MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.		AD2708220018544
GSTIN Number, if any/ User-id		27AABCB2304E1ZD
Legal Name of Applicant		M/s. Bridgestone India Private Limited
Registered Address/Address provided while obtaining user id		Plot no. A 43, Phase II, MIDC Chakan, Village Sawardari, Taluka Khed, Pune- 410501
Details of application		GST-ARA, Application No. 55 Dated 25.08.2022
Concerned officer		DIVISION-IV, CHAKAN, RANGE-I, COMM-PUNE-I
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Factory/ Manufacturing
B	Description (in brief)	The applicant is involved in the business of manufacture and sale of radial tyres, tubeless tyres, and steel radial tyres and other automobile tyres and tubes.
Issue/s on which advance ruling required		➢ Admissibility of input tax credit of tax paid or deemed to have been paid ➢ Determination of the liability to pay tax on any goods or services or both ➢ 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
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 55/2022-23/B-173 Mumbai, dt. 27/03/2025

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. Bridgestone India Private Limited**, the applicant, seeking an advance ruling in respect of the following questions.

Question 1: Whether the deduction of a nominal amount by the Applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service"

by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

a. In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees?

b. Whether ITC is available to the Applicant on GST charged by the Canteen Service Providers for providing the catering services?

Question 2:

a. Whether the services by the way of non-air-conditioned bus transportation facility provided by the Transport Service Providers would be construed as 'supply of service' by the Applicant to its employees under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

b. Whether ITC is available to the Applicant on GST charged by the Transport Service Providers for providing the non-air-conditioned bus transportation services?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION – AS PER THE APPLICANT:

1.1 The Applicant has a factory in the state of Maharashtra where the aforementioned goods are manufactured and approximately 1074 full-time permanent and contractual workforce are employed. The Applicant has entered into a contractual relationship with Sodexo India Services Private Limited (hereinafter referred to as 'the Canteen Service Provider') for the supply of food to its employees within the Applicant's factory premises. The Applicant makes payment to the Canteen Service Providers for the supply of such food to its employees. Where an employee avails the facility of food at the Applicant's premises, the Applicant will deduct a pre-agreed nominal amount from the monthly salary of the employee, in accordance with the Company policy of the Applicant.

Further, given that the factory premises of the Applicant is located outside the city limits, the Applicant provides the facility of bus transportation to ensure the safety

of their employees. In this regard, the Applicant has entered into contracts with the vendors, Prasanna Purple Mobility Solutions Private Limited as well as Shree Gajanan Corporation India Private Limited (hereinafter referred to as **'the Transport Service Provider'**) for the provision of *non-air-conditioned bus transportation* facility to and from the factory, to all the employees. No recoveries are made from employees for bus transportation.

This Application seeks to beseech the Hon'ble AAR to rule on the applicability of GST on the deductions made on canteen by the Applicant, and availability of input tax credit ('ITC') of the GST paid on the value of services provided by the Canteen Service Providers and Transport Service Providers.

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 Plot no A43, Chakan Industrial Area, Phase II, Taluka Khed, Pune - 410501 and is *inter alia* involved in the business of manufacture and sale of radial tyres, tubeless tyres, steel radial tyres and other automobile tyres and tubes. The Applicant is registered under the GST regime in the State of Maharashtra *vide* GSTIN 27AABCB2304E1ZD.

1.2 For the purposes of the present application, it is stated that the Applicant has engaged various food and transport service providers, who provide food and transportation facilities to the Applicant's employees.

1.3 It is with respect to the taxability of the amount paid to the vendors and the availability of ITC of the GST paid on such amount paid to the vendors, that the Applicant has filed the instant Application.

1.4 In order determine the taxability of the canteen and transportation facilities, it would be prudent to understand the nature of such facilities provided by the Applicant. The details of the existing arrangement are provided below.

Provision of good facility by the applicant to its employees.

1.5 In the course of undertaking the manufacture of tyres, the Applicant, has in its employ about 1074 employees. Being registered under the Factories Act, 1948 (hereinafter referred to as **'Factories Act'**), the Applicant is required to comply with all the obligations and responsibilities cast under the provisions of the Factories Act.

1.6 In this regard, we refer to Section 46 of the Factories Act which states that *'in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens, shall be provided and maintained by the 'Occupier' for the use of the workers.'* We

also refer to Section 2(n) of the Factories Act which defines the term 'occupier' of a factory to mean *'the person who has ultimate control over the affairs of the factory'*.

1.7 In the present case, given that the Applicant has employed more than 250 workers at its factory premises, the provisions relating to the maintenance and provision of canteen facilities for the use of the workers, would be applicable to the Applicant. Moreover, as the Applicant has ultimate control over the affairs of the factory, the Applicant would be considered as an 'Occupier' for the purpose of the Factories Act. Therefore, the Applicant set up a canteen facility, having a separately demarcated area in the factory premises, pursuant to and in compliance with the Factories Act. The said canteen facility has a seating area with tables and chairs, a cooking facility with utensils, refrigeration, storage rooms for keeping the cooked food, washrooms and wash basin, etc.

1.8 In order to provide such canteen facilities, the Applicant appoints vendors to provide skilled manpower for the preparation of food for the employees, purchase of raw materials required for the preparation of food and maintenance of the canteen premises. Additionally, the Canteen Service Provider is also made responsible for the subsequent deployment of trained staff for serving food and fulfillment of all the statutory requirements of such deployed staff, such as Provident Fund, Gratuity, Employee State Insurance, Group Accident Policy etc.

1.9 As per the employment contract, the employees of the Applicant are eligible for all the benefits and allowances according to the Company's policy.

Further, the Applicant has set out the **BSID Canteen Subsidy Policy** (hereinafter referred to as **'the Canteen Policy'**, wherein the procedure for the availment of the canteen facility has been provided for. The relevant paragraph of such policy is reproduced below, for ease of reference.

[Para 7] CANTEEN (In the Plant)

All the employees are eligible for lunch, breakfast/ snacks and tea/ coffee at subsidized rates. The rate of subsidy can be changed from time to time as per the management discretion. Employees shall bear 1/3rd cost of the amount on all items whereas 2/3rd cost of the amount shall be paid by the company to contractor. To avail the canteen facilities, employees have to punch their ID card in the canteen. All employees have to follow Canteen timings as per the rules.

