RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX, KAR BHAWAN, AMBEDKAR CIRCLE,NEAR RAJASTHAN HIGHCOURT
JAIPUR – 302005 (RAJASTHAN)

ADVANCE RULING NO. RAJ/AAR/2024-25/19

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Federal-Mogul Ignition Products India Limited, SP-812/ B1 &2, Phase-III, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, 301019
GSTIN of the applicant		08AAACF4128M1ZJ
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(d)admissibility of input tax credit of tax paid or deemed to have been paid e) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by applicant with respect to any goods or services or both, within the meaning of that term
Date of Personal Hearing	:	30.08.2024
Present for the applicant	:	Mr. Manish Nitharwal and Mr. Vikas Agarwal C.A.
Date of Ruling	:	14.10.2024

Note 1: Under Section 100 of the CGST/RGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/RGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s Federal-Mogul Ignition Products India Limited, SP-812/ B1 &2, Phase-III, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, 301019(hereinafter *"the applicant"*) is fit to pronounce advance ruling as they have deposited prescribed Fee under CGST Act and it falls under the ambit of the Section 97(2) given as under:

(d) Admissibility of input tax credit of tax paid or deemed to have been paid
(e) Determination of the liability to pay tax on any goods or services or both.
(g) Whether any particular thing done by applicant with respect to any goods or services or both, within the meaning of that term

A. <u>SUBMISSION OF THE APPLICANT</u>(in brief):-

Brief facts of the case :

- M/s Federal-Mogul Ignition Products India Limited (hereinafter referred to as 'the Applicant') is a manufacturer of auto components. The Applicant is engaged in the manufacture, supply and distribution of Spark Plug used in two/three/four-wheeler automobiles.
- The Applicant has a factory wherein manufacture of the aforementioned goods is carried out; and has about 311 full–time employees working on a permanent as well as contractual basis.

O/C

- The Applicant has contracted with Punjabi Flavouraz Catering Service (hereinafter referred to as 'the Canteen Service Provider') to operate Canteen within the Applicant's factory premises and a part of the cost of the meals provided is deducted by the Applicant from their employees' salaries on a monthly basis.

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (IN BRIEF)

- The Applicant is a Company incorporated under the provisions of the Companies Act, 1956 having a manufacturing plant (hereinafter referred to as **'the Factory'**) situated at SP-812/ B1 &2, Phase-III, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, 301019 and is *inter alia* involved in the business of manufacture, supply and distribution of Spark plugs used in two/three/four-wheeler automobiles. The Applicant is registered under the GST regime in the State of Rajasthan *vide* GSTIN 08AAACF4128M1ZJ.

- Canteen facility

  The Applicant has employed about 311 employees in its factory. Since the Applicant is registered under the provisions of the Factories Act, 1948 (hereinafter referred to as "Factories Act"),it is required to comply with all the obligations and responsibilities cast under the provisions of the Factories Act. The summary of the type of employees and the nature of recovery of subsidized value is tabulated below for the references.

Sl. No.	Types of employees	Canteen facility	Mode of availing facility	Type of food	Basis of recovery	Mode of recovery	Book treatment	ITC availment in inward supply	Payment of GST on outward supply
1	Management employees	Available to all the employees	Entry in the attendance register	Meals	Fixed recovery	Standard deduction of INR 200 per month (**subsidized**) and disclosed under the deduction side of the salary payslip	Deduction is credited to the canteen recovery account under income head while the full amount of the invoice issued by the Canteen Service Provider is booked as expense in the Applicant's Profit & Loss account	ITC of the GST paid on the Canteen Service Provider's invoice, is not availed	GST is paid on the basis head count in the attendance register during the month on **open market value** (i.e. the value charged by the canteen service provider)
				Snacks & tea / milk					
2	Contract employees		Entry in the attendance register	Meals	On the basis of consumption	Payment is made to the manpower supplier after deducting the **subsidized** charges towards the canteen facility used by the contractual staff.			GST paid on the actual amount deducted
				Snacks & tea / milk					

The employees employed by the Applicant can be largely categorized into 2 types, i.e. management employees and contractual employees. The canteen facility is available to all the employees of the Applicant.

- The applicant maintains an attendance register of the employees who avails the canteen facility. The contract employees will be charged only for the days on which the employee had used the canteen facility. The payment is made to the manpower supplier after deducting the subsidized charges towards the canteen charges. Further, in case of management employee, the standard rate of INR 200 per month will be charged and deducted from the salary irrespective of use of canteen facility.

