

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU  
NO.206, 2<sup>ND</sup> FLOOR, PAPJM BUILDING, NO.1 , GREAMS ROAD,  
CHENNAI -600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER  
SECTION 98(4) OF THE TNGST ACT, 2017.**

**Members present:**

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. N. Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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**Advance Ruling No.107/AAR/2023 Dated:05.09.2023**

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
  - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
  - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*
- 3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.*



GSTIN Number, if any / User id		33AAACS4920J1ZJ
Legal Name of Applicant		M/s. Sundaram Clayton Limited
Registered Address / Address provided while obtaining user id		12, Chaitanya, Khader Nawaz Khan Road, Nungambakkam, Chennai 600006.
Details of Application		Form GST ARA - 01 Application Sl.No.50/2022/ARA, dated 18.10.2022
Jurisdictional Authority		Center: Chennai North Commissionerate State : LTU DC2
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for-		
A	Category	Factory/Manufacturing
B	Description (in brief)	Manufacture and supply of Auto component
Issue/s on which advance ruling required		<p>i. Determination of liability to pay tax on any goods or services or both.</p> <p>ii. Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.</p>
Question(s) on which advance ruling is required		<p>Whether recovery of subsidized value from employees for providing canteen facility would (a) amount to 'supply' under the CGST Act and (b) whether the recovery would attract Goods and Services Tax(GST), under the following two models:</p> <p>(i) Canteen operated by the Applicant within the factory premises</p> <p>(ii) Canteen run by Applicant's subsidiary company operating within common premises for which the subsidiary company recovers charges from the Applicant.</p>

M/s. Sundaram Clayton Limited, 12, Chaitanya, Khader Nawaz Khan Road, Nungambakkam, Chennai 600006 (herein after referred to as 'The Applicant'), are



registered with GST and hold GSTIN 33AAACS4920J1ZJ. The Applicant is engaged in the manufacture and supply of die-casting parts for use in automobiles.

2.1. The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.2. The Applicant submitted that

- Under the said registration, they have 3 plant locations which are located in three different districts of Tamil Nadu namely Padi (Chennai), Oragadam (Chennai) and Belagondapalli (Hosur) and a registered Corporate Office in Chennai.
- They have over 3100 people working at aforementioned factories which includes employees and trainees, who are in their payrolls and also include contractual workers who are on the rolls of third party.

Factory location	Employees	Trainees	Contractors	Total
Padi	929	674	161	1764
Oragadam	269	349	196	814
Hosur	221	243	60	524

- Section 46 of the Factories Act, 1948, prescribes that-  
*“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”*
- The State Government of Tamil Nadu has provided for mandatory provision of canteen facility under the Tamil Nadu Factories Rules, 1950, which states that-  
*“65(2) The occupier of every factory notified by the State Government and wherein more than two hundred and fifty workers are ordinarily employed shall provide in or near the factory an adequate canteen according to the standards prescribed in these rules”.*
- Further ‘worker’ is defined under Section 2(I) of the Factories Act as,

*“a person employed, directly by or through any agency (including a contractor) with or without the knowledge fo the principal employer, whether for remuneration or not, in any manufacturing process, .....”*

- In compliance with the said requirement, a canteen is provided in the factory premises under two models:
  - a. Model I – Canteen operated by the Applicant(Padi) – Applicant runs the canteen, hired a cook who is their employee and food supplies are bought by the Applicant
  - b. Model II – Canteen run by a third party (Oragadam and Hosur) – Applicant avails canteen services from its subsidiary company namely Sundaram Auto Components Limited(SACL). There is a common canteen for food preparation operated by SACL. After the food is prepared, SACL sends the food to the Applicant’s dining area within the Applicant’s plant. SACL recovers charges for the canteen facility provided to the Applicant’s workers and the Applicant in turn recovers subsidized amount from its workers.
- They recover a subsidized amount from the workers, as given below, and the remaining cost is borne by them.