1.10. Pursuant to the Canteen Policy, where employees avail of the canteen facility provided by the Applicant, 1/3rd cost of the cost of such canteen facilities to the

Applicant will be deducted from the employee's salary, on a monthly basis. The balance monthly cost of the facilities is borne by the Applicant.

The cost borne by the employee is deducted from the salary on a monthly basis which is also visible in the salary slip.

1.11 It is pertinent to note that the canteen facility provided to the employees at a nominal rate, is in the course of the employment of such persons with the Applicant and in pursuance to the statutory requirements under the Factories Act. Such facility would not be offered to any other person, but for the employer-employee relationship existing between the Applicant and its employees.

Provision of bus transportation facility by the applicant to its employees

1.12 The factory of the Applicant is situated at a remote location in Pune, outside the city limits, where public transport is scare. This has a direct impact on continuity of operations of the factory, and the convenience and safety of employees to reach/ leave the factory. Accordingly, in order to carry out its business without any disruption and for efficient functioning of the business as a whole, the Applicant has engaged contractual service providers to provide transportation services for its employees.

1.13 In this regard, the Applicant has entered into a contract with two Transport Service Providers to provide transportation facility to its employees between the factory premises and the residence, in non-air-conditioned buses having seating capacity of more than 13 persons.

1.14 As per the policy of the Applicant, such bus transportation facility is offered only to employees of the company. Therefore, in order to avail the bus transportation services, the employees would be required to display company issued passes/employee IDs issued by the Applicant to board the bus and avail the bus facility. The service providers provide transportation services, according to the pre-approved routes provided by the Applicant.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.1 Question 1:

Whether the deduction of a nominal amount by the Applicant from the salary of the employees who are availing the facility of food provided in the factory premises would be considered as a 'supply of service' by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

a. *In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees?*

b. *Whether input tax credit (ITC) is available to the Applicant on GST charged by the Canteen Service Providers for providing the catering services?*

The provisions of both the Central Goods and Service Tax Act, 2017 (hereinafter referred to as '**CGST Act**') (as amended) and the CGST Rules as well as the provisions under the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as '**MGST Act**') and Rules made thereunder i.e. the Maharashtra Goods and Services Tax Rules 2017 (as amended) (hereinafter referred to as '**MGST Rules**') *are in pari materia* except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act or Rules would also mean a reference to the same provisions under the MGST Act or Rules and vice versa.

To examine whether the provision of food facilities by the Applicant to its employees, in pursuance of its statutory obligation under Section 46 of the Factories Act would be considered as 'supply of service' under Section 7 of the CGST Act, the Applicant seeks to rely upon the following legal interpretation of the CGST Act.

Extension of concessional food facility to the applicant's employees is in the course of employer – employee relationship.

2.1.1 As submitted above, the Applicant offers food facilities to the employees of the Applicant at a pre-agreed nominal amount as per the Canteen Policy. The details of the food consumed and the details of the employee are maintained by the Company. Based on the record of the food consumed, the service provider raises an invoice on the Applicant. After the termination of employment services, the employees would not be allowed to access the canteen facilities of the Applicant.

2.1.2 The Applicant wishes to submit that the deduction of nominal amount for the provision of food facility would be taxable only if such amount qualifies as consideration towards a 'supply' as defined under Section 7 of the CGST Act. In this regard, the Applicant places its reliance upon the interpretation of the following legal provisions.

2.1.3 Section 9(1) of the CGST Act provides that the Central Goods and Service Tax will be levied on all *intra state supplies* of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the CGST Act.

2.1.4 Basis the above, it is amply clear that in order for GST to be levied on any activity, such activity is required to qualify as a **'supply'** in the first place. To evaluate whether the deduction of a nominal amount from the salary of the employees towards the food facility at the Applicant premises, is in the nature of consideration for a 'supply', the Applicant would like to place reliance upon the provisions of Section 7 of the said Act, which states that:

(Relevant extract from the CGST Act, 2017)

*"(1) For the purposes of this Act, the expression "supply" **includes–***

*(a) **all forms of supply of goods or services** or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be **made for a consideration by a person in the course or furtherance of business;***

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration (1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services

2.1.5 At this juncture, the Applicant wishes to draw attention towards Schedule III of the CGST Act which provides the activities or transactions which shall be treated neither as a supply of goods nor supply of services. One of the activities mentioned therein is reproduced below for ease of reference:

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

2.1.6 Schedule III read with Section 7(2) of the CGST Act specifies that any services provided by an employee to the employer in the course of or in relation to his employment shall be neither a supply of goods nor supply of services. In short, any consideration by the employer to the employee, on account of the activities undertaken by the employee under the contract of employment will be out of the scope of levy of GST.

2.1.7 Applying the above to the Applicant's transaction, it emerges that the provision of the facility of canteen would squarely be covered under the ambit of the said Entry to Schedule-III since the canteen facilities are only provided to persons who are employees of the company i.e. in situations where an 'employer-employee' relationship exists. An employee would not be allowed to use the canteen facility once the employment ceases to exist. This makes it evident that an 'employer-employee' relationship is a mandatory, pre-requisite condition to avail the canteen facility.

2.1.8 Reliance in this regard is placed on the ruling issued by this Hon'ble Authority in case of **Tata Motors Limited**, wherein the taxability of bus transportation facility offered by the Tata Motors Ltd. was being evaluated. In this regard, it was held that since the Applicant (i.e. Tata Motors) had not been supplying any services to its employees, in view of the provisions of Schedule-III, GST was not applicable on the nominal amounts recovered by the said Applicant from its employees for providing transportation facilities (with the same being applicable to canteen facility). It was further observed that the Applicant, in its capacity of being the employer was the recipient of the service and employees were the users of such services. This Hon'ble AAR held that by virtue of Clause 1 of Schedule-III to CGST Act 2017, **GST was not applicable to the nominal amount recovered by the applicants from their employees**. The relevant paragraph from the said Ruling is reproduced below for ease of reference:

5.3.2 In the subject case we find that the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services in the instant case. The applicant's contentions that they are eligible for exemption from GST under Sl. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 in respect of nominal amounts of recoveries made from their employees towards bus transportation service, is not correct. The exemption under the said notification is available only when the supply is taxable in the first place. In the subject case, the transaction between the applicant & their employees, due to "Employer-Employee" relation as stated by the applicant in their submissions, is not a supply under GST Act.