- The above deduction is credited to the Canteen recovery account under Income head while the full amount of the invoice issued by the Canteen Service Provider is booked as expense in the Applicant's Profit & Loss account without taking the benefit of ITC of the GST paid on the Canteen Service Provider's invoice.
- The canteen recovery on subsidized basis made from the Management employees is disclosed under the deduction side of the salary pay slip, and the subsidized charges towards the canteen facility used by the contractual staff are deducted while making the payment to the manpower supplier and no invoice is raised on the manpower supplier towards deduction.
- The Applicant discharges GST on the canteen facility basis the head count in the attendance registers during the month at an open market value which is determined as under -

  Management employees - Per plate rate charged by the Canteen Service Provider from the Applicant for the Canteen services (i.e. open market value instead of actual recovery made from the employees)

  Contractual employees - GST is paid on the actual recovery from Manpower Supplier towards meals and snacks deemed as open market value.
- Further, the Applicant is liable to pay to the Canteen Service Provider for establishing the canteen set-up who raises GST invoice with tax rate of 5%. The Applicant does not avail ITC of the GST component paid there under.
- The Applicant has set up the canteen facility in a demarcated area within its factory premises wherein tables, chairs, utensils, washrooms, wash basins, storage rooms for keeping the cooked food, washing the utensils etc. have been provided by and maintained and the ultimate control of the factory lies with the Applicant.
- The mutually agreed roles and responsibilities of the Canteen Service Provider and the Applicant are clearly laid out in the Scope of Work mentioned in the Canteen Service Agreement dated January 16, 2020 (hereinafter referred to as **"SOW"**).The copy of the Canteen Service Agreement along with the SOW is enclosed for references.
- While the food is provided by the Canteen Service Provider to all the employees at the canteen facility set up by the Applicant, considering that it is practically inconvenient to enter in contractual agreement with every employee, the Canteen Service Provider has requested the Applicant and has entered into a contractual arrangement with the Applicant. It is agreed that the Applicant shall contract and pay in full for the food served during a prescribed period on behalf of the employees. and a portion of the amount paid by the Applicant is recovered from the employees and the balance amount which is borne by the Applicant, is treated as employee benefit / welfare expenses.

Applicant's interpretation:

B.1 The Applicant submits that the nominal amount deducted from the salary of the employees for providing the canteen facility, cannot be considered as supply as per Section 7 of CGST Act, therefore, GST cannot be levied on such activity. To analyses whether arranging the canteen facility for serving food in the factory to meet out statutory obligation laid under Section 46 of the Factories Act, 1948 would be considered as 'Supply of Service' by the Applicant to the employees, the Applicant has relied on the following legal interpretation of the CGST Act. Merely setting up of a canteen facility for the employees and deduction of nominal cost would not tantamount to Supply under Section 7 of the CGST Act. No GST to be levied on third-party canteen charges collected by employer from employee. The applicant submitted various case laws in support of their claims.

B.2 In the light of the above, the Applicant submits that the canteen facility provided to the employees is in accordance to 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 or furtherance of the business and it cannot be regarded as "supply" under GST law and hence not taxable under GST.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

Question 1:

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 Central Goods and Service Tax Act, 2017 and Rajasthan Goods and Service Tax Act, 2017.

a. If yes,
   i. Whether GST would be leviable in cases where nominal amount will be deducted from the salary of the employees by the Applicant?
   ii. Whether GST would be leviable in cases where nominal amount is recovered from the Manpower supplier in case of contractual employees?

b. Whether ITC of the GST charged by the Canteen Service Provider would be eligible for availment to the Applicant?

D. COMMENTS OF THE JURISDICTIONAL OFFICER: -

Comments received from the Assistant Commissioner CGST Division-C, Bhiwadi, Rajasthan vide letter NO. V(GST)18/Advance Ruling/Federal Mogul/Golitze/BHD-C/22-23/838 Dated: 29.07.2024 are as under: -

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 CGST Act 2017 and Rajasthan GST Act 2017:

In the above subject matter Observations of jurisdictional officer are as under:-

Supply of food/canteen facility service by the applicant to its employees, being an activity or transaction which is incidental or ancillary to the main business would come under the definition of business as provided in Section 2(17) of the CGST Act 2017.

Even though no profit has been earned by the applicant on such canteen services, however, the same constitutes supply under Section 7(1)(a) of the CGST Act 2017.

As per Schedule II of the CGST Act 2017, such provision of service by the applicant to its employees constitutes supply of services. Clause 6(b) of the Schedule reads as follows:

"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."

It has also been observed that since the applicant recovers the cost of food from its employees, there is consideration as defined in Section 2(31) of the CGST Act, 2017.

Relevant extract of Section 2(31) of the CGST Act, 2017 reads as follows:

"(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;"

Since the applicant recovers the expenditure incurred in the provision of service as a deduction from the employees' salary, it constitutes a consideration under clause (a) of Section 2(31) of the GST Act, 2017.

On this similar issue decision has also been made under the advance ruling filed by M/s Sundaram Clayton Limited, Tamil Nadu under which the authority under its order dated 25.09.2023 has held that:

Supply made by a taxable person in the course or furtherance of business is an Outward supply and establishing a canteen is in the furtherance of the business of the Applicant. Thus, the provision of food in the canteen for a nominal cost is a 'Supply for the purposes of GST.

b. 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, GST is to be levied on the amount recovered by the Applicant from the employees towards canteen provision.

a. Conclusion: Therefore, on the basis of the above observations, this office is having the view that the recovery of food expenses from the employees for the canteen services provided by applicant/outsourced would come under the definition of outward supply as defined under Section 2(83) of the CGST Act 2017, and therefore, taxable as a supply of service under GST.