Plant Location	Type of worker	Recovery per month/day
Padi (own canteen)	Regular	25 per month
	Trainee	25 per month
	Contractors	Rs.15 or 30/per day
Oragadam (SACL)	Regular	Rs.5 per day
	Trainee	Rs.5 per day
	Security	Rs.15 per day
	Contractors	Rs.30 per day
Hosur (SACL)	Regular	Rs.5 per day
	Trainee	Rs.5 per day
	Contractors	Rs.15 per day

2.3. In their interpretation of law/facts in respect of the questions raised, the Applicant submitted that –

- The subsidized amount collected from the workers for provision of canteen facility should not attract GST under both the models



- As per the scope of the term 'supply' as enumerated in Section 7(1) of the CGST Act, for applicability of GST on any transaction there should be the following ingredients:
  - (a) Supply of goods or services
  - (b) Such supply is made or agreed to be made for a consideration; and
  - (c) Such supply should be for furtherance of business.
- The first requirement is that there should be a legal intention and agreement between the parties to supply and receive goods or services or both. The absence of such intention would not amount to 'supply' within its meaning under the CGST Act and in this regard reliance was placed on judgement of European Court of Justice in the case of R.J.Tolsma V Inspecteur Omzetbelasting Leewarden in the case C-16/93.
- There is no legal intention between them and the workers to provide canteen services for a consideration, but it is only a statutory obligation under the Factories Act; There is no actual agreement between them and the workers with a positive act for consideration; The mention of provision of canteen facility in the HR policy and the Wage Agreement with employees cannot be called an agreement entered into by the parties to provide/avail canteen facility; The HR policy and the Wage Agreement merely specifies the facilities that are available to the workers, which are common to all and hence cannot be equated with an agreement to supply goods or services.
- The second requirement is the presence of 'consideration' against the supply; If an activity is undertaken but there was no agreement between the parties, any payment received by a party cannot be automatically linked to a supply for the purpose of levying GST; In this regard, reliance was place on the judgment of Bombay High Court in the case of Bai Mumbai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia Vs Suchita [Commercial Suit(I) no.236 of 2017 decided on 13.09.2019]; The amount collected from the workers towards canteen charges is merely to reimburse the cost incurred by them and it does not give rise to reciprocal obligations between the parties; Therefore, in absence of identifiable supply, the activity of recovery would not constitute a 'supply' and hence GST not leviable.
- The last requirement for a transaction to qualify a 'supply' is for it to be in course of furtherance of business. The activity of providing canteen facility does not fall under any of the clauses of the definition of 'business'. Their main business is manufacture and supply of die-casting parts and provision



of canteen facility is not incidental or ancillary to their main business. Therefore, taxability under Schedule I also fails.

➤ In this regard, reliance was placed on the following case laws:

- i. The Indian Institute of Technology, Kalyanpur, Kanpur V the State of Uttar Pradesh and Ors[1976(38) STC 428(All).
- ii. Panacea Biotech Ltd V Commissioner of Trade & Others[2012(12) TMI 826(Delhi High Court)]
- iii. Emcure Pharmaceuticals-Maharashtra AAR[AAR No.GST-ARA-119/2019-20/B-03 dated 04.01.2022]
- iv. Muashi Auto Parts India Pvt. Ltd. – Haryana Appellate AAR[HAAR/2020-21/06 dated 25.09.2020]
- v. North Shore Technologies Pvt Ltd. 2021(49) GSTL 315(AAR-GST-UP).

➤ Subsidised food is a perquisite to employees(excluding contractors) forming a part of the wage agreement and HR policy of the Agreement; Canteen facility is provided to the employees as part of their employment with them; As per Schedule III of the CGST Act, services by an employee to the employer in course or in relation to his employment shall be treated neither as a supply of goods nor a supply of services; Reliance is placed on Circular No.172/04/2022-GST dated 06.07.2022, wherein it was clarified that perquisites provided by the employer to its employees in terms of contractual agreement will not be subjected GST.

➤ Reliance is placed on Maharashtra Advance Ruling Authority's order in the case of Tata Motors Limited[GST-ARA-23/2019-20/B-46 dated 25.08.2020].

➤ In case GST is applicable on the recovery of canteen charges, the same should be restricted to the value of charges actually collected from workers. A combined reading of the Circular cited supra and meaning of the term 'perquisite' as per Section 17(2) of the Income Tax Act, 1961, it emerges that the intention of the Circular is to clarify that GST is not applicable on a perquisite which is part of the employment agreement and which may be free of cost for the employees; Consequently, in case where a recovery is made against a supply, the same may be subject to GST; Regarding recoveries from workers other than employees, it is an unrelated party transaction and therefore GST can apply on the transaction value only. In this regard, reliance is placed on TNAAR ruling in the case of M/s Kothari Sugar and Chemicals Limited [No.20/AAR/2022 dated 31.05.2022].