5.3.3 To answer the second question we now refer to Schedule III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services. As per clause 1 of the said Schedule-III. Services by an

employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.

5.3.4 Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case.'

2.1.9 Drawing inference from the above, it is submitted that in order for a transaction to be subject to GST, such transaction would be required to qualify as a supply. However, an activity is undertaken in the course of an employment relationship, such activity would be outside the scope of GST and would not be subject to tax.

2.1.10 Further, the Applicant wishes to place reliance on the **Circular No 172/04/2022-GST dated 6th July 2022**, wherein it has been clarified that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST. The relevant paragraph of the Circular is provided below:

Q5. Whether various perquisites provided by the employer to its employees in terms of the contractual agreement entered into between the employer and the employee are liable to 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 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.*

2.1.11 In the instant case, it is submitted that the Applicant provides the canteen facility in terms of the contractual agreement entered into between the employer and employee. The contractual agreement specifically provides for availment of benefits and allowances as per the Company's policy which apart from other benefits also provides for canteen services to employees. In view of this, the said transaction should not be treated as a supply as per Section 7 of the CGST Act

read with Schedule III. **Hence, GST shall not be leviable on the recovery of nominal amount** from the employees.

Merely providing food to its employees and subsequent deduction of nominal cost would not tantamount to supply under section 7 of the CGST act.

2..1.12 Without prejudice to the aforementioned submissions, the Applicant wishes to also submit that in order to attract GST on the provision of canteen facility to employees, it is essential that the activity qualify as a 'supply' under Section 7 of the CGST Act.

2.1.13 The term 'supply' includes all forms of supply (goods and/or services) and includes agreeing to supply when the **supply is for a consideration and is in the course or furtherance of business**. The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions.

2.1.14 It is pertinent to refer to the various facets of the concept of 'supply', as mentioned under Section 7 of the CGST Act, in the context of the facts under discussion. The Applicant believes that the following criteria, plays a crucial role to determine the GST implications on provision of such a facility:

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

We have discussed each of the above-mentioned limbs in the ensuing paragraphs.

The provision of canteen facility to the employees is only account of a statutory obligation and there is no legal intention to provide any service.

2.1.15 The Applicant wishes to reiterate the facts that they provide a demarcated space for canteen facility, as mandated under the provisions of the Factories Act, to its employees for consumption of food. To comply with this statutory obligation,

the Applicant offers the canteen facility and has appointed the Canteen Service Providers to undertake the preparation of food and regular maintenance of the facility.

2.1.16 We wish to submit that there must be a legal intention to enter in a contractual relationship with its recipient, which casts roles and responsibility on each contractual party, in order to fall under the ambit of supply under GST. Unless there is an intention to provide a service, the same shall not be treated as 'supply' within the meaning of Section 7 of the CGST Act, 2017.

2.1.17 In the instant case, the Applicant has set up the canteen facility on account of a statutory obligation imposed by the Factories Act on the Applicant in its capacity as the 'occupier' of the factory. This obligation is complied with, through the Canteen Service Providers appointed by the Applicant.

There should be an element of reciprocity for an activity to be subject to GST

2.1.18 As per Section 7 of the CGST Act, an activity could be considered as a supply only if it is 'made or agreed to be made' for a consideration. Thus, it becomes very critical to analyze the term 'consideration' in the context of the deduction of nominal amount from its employees' salary.

2.1.19 The term 'consideration' has been defined in **Section 2(31) of the CGST Act, 2017** which has been reproduced below, for ease of reference:

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.

2.1.20 The Applicant wishes to submit that a supply must involve **enforceable reciprocal obligations**. If something has been used, but there was no agreement for its supply between the relevant parties, ***any payment subsequently received by the aggrieved party is not consideration for supply***. If the receipt of payment

is not premised on the enforcement of reciprocal obligations between parties, it cannot be linked to a supply for the purpose of levying GST. Hence, it is submitted that the deduction of employees' salary towards the food availed by the employees, by the Applicant would constitute a transaction in money between the Applicant and its employees and would not attain a character of a 'consideration' in the absence of quid pro quo.

2.1.21 To substantiate this principle, the Applicant places reliance on the judgement of Bombay High Court in the case of ***Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra***. In the said case, the defendant was permitted to occupy the premises in question, on payment of royalty. It was contended that the royalty paid is consideration for the use of such premises and hence, should be subject to tax. It was held by the High Court that in order for a supply to subject to tax, it is essential that there is a supply by one person to another. It was further held that the royalty is payment towards damages for the violation of the plaintiff's right in the suit premises. Such payment lacks the essential quality of reciprocity to make it a supply and hence, will not be subject to tax.

2.1.22 In the instant case, the Applicant deducts a nominal amount from the employee's salary towards the cost of services availed by them from the Canteen Service Providers, without any commercial objective. Drawing inference from the above, it can be said that if there is no reciprocity of any activity or transaction i.e. when is no express or implied reciprocity i.e. quid-pro-quo, between the Applicant and the employees, there can be no question of taxability of such transactions. Thus, in the instant case, the absence of an identifiable supply in the case of the provision of a canteen facility to the employees, **the activity would not constitute 'consideration' for any supply.**

The supply should be effected in the course or furtherance of business under the CGST Act.

2.1.23 In order to qualify as a 'supply' as mentioned in Section 7 of the CGST Act, it is pertinent to evaluate the last element of supply i.e. whether the activity is undertaken in the course of or in furtherance of 'business'. Thus, it becomes important to analyze whether the provision of canteen facility pursuant to a statutory obligation could be considered as being provided *'in the course or furtherance of business'*.

2.1.24 In this regard, the Applicant refers to the definition of 'business', as defined in **Section 2(17) of the CGST Act 2017** which reads as follows:

'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);

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

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) [activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."

2.1.25 Considering the nature of activities and transactions undertaken by the Applicant, it is abundantly clear that the activity under evaluation does not fall within the definition of business from Sr. No. (c) to (i) above. Thus, the various elements of the definition of business as provided in Sr. No. (a) above would need to be analyzed i.e. ***"any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity"***.