Whether GST would be applicable on the nominal amount deducted from the salaries of its employees- Yes

Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees: Since the main service is falling under GST, accordingly GST would applicable on the nominal amount deducted from the Manpower supply contractor in case contractual employee.

B. Whether ITC of GST charged by the Canteen Service Provider would be eligible for availment to the applicant:-

It must be noted that as per Sec. 17(5)(b)(i) of the Central Goods & Services Tax ("CGST") Act, 2017, input tax credit is not available in respect of food and beverages as well as outdoor catering unless the same is used by the registered recipient for making an outward taxable supply of same category of goods or services or as an element of a taxable composite or a mixed supply. Here the taxpayer is not involved in the same line of business, accordingly, Input tax credit would not be eligible to the taxpayer as the same is falling under section 17(5)(b)(i) of CGST Act 2017.

Earlier, In the matter, after giving opportunity of personal hearing to the applicant an order was passed on dated 18.10.2022 via ADVANCE RULING NO. RAJ/AAR/2022-23/14. The finding of order is summarized as below:-

1. We have perused the records on file and gone through the facts of the case and the submissions made by the applicant as well as the department. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.
2. As per written submission made by the applicant, engaged in manufacturer of auto components, supply and distribution of automotive components used in two/three/four-wheeler automobiles. It offers Value Seat, Value Guide and Structural

Part. Further, the applicant is involved providing Canteen Services to its worked through contractual agreement with Punjabi Flavouraz Catering Service(hereinafter referred to as 'the Canteen Service Provider') and recover subsidized deduction from workers.

3 The question of law raised by the Applicant is –

3.1 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 Central Goods and Service Tax Act, 2017 and Rajasthan Goods and Service Tax Act, 2017.

In case answer to above is yes,

I) Whether GST is applicable on the nominal amount deducted from the salaries of its employees;

II) Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?

3.2 Whether Input Tax Credit ('ITC') of the GST charged by the Canteen Service Provider would be eligible for availment to the Applicant

4. On Examine of the application submitted by the applicant, we find that the applicant is involved in providing/ supplying Canteen Services to its employees as well as to contract workers. The Applicant has contracted with Punjabi Flavouraz Catering Service (hereinafter referred to as 'the Canteen Service Provider') to operate Canteen within the Applicant's factory premises; and a part of the cost of the meals provided is deducted by the Applicant from their employees' salaries on a monthly basis and fix rate is recovered from contractor in case of contract workers.

5. Based on the written submission made by the applicant and documents submitted by applicant vide latter dated 26.09.2022, we find that applicant have agreements from various firms for supply of man power which is his inward supply and not the question of Law before us. The applicant has not supplied the agreement of supply of canteen service but stated in his letter dated 26.09.2022 that the **applicant is paying GST against supply of canteen service on recovery basis since July 2017**.

6. The applicant submission dated 26.09.2022 about "The question on which ruling is sought by the Applicant is an existing or ongoing transaction and falls within the meaning of the phrase "being undertaken" used in the definition of the term "Advance ruling", is not acceptable as meaning of **'being undertaken' is not qualify for the supply which already taken place since long back from July 2017 and continue till date**.

7. Further the applicant submitted that the question sought by the applicant before the Rajasthan Authority for Advance Ruling is for a transaction **although ongoing but shall be continued in future as well**. The transaction on which ruling sought is not something that was undertaken and closed in the past. Thus, the transaction covered under the ruling aptly falls within the meaning of advance ruling as defined under Section 95 of CGST Act . Applicant submitted a brief note in respect of fitment of case under advance rulings and tried to justified the fitness of application for advance ruling but we find that justification given by applicant are not applicable as per provisions of Advance Rulings.

8. It is relevant to mention here that the applicant filed his application for seeking advance ruling on 11.03.2022 and as per submission made by the applicant mentioned in brief facts of the case that they are paying GST since 2017. We shall now examine the provisions of laws as laid down under the GST Act for the purposes of advance rulings. Chapter XVII of the GST Act comprising of Sections 95 is relevant provisions for advance ruling purposes.

As per Section 95 of CGST Act, 2017; this authority shall decide on matters or on questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both **being undertaken or proposed to be undertaken**, by the applicant and "Authority" means the Authority for Advance Ruling, constituted under Section 96. Thus Section 95 allows this authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant itself. In this case, the supplies of Services are being undertaken or proposed to be undertaken not by the applicant but by the supplier(s) of services to the applicant. These suppliers are distinct persons as per the provisions of the GST Act and GST is being paid since implementation of GST law. From the above-mentioned provision, it is seen that this authority is constituted to decide on matters or questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Thus, we find that the applicant is not a supplier in the present case, the applicant as per the contract is a receiver of services supplied by the canteen service provider also.