- In respect of Model 2, canteen facility through SACL is in nature of a back-to-back arrangement and they do not retain any profit margin. They mediate with SACL and employees as a pure Agent. They are not providing any goods or services on his account. Therefore, merely the act of recovery and reimbursement will not attract GST; As per Rule 33 of the CGST Rules, 2017, expenditure or costs incurred as a pure agent are excluded from the value of supply. In this regard, reliance was placed on the following judgments:

- Amneal Pharmaceuticals – FUJ/GAAAR/Appeal/2021/07 dated 08.03.2021
- Bharat Oman Refineries Ltd – MP/AAAR/07/2021 dated 08.11.2021

3.1. The Applicants were offered personal hearing on 23.08.2023, wherein Shri. Kulraj Ashpnani and Mr. Arun Fatela, Chartered Accountants(Authorised Representatives –AR) appeared for the Applicant and reiterated the submissions made in the application. He submitted copies of Employment letter and Wage Agreement, wherein mentioned was made regarding recovery of subsidised charges for availing canteen facility. The AR also cited the following ruling passed by AARs of other states, where the issue was decided in their favour:

- i. Shriram Pistons and Rings Limited -2023-VIL-106-AAR
- ii. Cadila Pharmaceuticals Limited – 2023-VIL-68-AAR
- iii. Brandix Apparel India Private Limited – 2023-VIL-63-AAR
- iv. Astral Limited – 2022-VIL-82-AAR
- v. Zydus Lifesciences Limited – 2022-VIL 260-AAR
- vi. Tata Autocomp Systems Limited -2023-VIL-108-AAR

3.2. The AR was asked to submit the following documents:

- Copies of agreements with the employees from 2017-18
- Sample invoices issued to Manpower supplier
- Copies of books of accounts showing accounting entry in respect of staff welfare
- Copies of sample consolidated invoices issued for recovery of nominal charges from the employees.
- Rationale behind recovery of Rs.5/Rs.15/Rs.25 per day

The Applicant vide their letter dated 04.09.2023 submitted the above documents. In respect of the last point above, they submitted that the recovery is determined



by way of discussion by the Management with the Worker's Union on a time to time basis.

4.1. The Applicant's jurisdictional Central Authority has submitted their remarks on the questions raised as under:

- The canteen has been established and the facility is provided as per the provisions of Section 46 of the Factories Act, 1948. This activity is an incident to the running of business. As per the term 'Business', defined under Section 2(17) of the GST Act, supply of food by the Applicant to its workers would fall under the clause (b) of the said section, as transaction incidental or ancillary to the main business. They collect a nominal fixed amount as employee cost in respect of food consumed by their employees and bears certain running cost which is an activity in furtherance of business.
- The supply made by a taxable person in the course of furtherance of business is an outward supply as per Section 2(83) of CGST Act, 2017.
- As per clause 6 of Schedule II of CGST Act, 2017, also supply of food for cash, deferred payment or other valuable consideration is declared as supply of service; Thus there is supply as provided in Section 7(1)(a) of the CGST Act, 2017, and the Applicant would fall under the definition of supplier as provided under sub-section (105) of Section 2 of the CGST Act, 2017;
- The applicant and workers are related persons as per Explanation (a)(iii) to Section 15 of CGST Act, 2017.
- Hence supply of food to their employees by the applicant is supply under the CGST Act, 2017 and attracts GST.

4.2. The Applicant's jurisdictional State Authority has not submitted any remarks and hence it is presumed that there are no pending proceedings in the Applicant's case on the issue raised in the application.

#### **DISCUSSION AND FINDINGS:**

5.1. We have considered the submissions made by the applicant in their application for advance ruling and the submissions made by their AR during the course of personal hearing and additional submissions made thereon with reference to the issues involved and relevant facts.