2.1.26 The **Black Law's dictionary** provides the below definitions for the activities in Sr no (a):

i. Trade – *"The business of buying and selling or bartering goods or services; A transaction or swap; A business or industry occupation; a craft or profession."*

ii. Commerce – *"The exchange of goods and services, esp. on a large-scale involving transportation between cities, states, and nations."*

iii. Manufacture - *"A thing that is made or built by a human being (or by a machine), as distinguished from something that is a product of nature. Manufacturers are one of the statutory categories of inventions that can be patented. Examples of manufactures are chairs and tires."*

iv. Profession - *"A vocation requiring advanced education and training. Collectively, the members of such vocation."*

v. Vocation - *"A person's regular calling or business; one's occupation or profession."*

vi. Adventure - *"A commercial undertaking that has an element of risk; a venture. Cf. Joint venture; A Voyage involving financial and insurable risk, as to a shipment of goods."*

vii. Wager - *"Money or other consideration risked on an uncertain event; a bet or gamble. A promise to pay money or other consideration on the occurrence of an uncertain event. See wagering contract under Contract."*

2.1.27 Further reliance is also placed on the case of **Cinemax India Limited Vs Union of India**[3] wherein the term 'furtherance of business' has been pointed out as: *"The meaning of 'furtherance', as per Black's Law Dictionary, 6th Edition, 11th reprint, 1997, is act of furthering, help forward, promotion, advancement or progress. Furtherance of business will, thus mean, act of furthering business, helping forward business, promotion of business, advancement of business or progress of business."*

2.1.28 In the Australian Concise Oxford Dictionary (1997) defines the phrase 'in the course of' as 'during' and the word 'furtherance' as to mean 'furthering or being furthered; the advancement of a scheme etc.'

2.1.29 Additionally, we refer to the order of the Supreme Court in the case of ***State of Gujarat vs. Raipur Manufacturing Co. Ltd.,*** the Petitioner was engaged in the business of manufacturing and selling cotton textiles. The petitioner purchased coal for use in the business of cotton textiles, which was later sold by them. In this context, the Supreme Court held that unless there is evidence to show that there was an intention to carry on the business of selling coal, the mere fact that the coal was sold will not by itself make the Company a dealer carrying on business in coal. It was held that the Petitioner was not engaged in the business of sale of 'coal'.

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

2.1.31 In view of the above, in the instant case, it is submitted that unless there is evidence of he fact that the Applicant had any intention of undertaking business

and earning profit in relation to the provision of canteen facilities, and that the facility was merely provided in the course of a statutory obligation, the provision of such facility cannot be construed to be in the course of or in furtherance of its business operations. Therefore, such transaction cannot be construed as a supply under Section 7 of the CGST Act.

2.1.32 Moreover, it is submitted that various State Authority for Advance Ruling, including this Hon'ble Authority, have held that the provision of canteen facilities is not in course of business, but in the course of a statutory obligation and hence, does not qualify as a supply under Section 7 of the CGST Act:

i. In the case of **Emcure Pharmaceuticals Ltd.**, this Hon'ble Authority held that the provision of canteen facilities is not in the course of business and hence, should not be construed as a 'supply' under Section 7 of the CGST Act. Therefore, any recovery on account of the canteen facility should not be subject to tax.

The relevant extract is provided below, for ease of reference:

'The provision of canteen facility is a welfare measure, also mandated by the Factories Act and is not at all connected to the functioning of their business of developing, manufacturing, and marketing pharmaceutical products. Further, the said activity is not a factor which will take the applicant's business activity forward.

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

...

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

ii. In the case of ***Amneal Pharmaceuticals Ltd.,*** the Gujarat Authority for Advance Ruling held that the company does not undertake any supply for a consideration in respect of the canteen facility made available to the employees, and therefore, any recovery of an amount towards such facility will not be subject to GST.

This view was reiterated by the Gujarat Authority for Advance Ruling in the case of ***Tata Motors Ltd*** .

2.1.33 Further reliance has been placed in case of **Posco India Pune Processing Center Private Limited,** wherein the Applicant was paying the premium towards mediclaim taken for their employees and the parents of such employees. Against such payments made they were recovering 50% from their employees. The AAR Maharashtra held that there is no way that the 50% amount recovered can be treated as amounts received for services rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents. Such recovery of 50% premium amounts by the applicant from their employees cannot be supply of services under the GST laws.

2.1.34 It is further stated that a similar ruling has been passed in case of In Re: **M/s Jotun India Pvt Ltd**[10] by the Authority For Advance Ruling, Maharashtra, wherein *it was held that the recovery of 50% of Parental Health Insurance Premium from employees does not amount to "supply of service" under Section 7 of the CGST Act, as the Assessee was not in the business of providing insurance service.*

2.1.35 Given the above submissions, it is submitted that the canteen facility provided to the employees by the Applicant is not in the nature of a supply under Section 7 of the CGST Act, and therefore, is outside the scope of GST and would not be subject to tax, on account of the following:

- The canteen facility is provided in pursuance of a statutory obligation under the Factories Act; there is no supply of service being undertaken.
- The canteen facility is provided to the employees in the course of their employment with the Applicant. As a result, such activity is excluded from the purview of supply as per Section 7 of the CGST Act read with Schedule III.
- Notwithstanding the above, the canteen facility is not provided in the course or furtherance of business; there is quid pro quo and no intention to undertake the business of providing canteen facilities.

- Moreover, the recovery related to canteen made by Applicant from its employee is ultimately paid to the third-party vendor i.e. Sodexo India Services Private Limited.
- This has been substantiated with reference to various Advance Rulings as provided above which indicates that the canteen facility is not in the nature of supply and therefore, should not be subject to tax.

In view of the above, it is submitted that the provision of canteen facility should not be subject to GST.

The applicant is eligible to avail input tax credit of the GST charged by the canteen service provider

2.1.36 In order to determine whether the Applicant is eligible to avail ITC on the GST charged by the Canteen Service Provider, it is pertinent to refer to Section 16(1) of the CGST Act. The relevant extract of Section 16 of the CGST Act, 2017 is reproduced below:

(1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take* ***credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business*** *and the said amount shall be credited to the electronic credit ledger of such person.*

2.1.37 Based on a plain reading of the CGST Act, we understand that credit of input tax charged on supply of services would only be allowed when such goods or services or both are used or intended to be used in the course or furtherance of business. In this regard, the Applicant wishes to submit that the Canteen Service Provider provides the services to the Applicant in the form of preparation of food and maintenance of the canteen premises, for the Applicant's employees. Such services are provided in pursuance of the Applicant's obligation to provide such facilities to its employees, in the capacity of an 'occupier' of the factory under the Factories Act.