9. We observe that purpose of Advance ruling is to provide certainty of tax liability in advance in relation to a future activity to be undertaken by the applicant and help the applicant in planning about GST liability on activities well in advance along with proper interpretation and understanding of tax laws. Advance rulings can be given only for a proposed transaction & matters related to qualifies for advance ruling whether it will be undertaken or proposed to be undertaken. We also observe that advance ruling under GST can be obtained for a proposed transaction as well as a transaction being undertaken by the applicant but the transactions on which GST is being paid since July 2017 are out of preview of advance ruling. Moreover, on gone through the facts of the case, we observe that applicant filed their application before the Rajasthan Authority for Advance Ruling (RAAR) on 11.03.2022 i.e. much later from the execution of contract i.e July 2017 and applicant is discharging his GST liability since July 2017 on canteen service supplied by him. We observe that applicant motto is to find out whether the mechanism opted by him for payment of GST on said service since July 2017 is right or wrong, which is against the spirit of advance ruling. We found that in the instant case if advance ruling may be considered then it will defeat the very purpose of advance ruling and violation of present law in GST regions.

10. Since the Applicant has asked for ruling on the transactions effected prior to the date of filing of the application before the RAAR, we find it appropriate to visit the definition of the 'Advance Ruling' given under Section 95(a) of the CGST Act, 2017 which is reproduced as under: -

"95. Definitions of Advance Ruling— In this Chapter, unless the context otherwise requires—

(a) —advance ruling|| means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;".

From the above definition, it is very much clear that the scope of the ruling for Authority for Advance Ruling (AAR) is limited to the transactions being undertaken or proposed to be undertaken. In the instant case, as already narrated, the application seeking advance ruling was filed on 11.03.2022 before the RAAR with respect to supplies already being undertaken and GST being paid from 1.7.2017 onward. Hence, without

going into the merits of the case, we find that the case is out of the purview of the Advance Ruling. Accordingly, rules that "The subject application for advance ruling made by the applicant is not maintainable and hereby rejected under the provisions of the GST Act, 2017."

On being aggrieved from the above order dated 18.10.2022 the applicant filed an appeal before APPELLATE AUTHORITY FOR ADVANCE RULING, RAJASTHAN (AAAR.). The AAAR vide its ORDER NO. RAJ/AAAR/12/2023-24 DATED 15.03.2024 set aside the Ruling of AAR, Rajasthan dated 18.10.2022 and remanded the matter back to the AAR Rajasthan to decide the application afresh on merits after considering all the questions posed by the applicant in their application dated 11.03.2022.

F. Records of Hearing :

In direction of AAAR order dated 15.03.2024, a personal hearing was granted to the applicant on 30.08.2024. Mr. Manish Nitharwal and C.A. Vikas Agarwal Authorized Representatives appeared for personal hearing on dated 30.08.2024. They reiterated the submission already made by them. They also stated to submit the additional submissions along with case law compilation within 7 days. The applicant has submitted the aforesaid additional documents on 05.09.2024 which are kept on record. Further, applicant vide their e-mail dated 01.10.2024 submitted the bifurcation of cost borne by the Company as well as recovered from the Employees against Canteen Services availed during FY 2023-24 which is as follows:-

Description of items	Amount Canteen expenses incurred during the Period (FY 2023-24) (in Rs.)
Total expenses incurred by the Company toward Canteen Services during the period (A)	109,33,346/-
Canteen expenses recovered from the employees during the period (B)	8,18,314/-
Canteen expenses borne by the Company (C= A-B)	101,15,032/-

G. Discussions and Findings:

1. We have carefully examined the statement of facts, supporting documents filed by the applicant along with the application, oral and written submissions made at the time of hearing and the comments of the Central Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

2. The Applicant has set up a canteen facility for the benefit of its employees and contract workers, at their manufacturing unit located at SP-812/ B1 &2, Phase-III, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, 301019. As per facts on record, there are about 311 workers/employees working on a permanent as well as on contractual basis, in the factory (at the time of filing application for obtaining Advance ruling). The Applicant has contracted with Punjabi Flavouraz Catering Service (hereinafter referred to as 'the Canteen Service Provider') to operate Canteen within the Applicant's factory premises; and a part of the cost of the meals provided is deducted by the Applicant from their employees' salaries on a monthly basis.

The applicant seeks ruling on the following question:

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 Central Goods and Service Tax Act, 2017 and Rajasthan Goods and Service Tax Act, 2017.

a) In case answer to above is yes,

i) Whether GST is applicable on the nominal amount deducted from the salaries of its employees;

ii) Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?

b) Whether input Tax Credit(ITC) of the GST charged by the Canteen Service Provider would be eligible for availment to the Applicant?