5.2. Before moving further, we have to determine the admissibility of the application. In terms of Section 97(2) of the CGST/TNGST Act, Question which advance ruling is sought under the Act, falls within the scope of Section 97(2)(e) & (g) of the CGST/TNGST Act, 2017, and therefore the application is admissible.

5.3. The Applicant has raised the following question on which he has sought Advance Ruling:

‘Whether recovery of subsidised value from employees for providing canteen facility would (a) amount to ‘supply’ under the CGST Act and (b) whether the recovery would attract GST under the following two models:

- Model I - Canteen operated by the Applicant within the factory premises
- Model II - Canteen run by Applicant’s subsidiary company operating within common premises for which the subsidiary company recovers charges from the Applicant.

It is seen that in Model I the Applicant had set up a canteen facility in their Padi factory for the benefit of its employees and workers, wherein the cook is their employee and inputs for cooking are bought by the Applicant. In Model II, operated in Oragadam and Hosur, Canteen run by Applicant’s subsidiary company(SACL) operating within common premises for which the subsidiary company recovers charges from the Applicant. In both the models, a subsidised amount is collected from the employees/workers towards availing canteen facility. The clarification sought is as to whether GST is liable to be paid on that part of the amount collected from their employees towards provision of food for both the models. The contention of the applicant is that -

- There is no supply between the Applicant and the employees and the Applicant is not engaged in the business of provision of canteen services.
- The amount received from the employees is in the nature of recovery and not consideration. The recovered amount is directly paid to the third-party vendor without any profit element in the hands of the Applicant.
- Subsidised food is a perquisite to employees(excluding contractors) forming a part of the wage agreement and HR policy of the Agreement; As per Schedule III of the CGST Act, services by an employee to the employer in course or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.
- In Model II, the Applicant mediate with SACL and employees as a pure Agent and they are not providing any goods or services on his account; Therefore,



merely the act of recovery and reimbursement will not attract GST as per Rule 33 of the CGST Rules, 2017.

6.1. The Applicant has stated that the total number of employees (including trainees & contractors) in Padi factory is 1764, in Oragadam 814 and in Hour 524. The employees and trainees are in their payroll and contract labourers are in the payroll of a third party contractor. They have deployed employees for preparation of food at their Padi unit, where the required inputs are procured by the Applicant. In their Oragadam and Hosur unit, canteen is run by Applicant's subsidiary company(SACL) operating within common premises for which the subsidiary company recovers charges from the Applicant. The Applicant recovers agreed rate for the food consumed at the concessional rate from each of the employees for the supply of food in the canteen and the balance cost incurred is borne by them as cost to the employer. The offer of appointment letter in respect of the employees at M/s Sundaram Clayton, Padi unit were furnished. On perusal of the employees appointment order dated 08.05.2018, 02.03.2018 and 03.10.2016 furnished in respect of Shri M Aravindhnan, Shri A Bakiaraj and Shri V Velmurugan respectively, it is seen that at point no. 19, it was mentioned that the employee will be entitled to use the canteen facility within the Factory premises as mandated under the Factories Act, 1948 and the Company will recover charges on a subsidized basis for availing the canteen facility. The Applicant also furnished a Memorandum of Settlement dated 26.10.2020 entered into between the Management of Sundaram Clayton Ltd and the workmen of Die Casting Division, Hosur, wherein at point No.30, a mention is made that canteen recovery of Rs.5/- per day remains unchanged.

6.2. From the above, we find that Applicant provides canteen facility either by himself or through a third party and is providing meals/food at concessional rates, i.e., no meal is extended free and specified amount in respect of the food consumed by the employee are collected by the Applicant against such consumption of food. Further, as seen from the documents furnished i.e. appointment order, availing the canteen facility made available by the Applicant in their premises is not mandatory. With the above facts, the question sought on the liability to pay GST on the amount collected by the employees is taken up.



7.1. Firstly, the first part of the question i.e. whether recovery of subsidised value from employees for providing canteen facility would amount to 'supply' under the CGST Act, is taken up. It is the contention of the Applicant, that canteen has been established as required under the Factories Act. Factories Act, 1948 on providing the facility of Canteen, states as follows:

46. Canteens. (1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for--

- (a) the date by which such canteen shall be provided;
- (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made therefor;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- 1\*[(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;]
- (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

From the above provision, it is seen that the Act mandates establishing a canteen when more than two hundred and fifty workers are 'ordinarily' employed in a factory and as per sub- clause (2)(dd) above, certain expenditure are to be borne by the employer. Abiding by the above provisions, since the number of workers and contract labourers, ordinarily employed exceeds 250 in number, the Applicant has established a canteen.