2.1.38 It is also crucial to refer to the provisions of Section 17(5)(b) of the CGST Act, 2017, which provides for ITC which will not be available to an assessee. We have reproduced below the relevant portion of the said provision:

"(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."

2.1.39 In this regard, we wish to reiterate the fact that the Applicant is engaged in the business of manufacture and sale of radial tyres, tubeless tyres, steel radial tyres and other automobile tyres and tubes and is registered under the provisions of Factories Act. As per Section 46 of the Factories Act, 'in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens, shall be provided and maintained by the 'Occupier' for the use of the workers.' In this regard, we refer to Section 2(n) of the Factories Act, which defines the term 'occupier' of a factory to mean 'the person who has ultimate control over the affairs of the factory'. In the instant case, the Applicant has the ultimate control over the affairs of the factory and hence will be treated as the occupier.

2.1.40 Further, the Applicant wishes to place reliance on the **Circular No 172/04/2022-GST dated 6th July 2022,** wherein it has been clarified that the proviso at the end of clause (b) of Section 17(5) is applicable to the entire clause (b) of Section 17(5). The Circular intends to clarify that ITC on food and beverages, outdoor catering, health services etc covered under Section 17(5) of the CGST Act would not be restricted provided it is obligatory for an employer to provide the same to its employees under any law for the time being in force. The relevant paragraph of the Circular is provided below:

Q3. 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 Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019.

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 21.07.2018. 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.

As submitted above, the Applicant provides the canteen facility to its employees in furtherance of its obligations under the Factories Act. Therefore, the Applicant wishes to submit that the restriction imposed under Section 17(5) of the CGST Act, 2017 is not applicable in the instance case, since the canteen facility is extended to its employees as a part of its statutory obligations under the provisions of Factories Act.

2.1.41 Additionally, we refer to the ruling of the Appellate Authority of Advance Ruling Madhya Pradesh in the case **M/s Bharat Oman Refineries** wherein it was held that ITC of GST paid to canteen service provider would be available to the appellant in terms of proviso under Section 17(5)(b) where it is obligatory for an employer to provide the same to its employees under any law. The relevant portion of the said Ruling is reproduced below:

As regards provision of canteen facility we find that the appellant has submitted that the canteen facility was required to be provided by a company as per Section 46 of the Factories Act, 1948. Therefore, applying the proviso under Section 17(5)(b) 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, we are of the view that input credit of GST paid would be available to the appellant.

2.1.42 The Applicant also wishes to draw your kind attention towards various judicial precedents wherein the Courts have held that ITC will be available to the assessee unless it's for personal use of an employee. In the case of **M/s Hindustan Coca Cola Beverages Pvt. Ltd. v/s CCE, Nashik**[12], the Hon'ble CESTAT, Mumbai Bench held that post 2011, *canteen service is excluded from input service definition only when such service is primarily for personal use or consumption of any employee. When the company has borne the cost of canteen and not recovered from the employees, then in that case, the canteen service cannot be treated as services primarily for personal use or consumption of employee and accordingly, CENVAT credit is allowed.*

A similar view was upheld by the Hon'ble High Court in the case of **Cema Electric Lighting Products India Private Limited Vs. CCE reported in 2015 (37) STR 718 (Guj.).**

2.1.43 Based on the aforementioned provisions and judicial precedents cited, there is no doubt that a taxpayer is allowed to avail ITC on procurement of foods or beverages when the same is made under any existing and enforceable law. Further, the Applicant has discussed in para 2.39 above the statutory obligation cast upon it under the Section 46 of the Factories Act, to provide canteen facility to its employees.

2.1.44 Considering the above, it is stated that the Applicant is allowed to avail input tax credit on the GST charged by the Canteen Service Provider as it is under a legal requirement.

2.2 Question No. 2.

a. *Whether the services by the way of non-air-conditioned bus transportation facility provided by the Transport Service Providers would be construed as 'supply of service' by the Applicant to its employees under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?*

b. *Whether ITC is available to the Applicant on GST charged by the Transport Service Providers for providing the non-air-conditioned bus transportation services?*

To analyse whether arranging the transportation facility would be considered as a 'supply of service' by the Applicant to the employees, we have relied on the following legal interpretation of the CGST Act.

Provision of transport facility through transport service providers would not tantamount to 'supply' under section 7 of the CGST act.

2.2.1 In the light of the above facts, it is pertinent to determine the GST implications on the provision of transport facility by the Transport Service Providers to its employees. In this regard, the Applicant has completely placed its reliance upon the following interpretation of the legal provisions.

2.2.2 The Applicant has made submission regarding the legislative framework in relation to the concept of 'supply' in para 2.3 to 2.6 above, which will also be squarely applicable in the context of transportation services being provided to the Applicant's employees. In the context of whether the transportation facility provided by the Applicant qualifies as a 'supply', the Applicant makes the following submissions.

Transportation facility provided by the Applicant is the course of employment and therefore, does not qualify as a supply under the CGST Act.

2.2.3 The Applicant has engaged third-party Transport Service Providers to provide transportation facility to its employees for commute between the office and residence in non-air-conditioned buses. Given that the factory premises is located outside the city limits, the Applicant offers the bus transportation services to ensure that the employees are able to travel to work and therefore, maintain continuity of business. The bus transportation facility is made available by the Applicant is to ensure the safety and convenience of the employees.

2.2.4 As per the Company policy such bus transportation facility is offered only to employees of the company. Therefore, in order to avail the bus transportation services, the employees would be required to display company issued passes/employee IDs issued by the Applicant to board the bus and avail the bus facility. The service providers provide transportation services, according to the pre-approved routes provided by the Applicant. Once an employee ceases to be in employment with the Applicant, he/she is not authorized to use the transportation facility. In other words, an employer -employee relationship is a mandatory requirement to avail this facility.

2.2.5 As mentioned above, as per Section 7 read with Schedule III of the CGST Act, the supply of services by an employee to an employer in the course of employment will neither be in the nature of a supply of goods or services. Given that the facility is provided only to employees and in pursuance of their relationship as employees of the Applicant, it is submitted that the transportation services squarely falls under Schedule III to the CGST Act and such facility will not be construed as a 'supply'. Therefore, the provision of such facility will not be subject to GST.