3. At the outset, it is observed that the Applicant is asking questions which are quite ambiguous. On one hand they are asking whether deduction of amount by the Applicant from the salary of employees is leviable to GST or not? The similar question is asked with respect to the recovery made from the manpower supplier in the case of contractual workers. We observe that the collection of money is never 'supply' and, therefore, can never be leviable to GST. This is clearly borne out of Section 2(52) of the CGST Act, 2017 which while defining goods excludes "money" from its purview. Similarly, definition of services is defined in section 2(102) of the CGST Act, 2017 excludes "money" from its purview. Clearly, deduction of amount from the salary or recovery of some amount from manpower supplier (in case of contractual worker) will be a transaction in money, accordingly, it is not the transaction relating to supply of goods and services, and hence, not liable to GST.

3.1 It seems that the Applicant wanted to raise the question, as to whether, supply of food on subsidised rate to its employees whether contractual workers or regular employees, is liable to payment of GST or otherwise? Further, the second major issue, which has been raised by the Applicant, is whether, they are eligible to claim input tax credit, of the GST charged, by the canteen service provider, to the Applicant, for making supply of food? Both the issues will be dealt in subsequent paras.

3.2 We find that to answer the queries raised by the Applicant, it is necessary to first decide as to whether supply of food at subsidised rate to employees and/or contractual workers is supply within the meaning of Section 7 of the CGST Act or the not? And if yes, whether such supply attracts GST or not?

3.3 With this intention, we quote the relevant provisions of section 7 of the CGST Act, which is as under :-

SECTION 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;

(aa) the activities or transactions, by a person, other than an individual to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

3.4 From the reading of clauses (a) and (aa) above, it is clear that the definition of supply is inclusive definition and it includes all forms of supply of goods or services for a consideration in the course or "furtherance of business". The Applicant has argued that supply of food is not made for consideration and is not in the course or furtherance of business. We would examine the pleas in this regard.

4. We find that the Applicant has stated that they are recovering nominal amount from their employees (including contractual workers) for food provided which cannot be considered as 'Consideration'. The Applicant has relied upon some judgments to say that consideration is present only if there is an element of reciprocity between the service provider and the person making the payment. The Applicant has accepted that they are charging some amount from their employees. Vide Applicant email dated 01.10.2024, it is informed that canteen service provider has charged about Rs.109.33 lakhs towards supply of food, during the period April, 2023 to March, 2024. In other words, the total money paid to the canteen service provider for the period April, 2023 to March, 2024 is Rs.109.33 lakhs. Against this payment, it is claimed that the Applicant has recovered Rs. 8.18 lakhs from the employees. Therefore, consideration is present in the transaction.

4.1 Coming to legal position, it is seen that the consideration is defined in section 2(31) is as under :

'2 (31) "consideration " in relation to the supply of goods or services or both includes-

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

(b) the monetary value of any act or forbearance, 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:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;'

4.2 The reading of definition of 'consideration' as quoted above, makes it clear that the quantum of consideration is immaterial for the purpose of GST law and, therefore, even if an amount of say 5% of the total cost paid to the canteen service provider, is recovered from the employees/contractual workers, still it remains a 'consideration' within the meaning of word 'consideration' as defined above. It is clear from 2(31)(a) that 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 includes in consideration.

4.3 The second argument of the Applicant is that there is no element of reciprocity between the service provider and the person making the payment. It is an accepted case that the amount is deducted/charged from the employees/contract workers, for supply of subsidised food and therefore, the element of consideration is self-evident. In other words, it is not a case where amount is deducted/collected without any supply in return. Though, the supply is made at concessional price, still there is direct connection between the supply of food and money recovered/charged from employees/manpower contractor. The supply of food to workers is neither a gift nor a donation. So consideration, monetary or otherwise, is self-evident.

5. We also observe that the Applicant has argued that he is in the business of manufacture and supply of automotive components and supply of food is not his business, rather, it is their obligation under the provisions of the Factories Act, 1948. The Applicant has quoted few case laws, which elaborate the meaning of expression "Furtherance of Business". However, since the CGST Act itself defines the expression 'business' under Section 2(17) of the CGST Act, 2017, therefore, there is no need to look any further to gather the meaning of term business as considered in different cases/provisions of law. The definition of 'business' as given in section 2(17) of the CGST Act, 2017 is as under:-

'2 (17) "business" includes

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;'

...

...

...

5.1 It is an accepted fact that the Applicant is not carrying out supply of food as his principal activity. No doubt his principal activity remains as manufacture and supply of automotive components. Therefore, it needs to be seen whether the activity of supply of food, falls under clause (b) of definition of business, as extracted above?

5.2 The term 'incidental' has been defined in various dictionaries as under :

Oxford Dictionary - the happening as part of something more important.

Cambridge Dictionary - less important than the thing something is connected with or part of.

Dictionary.com - happening or likely to happen in an unplanned or subordinate conjunction with something else.

5.3 Similarly word 'ancillary' has been defined as under :

Oxford Dictionary -provide necessary support to the main work or activities of an organisation.

In addition to something else but not as important.

Cambridge Dictionary: providing support or help.

