division.**(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District , (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.