2.2.6 This view is substantiated with reference to the ruling issued by this Hon'ble Authority in case of Tata Motors Limited, wherein the taxability of bus transportation facility offered by the **Tata Motors Ltd.** was being evaluated. In this regard, it was held that since the Applicant (i.e. Tata Motors) had not been supplying any services to its employees, in view of the provisions of Schedule–III, GST was not applicable on the nominal amounts recovered by the said Applicant from its employees for providing transportation facilities (with the same being applicable to canteen facility). It was further observed that the Applicant, in its capacity of being the employer was the recipient of the service and employees were the users of such services. This Hon'ble AAR held that by virtue of Clause 1 of Schedule–III to CGST Act 2017, **GST was not applicable to the nominal amount recovered by the applicants from their employees.** The relevant paragraph from the said Ruling is reproduced below for ease of reference:

'5.3.2 In the subject case we find that the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services in the instant case. The applicant's contentions that they are eligible for exemption from GST under Sl. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 in respect of nominal amounts of recoveries made from their employees towards bus transportation service, is not correct. The exemption under the said notification is available only when the supply is taxable in the first place. ***In the subject case, the transaction between the applicant & their employees, due to "Employer-Employee" relation as stated by the applicant in their submissions, is not a supply under GST Act.***

5.3.3 To answer the second question we now refer to Schedule III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services. As per clause 1 of the said Schedule-III. ***Services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.***

5.3.4 ***Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case.'***

2.2.7 Given the above, it is submitted that the provision of transport facility to its employees by the Applicant, cannot be construed as supply under GST.

<u>*There should be an element of reciprocity for an activity to be subject to GST*</u>

2.2.8 The Applicant wishes to reiterate its submissions mentioned in paragraphs 2.18 to 2.21, which is squarely applicable in the instant case. In the instant case, the Applicant does not deduct any amount from the employee's salary towards the cost of services availed by them from the Transport Service Providers, without any commercial objective. Drawing inference from the above submissions, it can be said that if there is no reciprocity of any activity or transaction i.e. when there is no express or implied reciprocity, between the Applicant and the employees, there can be no question of taxability of such transactions. Thus, in the instant case, the absence of an identifiable supply in the case of the provision of a transportation facility to the employees, **the activity would not constitute 'consideration' for any supply.**

The supply should be effected in the course or furtherance of business under the CGST Act

2.2.9 The Applicant submits that it is engaged in the business of manufacture and sale of radial tyres, tubeless tyres, steel radial tyres and other automobile tyres and tubes - which is the Applicant's main business activity in accordance with the definition of business as provided in Section 2(17) of the CGST Act.

2.2.10 In this regard, it is submitted that the provision of transportation facility is not in the nature of or in the course of business. In this regard, we refer to the submissions made in paragraphs 2.23 to 2.30 above.

2.2.11 In the instant case, the Applicant does not collect any amount from the employees towards the provision of transportation of services.

2.2.12 Based on the above, it could be inferred the Applicant is not supplying any services to its employees but is merely making a facility available to its employees in the course of their employment with the Applicant. Further, it is submitted that unless there is evidence of the fact that the Applicant had any intention of undertaking business and earning profit in relation to the provision of transportation facilities, the provision of such facility cannot be construed to be in the course of or in furtherance of its business operations. Therefore, such transaction cannot be construed as a supply under Section 7 of the CGST Act.

2.2.13 We also refer to another ruling of this Hon'ble Authority, in the case of ***Integrated Decisions and Systems India Pvt. Ltd.,*** where the applicant provided transportation facility to its employees and recovered a nominal amount from such employees. This Hon'ble Authority held that the applicant provided the

transportation facility as a security, safety and welfare measure and that the company was not engaged in the business of providing transportation services. A similar view was also adopted by the Uttar Pradesh Authority for Advance Ruling in the case of *North Shore Technologies Pvt. Ltd.*

2.2.14 Further, as mentioned above, various Authorities for Advance Ruling in the context of other employee recoveries have also held that the companies are not engaged in the providing the services for which recoveries are made from employees, and therefore, should not be subject to GST. We refer to the Advance Ruling pronounced by the Maharashtra Authority for Advance Ruling in ***M/s. Posco India Pune Processing Center Private Limited,*** in ***M/s Jotun India Pvt. Ltd,*** (as mentioned above) and in **M/s Ion Trading India Private limited** reported in **[2020] 113 taxmann.com 609 (AAR-UTTAR PRADESH)**, wherein the amount recovered from the employees towards self or parental insurance premium payable to the insurance company would not be deemed as 'Supply of service' by the applicant to its employees.

2.2.15 From the aforesaid legal provisions, judicial precedents and discussions, it is submitted that the provision of transportation facility for the employees cannot be considered as supply of service as per Section 7 of the CGST Act, and therefore, should not be subject to GST.

THE APPLICANT IS ELIGIBLE TO AVAIL INPUT TAX CREDIT OF THE GST CHARGED BY THE TRANSPORT SERVICE PROVIDER

2.2.16 In order to determine whether the Applicant is eligible to avail ITC on the GST charged by the Transportation Service Provider, it is pertinent to refer to Section 16(1) of the CGST Act. The relevant extract of Section 16 of the CGST Act, 2017 is reproduced below:

> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to* ***take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business*** *and the said amount shall be credited to the electronic credit ledger of such person.*

2.2.17 Based on a plain reading of the CGST Act, credit of input tax charged on supply of services would only be allowed when such goods or services or both are used or intended to be used in the course or furtherance of business. In this regard, the Applicant wishes to submit that the Transport Service Provider provides the services to the Applicant in the transportation of employees to and from the

premises of the Applicant. Such services are provided in pursuance of the Applicant's obligation to provide such facilities to its employees, in the course of its employment.

2.2.18 It is also crucial to refer to the provisions of Section 17(5)(a) of the CGST Act, which provides for ITC which will not be available to an assessee. We have reproduced below the relevant portion of the provision:

"(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely: -

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles'

2.2.19 Given the above, it is submitted that ITC of tax paid on the supply of transportation services by a motor vehicle with the capacity of more than 13 persons, will be available as ITC. Therefore, the Applicant should be eligible to avail ITC of the tax charged on the invoices raised by the Transport Service Providers.