Dictionary.com - supporting, secondary, subsidiary

5.4 The reading of all above definitions clarifies that any activity, which supports the main activity or necessary to carry out the principal activity, is an activity or transaction in connection with or incidental to or ancillary to the principal activity. The Applicants has pleaded that he is providing food in compliance to the provisions of the Factories Act, 1948 and therefore even going by his own pleading, supply of food is in connection with and ancillary to his main activity of manufacture and supply of automotive components.

5.5 Further, in terms of Section 2(17)(c), as mentioned in para 5 above, the volume of transaction is immaterial for the purpose of coverage under "Business", therefore, even if supply of food is quite insignificant activity in terms of volume of transaction, still in terms of clause (c) of the aforesaid section ibid, the activity of supply of food, is a supply within the meaning of supply under Section 7 of the CGST Act, 2017. In other words, clauses (b) and (c) of definition of business covers the activity of supply of foods, within the definition of "business".

5.6 The Applicant has also cited the few rulings passed by the Advance Ruling Authority in respect of some other parties holding that GST is not leviable on the amount collected from the employees towards canteen charges. Though, there is no denying that these rulings have some persuasive value, however, these rulings are not binding on this Authority and this Authority differs from the rulings pronouncement by the AAR/AAAR in similar cases favouring the Applicant. It is also a fact that some of AAR/AAAR rulings have also held that GST is leviable on subsidized food supplied by the taxpayers to their workers. The Applicant has ignored these rulings for the obvious reason. Since, we have a different appreciation of law and, therefore, we are not persuaded to adopt the view that supply of subsidized food to the employees/contractual workers is not leviable to GST.

6. The next line of argument which has been adopted by the Applicant is supply of food at subsidized rate is not liable to GST in terms of Circular No. 172/04/2022-GST, dated 6-7-2022 of CBIC, the relevant extract of the said circular is reproduced hereunder for case of reference :

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

6.1 Before proceeding further in the matter, it is necessary to understand the logic and law behind the aforesaid clarification. As is rightly observed in the clarification, the

services by the employer to the employee, in the course of employment, are out of the purview of GST. Naturally, an employer pays some compensation either in monetary (money) form or otherwise (kind) to the employee. Therefore, perks provided by the employer to its employees, as a part of compensation for the services rendered, is not an independent supply but is in connection with or in relation to the employer-employee relationship. Accordingly, the CBIC in its circular ibid, has mandated that perks provided in terms of contractual agreement, are not supply under GST. In other words, the circular ibid has mandated that if any perk is provided to the employee, in terms of contractual agreement, then such perks are outside the purview of GST.

6.2 The applicant during the course of personal hearing adopted the argument that the deduction of nominal amount is as per the contractual agreement with the employees but they did not provide copy of such agreement evidencing mentioning of such clause even at the time of additional submission made by them.

6.3 We are of the opinion that Employment Agreement lists out the compensation which is agreed to be granted by the employer to the employees towards their services. If any perk is mentioned in the employment contract, then it becomes binding for the employer to provide the same to the employees, otherwise such an employer can be sued in the court of law for the breach of condition of employment contract. Therefore, anything provided beyond the employment contract, is a part of sweet will or largesse on the part of employer and cannot be insisted upon by an employee. Viewed from this angle, a perk, which is not specified in employer- employee contract, is not in lieu of services, supplied by the employer to the employee but the largesse or matter of goodwill on part of such employer. Therefore, absence of mention about supply of subsidized food, in employment contract, cannot be equated with perk mentioned in the employment contract as talked about in above referred CBIC circular.

6.4 The Applicant has also emphasized upon the fact that Factories Act, 1948 mandates supply of food to the employees. In this regard, the relevant provisions of Section 46 of the Factories Act, 1948 are produced as under :

> "46. Canteens. - (1) The State Government may make rules requiring that in any Specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
>
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for-
>
> (a) The date by which such canteen shall be provided;
>
> (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
>
> (c) the foodstuffs to be served therein and the charges which may be made therefore;
>
> (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
>
> (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
>
> (e) The delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c). "

6.5 From the reading of above provisions of Section 46 of the Factories Act, 1948, it is clear that in a factory where more than 250 workers are ordinarily employed, the provisions for canteen is a must, however, it does not provide for any provision for exemption from levy of any taxes. In fact, tax in the case of supply of food/beverages is leviable in terms of the provisions of the GST law and is not covered by any exemption, at all. Even logically speaking, provisions of the Factories Act, cannot provide any mandate on the issue of leviability or otherwise, of GST, a question which needs to be determined within four corners of the GST Law. Further, the said consideration for supply of food/beverages, although at the subsidized rate, also does not qualify as the perquisite to extend the benefit of non-levy of GST in terms

of the above cited Circular dated 06-07-2022, as already discussed above.

6.6 Further, we find that Rule 72 of the Rajasthan Factories Rules, 1969, also envisages as under :-

"72. Prices to be charged. - (i) Food stuff, beverage and other items served in the canteen shall be sold on a non- profit basis.

(ii) In computing the process referred to in sub-rule (i) the following items of expenditure shall not be taken into consideration but will be born e by the occupier

a.