7.2. We find it is pertinent to see the term 'business' in the context of GST. The term "**business**" is defined in Section 2(17) of the GST Act 2017 as:

"business" includes:

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidents or ancillary to sub-clause (a); .



In the case at hand establishing a canteen facility in the unit is an activity incident to the running of their business. Factory Act, above mandates establishing canteen, bearing certain mandatory costs in running of the canteen by the employer in as much as the number of workers 'ordinarily employed' (workers & contract labourers) are above 250 per unit, which is the case in hand as per their submissions. Accordingly, the applicant has established the canteen in their premises and bears certain running cost while collecting the nominal rate as fixed by the Managing Committee, which is an activity in furtherance of their business.

7.3. The term 'Outward supply', is defined in Section 2(83) of the CGST Act, 2017, as below:

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

Thus supply made by a taxable person in the course or furtherance of business is an 'Outward supply'. It has been brought out above, that establishing canteen is in the furtherance of business of the Applicant. Thus, the provision of food in the canteen for a nominal cost is a 'Supply' for the purposes of GST. Here, the Applicant has relied on a judgment of European Court of Justice regarding the issue of 'supply of service'. We find that this judgment has no relevance as case in hand is dealt in Indian laws.

7.4. It was also the contention of the Applicant that the amount received from the employees is in the nature of reimbursement of the cost incurred by the Applicant and there is not enforceable reciprocal obligations. However, we find that as stated supra, the running of canteen in the premises of the Applicant is in the course of furtherance of business. It is also clear that in running of such a canteen, the employer, i.e., the Applicant is mandated to bear certain costs. Provision of canteen facility and bearing certain costs in running of canteen are mandated on the part of the employer as per the Factories Act. Accordingly, such canteens are provided. It has been established that the supply of food in the canteens are 'Supply of Service' by the Applicant. 'Consideration' is defined in Section 2(31) of the CGST Act 2017 as:

'Consideration' in relation to the supply of goods or services or both includes,-



*a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.*

In the case at hand, the Applicant supplies food to their employees at a nominal cost, and the same is the consideration for such supply made by the Applicant on which GST is liable to be paid. The Applicant had relied on judgment of Bombay High Court in the case of Bai Mumbai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia Vs Suchita [Commercial Suit(I) no.236 of 2017 decided on 13.09.2019] and it was the contention of the Applicant there was no agreement between the parties. In contrast, we find that there is reciprocal obligation between the parties as there is a specific mention in the appointment order regarding recovery of subsidised charges for availing canteen facility. Hence, we find that reliance the said case law in their favour is of no avail.

7.5 The Schedule II to the CGST/SGST Act, 2017 describes the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service:

*"Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is-for cash, deferred payment or other valuable consideration."*

In the instant case, the Appellant had established the canteen in their premises and has been bearing a part of the cost for providing the food/beverages to their employees and a part of the cost is being collected from employees, by adopting subsidized rates. The supply of the food/beverages, although at subsidized rates, by the Applicant to their employees is certainly an activity amounting to supply of service and attracts levy of GST on that part of the consideration being charged for such supply. The supply of food by the employer, i.e, the applicant to their employees is composite supply of food held as 'Supply of service' as per Schedule-II of the GST Act and the amount collected by the Applicant is a 'Consideration' on which GST is liable to be paid.

7.6 Reliance was placed by the Applicant in the cases of Honble High Court's decision in the case of The Indian Institute of Technology, Kalyanpur, Kanpur V the



State of Uttar Pradesh and Ors[1976(38) STC 428(All), which pertains to levability of Sales Tax, which is not the case in hand. The other case law viz. Panacea Biotech Ltd V Commissioner of Trade & Others[2012(12) TMI 826(Delhi High Court)], which the Applicant has relied, wherein the facts of the case are entirely different from the facts of the case in hand.