2.2.20 Further, the Applicant wishes to draw your kind attention towards various judicial precedents allowing the ITC to the assessee under negative list regime of taxation of services under Finance Act, 1994. In the case of **M/s Hindustan Coca Cola Beverages Pvt. Ltd. v/s CCE, Nashik**[17], the Hon'ble CESTAT, Mumbai Bench held that post 2011, *canteen service is excluded from input service definition only when such service is primarily for personal use or consumption of any employee. When the company has borne the cost of canteen and not recovered from the employees, then in that case, it cannot be treated as services is primarily for personal use or consumption of employee and accordingly, CENVAT credit is allowed.*

A similar view was upheld by the Hon'ble High Court in the case of ***Cema Electric Lighting Products India Private Limited Vs. CCE*** *reported in* ***2015 (37) STR 718 (Guj.).***

2.2.21 It may be noted this Hon'ble AAR in the **Tata Motors Limited** Ruling had affirmed that ITC would be applicable to the applicant of the GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace. The relevant question was answered by this Hon'ble AAR is reproduced below:

Question: -1. Whether input tax credit (ITC) is available to Applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace?

Answer: - ITC is available to the applicant but only after 01.02.2019.

2.2.22 Based on the aforementioned provisions and judicial precedents cited, there is no doubt that a taxpayer is allowed to avail ITC on the procurement of services of transportation of passengers by a non-airconditioned bus for passengers exceeding 13 passengers.

2.2.23 Considering the above provision and facts of the case, it is submitted that the Applicant is allowed to avail ITC on the GST charged by the Transport Service Provider.

2.2.24 In this regard, we refer to the order passed by Authority for Advance Ruling Uttar Pradesh in case of **Dr Willmar Schwabe (I) Private Limited** wherein it was held that the applicant was specifically using motor vehicles having approved seating capacity of more than thirteen persons (including the driver) would be eligible for Input tax after 01.02.2019. The relevant portion of the said ruling is reproduced below:

In the subject case, since the applicant has specifically submitted that they are using motor vehicles having approved seating capacity of more than thirteen persons (including the driver), the applicant shall be eligible for Input Tax Credit. In this case, however we would like to make it very clear that if the motor vehicle hired by them does not have an approved seating capacity of more than thirteen persons (including the driver), then in that case the applicant will not be eligible for Input Tax Credit.

As per clause 1 of the said Schedule-III, services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services. Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, it is held that GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case.

2.2.25 In view of the above, it is submitted that the ITC of the tax paid by the Applicant on the value of services provided by the Transport Service Providers should be available as ITC.

PRAYER

In view of above submissions, it is most respectfully prayed by the Applicant that the Hon'ble Authority for Advance Ruling be pleased to:

(a) Pass a ruling as to whether GST would be applicable on the nominal amount deducted by the Applicant from its employees towards the food served in the canteen maintained by the Applicant;

(b) Pass a ruling as to whether ITC of the GST paid to the Canteen Service Provider would be available to the Applicant;

(c) Pass a ruling as to whether services provided by the way of transportation facility to employees would be construed as supply of service;

(d) Pass a ruling as to whether ITC of the GST paid to the Transport Service Provider would be available to the Applicant;

3. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

Question 1 -

Whether the deduction of a nominal amount by the Applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service" by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

Taxability of "canteen facility' provided to employees:

At the outset, taxability of 'Canteen Facility' need to be determined which can be analysed through the Charging section of the statue i.e. Section 9 of the CGST Act 2017 read with Section 7 of the CGST Act 2017 i.e. scope of supply, which lays two important tests discussed hereunder:

1. **Test 1: Whether 'Canteen Facility's provided by employer to employee is in course or furtherance of business?**

   Analysis: The phrase in course or furtherance of business is a very vide term and has not been defined in the CGST Act 2017. But the word business has been defined under Section 2(17) of CGST Act, 2017 which within its scope almost every commercial activity. The definition starts with the words "Business includes" i.e. it is an open-ended definition and not an exhaustive which covers any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity. Further, clause (b) of Sec 2(17) widens the scope by covering any activity which is incidental or ancillary to business is also business. On these footings we may say that 'Canteen Facility's provided by employer to its employee can be covered in the definition of business.

2. Test-2 Whether Such services qualify to be supply under CGST Act, 2017?

Analysis: Now it is important to determine whether the same qualify the definition of Supply under Section 7 of the CGST Act 2017 read with schedules. There could be two scenarios i.e. these 'Canteen Facility" can be provided with or without consideration:

2.1 If such services provider for a consideration:

Analysis of Definition of Supply:

Supply as defined under Section 7 of the CGST Act 2017 has a very wide ambit covering almost everything through its inclusive definition. As per Section 7(1) (a) of CGST Act, 2017 sale, transfer, barter exchange etc. all are covered under the definition of supply if it for business purpose and involving consideration. Thus, it is very clear that if the employer provide 'Canteen Facility's to its employees for a consideration which may be at concessional rate or otherwise the same will be covered under Section 7(1) (a) and such services shall be treated as supply.

Reference to Advance Ruling-Kerala

Further emphasis need to be placed on the Authority for Advance Ruling (in short "AAR") -Kerala in case of Caltech Polymers (P.) Ltd., In re [2018] 92 taxmann.com 142/67 GST 95 wherein application was filled fora matter involving recovery of food expenses from employees for the canteen facility provided by a Company, whether such recovery falls within the definition of 'outward supply' and are therefore taxable outward supplies under the GST law. The Hon'ble AAR-Kerala has held that the supply of food by the applicant (Company) to its employees would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business and thereby the test of in the course or furtherance of business' is met by the applicant and hence a taxable supply under GST.

Reference to Appellate Authority of Advance Ruling-Kerala

The applicant to advance ruling being aggrieved with the order of AAR, preferred an appeal to Appellate Authority for Advance Ruling, Kerala (in short "AAAR") wherein AAAR vide in Caltech Polymers (P.) Lid, In re [2018] 98 taxmann.com 355/70 GST 582 upheld the order of AAR, and held that supply of food items to the employees for consideration run by the company would come under definition of "supply" and would be taxable under GST.

It is pertinent to note that the view taken by AAR Haryana (Bewmer India Private Limited [2020 VIL 316 AAR] by AAR-Haryana dated 29 October 2020 conforms to the ruling issued in the matter of Caltech Polymers Private Limited [2018 (12) G.S.T.L. 350 (A.A.R. - GST)] which has been affirmed by the Appellate Authority for Advance

Ruling [2018 (18) G.S.T.L. 373 (App. A.A.R. - GST)], wherein it was held that recovery of amount from employees for the canteen services provided by the company would be considered as outward supply and GST will be applicable on the same.