...

...

g.

(iii) the charges per portion of foodstuff, beverages and any other item served in the canteen shall be conspicuously displayed in the canteen."

6.7 We find that although the above quoted Rule 72 of the Rajasthan Factories Rules, 1969 does provide that food is to be provided at no profit basis, but, it is clear that though supply of food is mandatory but the Factories Act or the rules do not mandate supply of food at subsidized rate or food without taxes. Therefore, the supply of food even at subsidized cost, is a supply within the meaning of Section 7 of the CGST Act, 2017 [value of such supplies to be determined under Section 15 of the CGST Act, 2017 read with provisions of Chapter IV of the CGST Rules, 2017] and do not qualify as perk as considered in terms above Circular dated 06-07-2022 ibid.

6.8 The Applicant has relied upon the above mentioned Circular dated 06-07-2022 and has also further stressed that it is settled law that circulars issued by CBIC are binding on and to be followed by revenue. But, the fact of the matter is that, since the Applicant had no explicit contractual agreement with regard to the canteen facility, the same cannot be equated to perquisites mentioned in the said Circular. Hence, even as per the Circular ibid, and cited by the Applicant, the canteen facility goes out of the purview of 'perquisites' as the Canteen facility was not provided in terms of contract between the employer and employee.

7. Now, coming to the other issue which is to be decided here is, whether Input Tax Credit (ITC) is available to the Applicant on GST charged by the service provider on the canteen facility provided to employees working in the factory or otherwise?

7.1 Before deliberating on this issue, it would be prudent to refer to the Section 17(5) (b) of CGST Act, 2017, which pertains to blocking of ITC :

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

....

(b) the following supply of goods or services or both -

(i) *food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance :*

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(Emphasis supplied)

.....

7.2 The reading of the above provision makes it clear that provisions of blocked credit

under Section 17(5)(b), inter alia on food and beverages, do not apply only where, it is obligatory for an employer to provide goods and services or both to the employee under any law for the time being in force. Since, the proviso carves out an exception to the Rules/Provisions, a strict interpretation is required to be adopted for examining its applicability. Since the contract workers are not employees of the Applicant, therefore, the benefit of the above proviso will not be applicable in respect of contract workers but will be limited only with respect to the employees.

7.3 We observe that the above Section 17(5)(b) was amended on 01-02-2019. The same was resultant of the 28th meeting of the GST Council held on 21st July, 2018. The Press Note issued on the recommendations made during above meeting stated that the scope of input tax credit is being widened and it would now be available in respect of goods or services which are obligatory for an employer to provide to its employees under any law for the time being in force. The Applicant submitted that they are a manufacturing unit and that there are 311 workers/employees in the factory (at the time of filing, application for obtaining Advance ruling); that in accordance with section 46 of the Factories Act, 1948, it is obligatory on them to provide canteen facilities within the factory premises.

7.4 We also observe that that Circular No. 172/04/2022-GST, dated 06-07-2022 has been issued, by the CBIC, wherein clarifications on various issue pertaining to GST have been provided. In the above Circular, at Sl. No. 3 of Para 2, clarification has been provided on the issue as to whether the proviso at the end of clause (b) of Section 17(5) of CGST Act, is applicable to the entire clause (b) or only to sub-clause (iii) of clause (b). It has been clarified by the Board that vide the CGST (Amendment) Act, 2018, clause (b) of Section 17(5) was substituted with effect from 1-2-2019 on the recommendation of GST Council's 28th meeting and accordingly, the proviso after sub-clause (iii) of Section 17(5)(b) of CGST Act, is applicable to whole clause (b) of Section 17(5). The relevant portion of above clarification is reproduced below:

Clarification on various issues of section 17(5) of the CGST Act		
3.	Whether the proviso at the end of clause (b) of sub-section (5) of Section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	1. Vide the Central Goods and Services Tax (Amendment) Act, 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 1-2-2019. After the said substitution, the proviso after sub-Clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under : "Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force." 2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of Section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21-7-2018. It had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force." 3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of Section 17 of the CGST Act.

7.5 In view of above legal position clarified by CBIC, as second proviso to Section 17(5)(b) inserted vide CGST Amendment Act, 2018, effective from 1-2-2019, is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act, 2017, therefore, we find that Input Tax Credit will be available to the Applicant in respect of food & beverages as canteen facility, is obligatorily to be provided under the Factories Act, 1948, to its employees

working in the factory. Input Tax Credit will be available in respect of such services provided by canteen facility to its direct employees but not in respect of other type of workers including contract employees/workers, visitors etc.

7.6 The issue which is flowing out of para 7.5 above is, whether ITC available on GST charged by the canteen service provider, on canteen facility provided to its employees working in their factory, will be restricted to the extent of cost borne by the Applicant or not? For answering this question, we intend to rely upon the judgment of Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. [2010 (260) E.L.T. 369 (Bom.)] wherein it was held as under :-

> "39. The Larger Bench of CESTAT in the case of GTC Industries Ltd. (supra), has also observed that the credit of service tax would be allowable to a manufacturer even in cases where the cost of the food is borne by the worker (see last para). That part of the observation made by the Larger Bench cannot be upheld, because, once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer."