7.7 The next contention of the Applicant is that subsidized food is a perquisite to employees forming a part of the wage agreement and HR policy of the Applicant. The Applicant stated that the perquisites forming part of employment contract were excluded from GST as per the Circular no. 172/04/2022-GST dated 06.07.2022 of CBIC. The relevant extract of the said circular is reproduced hereunder for ease of reference:

S.No	Issue	Clarification
5.	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	<p>1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</p> <p>2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.</p>

7.8 As per the contents of the employment appointment orders issued to their employees, it is evident that, *inter alia*, there exists a clause stating that “You will



*be entitled to use the canteen facility within the Factory premises as mandated under the Factories Act, 1948 and the Company will recover charges on a subsidized basis for availing the canteen.*" We find that there exists an express mention in the terms of agreement between the Applicant and the employees.

7.9 At this juncture, we find that it is pertinent to see the definition of the term 'Perquisite'. As per Section 17(2) of the Income Tax Act, 1961, "Perquisite" is defined as

*"any casual emolument or benefit attached to an office or position in addition to salary or wages."*

Thus a 'perquisite' is a non-cash benefit attached to an office or position which is in addition to salary or wages. Generally, such perquisites being a part of the salary or Cost to Company of the employee are free of cost i.e. the employee does not pay anything additional for a perquisite.

7.10 A combined reading of the Circular and the term 'perquisite', we find that the intention of the Circular is to clarify that tax is not applicable on perquisite which is part of the employee agreement and which may be free of cost for the employees. Accordingly, in case where a recovery is made against a supply, even if it is subsidised, the same will be subjected to tax. We find that the benefit of the non-levy of GST could be extended only to the extent of the consideration being borne by the Applicant out of the total cost for supply of the food/beverages, but not to the extent of the consideration being collected at the subsidized rates, by the Applicant from their employees. Thus, we hold that GST is to be levied on the amount recovered by the Applicant from the employees towards canteen provision.

7.11 Further, it was the contention of the Applicant that in respect of Model II, where canteen facility is provided through a third party i.e. SACL, the Applicant's role is limited to collecting the amount from the workers for onward payment to SACL and thereby they act as a pure agent. We find that this contention of the Applicant is not acceptable as the third party i.e. SACL is providing the canteen service to the Applicant and not to the employees. The Applicant in turn is providing the canteen facility to the employees. This fact is stated by the Applicant themselves in their application. Moreover, the first condition to act as a pure agent is that the service recipient should enter into a contractual agreement to authorize a person to act a pure agent for them. Whereas, in the present case, the employees have not



authorised the Applicant to act as their agent. Hence this contention of the Applicant is totally not tenable.

8. The Applicant has referred to the rulings of various advance ruling authorities and appellate authorities, wherein it is held that the provisioning of canteen services to employees is not taxable activity chargeable to GST. Prima-facie, such rulings passed by advance ruling and appellate authorities cannot be generalized and applied to all cases as they binding only on the Applicant of that Advance Ruling.


In view of the above, we pass the following

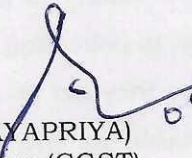
**RULING**

**Question:** Whether recovery of subsidized value from employees for providing canteen facility would (a) amount to 'supply' under the CGST Act and (b) whether the recovery would attract Goods and Services Tax (GST), under the following two models:

- (i) Canteen operated by the Applicant within the factory premises
- (ii) Canteen run by Applicant's subsidiary company operating within common premises

**Answer:** For both the models, recovery of subsidised value from employees for providing canteen facility will amount to 'supply' under the CGST Act and GST is to be levied on the amount recovered by the Applicant from the employees towards provision of canteen facility.

  
(N. USHA)  
Member (SGST)

  
(D. JAYAPRIYA)  
Member (CGST)

To,  
M/s. Sundaram Clayton Limited, 12, Chaitanya,  
Khader Nawaz Khan Road, Nungambakkam,  
Chennai 600006

//BY RPAD//

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,  
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034



2. The Additional Chief Secretary/Commissioner of Commercial Taxes,  
II Floor, Ezhilagam, Chepauk, Chennai-600 005

Copy to:

1. The Commissioner of GST & Central Excise, Outer Commissionerate, Newry  
Towers, Anna Nagar, Chennai-600041.
2. The Assistant Commissioner (ST),
3. Master File/ Spare-2