7.7 The ratio laid down in the said case is also applicable to the present case where part of cost for providing canteen services is recovered by the Applicant from its employees. We find that the ITC on GST charged by the canteen service provider will be available only to the extent of cost borne by the Applicant, for providing the canteen services only to its direct employees.

7.8 However, this is not the end of the issue, and in this particular case, matter needs to be examined further in the light of fact of the present case and various Tax Notifications.

7.9 As per the provisions of the Factories Act, 1948 as extracted in Para 6.4, the Applicant has the legal responsibilities to provide & maintain the canteen. The Applicant has accordingly, instead of maintaining the canteen himself, has engaged another person (hereinafter called as Canteen Contractor), who is providing canteen services to the workers of the Applicant on behalf of the said Applicant. The service so provided is righty classifiable as "Restaurant Service" as already clarified under Circular No. 164/20/2021/GST, dated 06-10-2021 where under, vide Point Nos. 3 & 4, it has been clarified that cooking & supply of food will only be covered under Restaurant Service and in case there is no cooking but only supply of food then GST rate as applicable on supply of Goods would be attracted. In other words, if the cooking of food & supply of the same food is made as a single transaction, then the said transaction is the Restaurant Service. The Restaurant Service attracts 5% of GST in terms of entry No. 7 (ii) of the Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017 which was amended by the Notification No. 20/2019-C.T. (Rate), dated 30-09-2019, effective from 01-10-2019.

7.10 From the facts of the case, it is clear that Canteen Contractor is providing Restaurant Service to the Applicant which is chargeable to GST @5% in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017, as amended, without availment of ITC. Under Explanation to the aforesaid entry, it has been clarified that the concessional rate is mandatory rate and availing the normal rate of tax will not apply and that is the reason the amended Notification No. 20/2019-C.T. (Rate), dated 30-09-2019 has been issued exercising power under Section 16(1) and section 148 of the CGST Act, 2017, so as to come out of the provisions of permitting availment of ITC. In other words, a Taxpayer providing Restaurant Service has no option of taking ITC and providing Restaurant Service at normal rate.

7.11 Accordingly, the canteen service provider is providing the service to the workers of the Applicant on behalf the said Applicant and paying Tax at specified rate of 5% in terms of the Notification ibid. The Applicant is also recipient of service when viewed in terms of definition of recipient of service; as defined in section 2(93)(a) of the CGST Act, 2017, which is reproduced below :-

> '2. (93) "recipient" of supply of goods or services or both means -
>
> (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;'

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

Act, 1948 i.e. he is also providing a Restaurant Service to its worker. As already mentioned in para 7.10, the Restaurant Service compulsorily attracts rate of 5% without ITC in a non-specified premises and the Applicant's premises is not a specified premises in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017. Therefore, though the Section 17(5) of the CGST Act, 2017 does not debar availment of ITC in entirety, however. in the present case availment of ITC is debarred in terms of provisions of Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017 as amended vide Notification No. 20/2019-C.T. (Rate), dated 30-09-2019.

7.13 There is another way of looking at the transactions, that, had the Applicant not engaged any Canteen Contractor but decided to run the 'canteen himself, as mandated in the Factories Act, 1948, then also he had to compulsorily pay 5% of GST without availment of any ITC in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017 supra, Therefore, just by engaging, a Canteen Contractor, he can't be allowed to adopt an interpretation for availing ITC which is not available to him in a case of direct supply of Service.

8. In view of the foregoing facts, circumstances and provisions of the GST law, we pass the following order :

RULING

(1) 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 Central Goods and Service Tax Act, 2017 and Rajasthan Goods and Service Tax Act, 2017.

If yes,

-Whether GST would be leviable in cases where nominal amount will be deducted from the salary of the employees by the Applicant?

-Whether GST would be leviable in cases where nominal amount is recovered from the Manpower supplier in case of contractual employees?

Ans: Yes

(2) Whether ITC of the GST charged by the Canteen Service Provider would be eligible for availment to the Applicant?

Answer : Input Tax Credit will not be available to the Applicant on GST charged by the canteen service provider, in terms of provisions of the Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017, as amended vide Notification No. 20/2019-C.T. (Rate), dated 30-09-2019, as discussed in para 7 above.

14/10/2024

(Mahipal Singh)
MEMBER
CENTRAL TAX

14/10/2024

(Mahesh Kumar Gowla)
MEMBER
STATE TAX

F. No. AAR/SF/2024-25/ 162–167

Date: 14/10/2024

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3. The Commissioner, CGST and Central Excise Commissionerate, Alwar, Rajasthan.
4. The Deputy/Assistant Commissioner, CGST Division-C, Bhiwadi.
5. The Deputy/Assistant Commissioner, State Tax Department, Circle -C Bhiwadi, Zone BHIWADI, Rajasthan.