The Caltech case (supra) has been upheld by Hon'ble AAAR, Kerala /Case No. CT/7726/2018-C3 dated September 25, 2018].

Reference Case law: Karnataka AAR in the case of M/s Federal Mogul Goetze India Ltd. Dtd. 29.11.2022. the gist of the judgment is reproduce below: -

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

a. In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees?

Comment:

The canteen services provided by the employer to their employees, as per the contractual agreement, are considered perks concerning employment. Therefore, these perks offered by the employer to the employee will not attract GST. However, if the employer charges consideration for providing canteen services as a taxable supply for business purposes, GST will be applicable as per the provisions of the CGST/TGST Act 2017.

b. Whether ITC is available to the Applicant on GST charged by the Canteen Service Providers for providing the catering services?

Comment

Section 16 of the CGST Act, 2017 enables the registered person to avail ITC on goods or/and services which are used or intended to be used in the course or furtherance of business.

Further, Section 17(5) of the CGST Act prescribes a list of few goods and services on which ITC is not admissible. Relevant provision reads as under:

Section 17: Apportionment of credit and blocked credits

(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 (an) except when used for the purposes specified therein, life insurance health insurance:

Question 2:

a. Whether the services by the way of non-air-conditioned bus transportation facility provided by the Transport Service Providers would be construed as 'supply of service' by the Applicant to its employees under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

Comment:

A. As per Sec.7 of CGST Act,2017 'Scope of supply' means 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 of agreed to be made for a consideration by a person in the course or furtherance of business;

b. the activities specified in Schedule I, made or agreed to be made without a consideration; and

c. the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

SCHEDULE I given under Section 7 of the CGST Act, 2017 declares supply of goods or services or both between related persons when made in the course of furtherance of business as "Supply".

As per Explanation provided under Sub-section (5)(a) (iii) of Sec.15 of the CGST Act, 2017, employer and employee are related persons.

In view of above legal positions, the act of the assessee to provide Conveyance/Rent-a-Cab services to its employees will be treated as "Supply'.

I. To decide value of supply:

A) As per section 15(1) value of supply shall be transaction value when Supplier and Recipient are not related person. However as per explanation to section 15(5) (a) (iii), Employer and Employee are related person.

B) As per section 15(4), when the value can not be determined under section 15(1), then the same shall be determined as prescribed and the same has been prescribed in CGST Rules 2017.

C) As per Rule 28 of CGST Rules 2017, value in relation to transactions between related person shall be, either a) Open Market Value or b) Value of like kind & quality goods or c) as determined under Rule 30 or 31. However value can not be

determined under Rule 28 in the instant case in view of second proviso to said Rule. The said proviso excludes the instant case from Rule 28 since recipient (i.e. Employee) is not eligible for full ITC as declared on invoice of outward supply (ie Conveyance/Rent-a-Cab services")

D) Therefore Rule 30 is squarely applicable because value of inward supply i.e Cost of acquisition is available. Therefore, value of Conveyance/Rent-a-Cab services shall be One hundred and ten percent of cost of acquisition of services.

In view of the above the taxpayer, is liable to pay GST on value which is one hundred and ten percent of the cost of inward supply. Since the supply is intra-state, the GST liability is worked out as under:

1. Clause 1 of the Schedule- III says "services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services". In the instant case, services are provided by employer Me employee and not by employee to the employer. Hence the contention of the assessee appears to wrong and incorrect.
2. The recovery of some amount from employees towards Conveyance charges has not been denied by them.
3. Another contention of the assessee that charges collected by them from employees is exempted vide Notification No 12/2017-CT(Rate) dt 28.06.2017 [s]. no.15(b)], is also not correct. The exemption vide Notification No 12/2017-CT(Rate) dt 28.06.2017[sl.no. 15(b)] pertains to "Transport of Passengers with or without accompanied belongings'. In the instant case the company has facilitated to and for arrangement of its employees to reach work place from their residence places. Transport of passengers and transport of employees are two different things and employees of the company can not be equated with Passengers. Hence there will not be any exemption available to the assessee.

LEGAL PROVISIONS

A); Section 17(5) (b) of CGST Act 2017,

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

namely: -

(a) motor vehicles and other conveyances except when they are used

(i) for making the following taxable supplies, namely: -

(A) further supply of such vehicles or conveyances; or

(B)transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) .....

B): Therefore, the taxpayer is eligible to avail ITC on inward Supply of "Rent-a-Cab services CH 9964" since they are providing Outward Supply as "Conveyance/Rent-a-Cab services".

C): As per section 15(1) value of supply shall be transaction value when Supplier and Recipient are not related person. However as per explanation to section 15(5) (a) (iii), Employer and Employee are related person.

D): As per section 15(4), when the value cannot be determined under section 15(1), then the same shall be determined as prescribed and the same has been prescribed in CGST Rules 2017.

E) As per Rule 28 of CGST Rules 2017, value in relation to transactions between related person shall be, either a) Open Market Value or b) Value of like kind & quality goods or c) as determined under Rule 30 or 31. However value cannot be determined under Rule 28 in the instant case in view of second proviso to said Rule. The said proviso excludes the instant case from Rule 28 since recipient (i.e. Employee) is not eligible for full ITC as declared on invoice of outward supply (i.e Conveyance/Rent-a-Cab services")

F) Therefore Rule 30 is squarely applicable because value of inward supply i.e Cost of acquisition is available. Therefore, value of Conveyance/Rent-a-Cab services shall be One hundred and ten percent of cost of acquisition of services.

Karnataka AAR in the case of M/s Federal Mogul Goetze India Ltd .dtd 29.11.2022. the gist of the judgment is reproduce below :-

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

b. Whether ITC is available to the Applicant on GST charged by the Transport Service Providers for providing the non-air-conditioned bus transportation services?

Comment:

ITC on GST paid on transport facility is admissible under Section 17(5)(b) of CGST Act on the transport facility provided to employees of the company subject to the condition that burden of GST have not been passed on to the employees of the company.

4. HEARING

Preliminary e-hearing in the matter held on 09.05.2024. Mr. Pratik Shah, C.A., appeared and requested for admission of the application. Jurisdictional Officer was not available.

The application was admitted and called for final hearing on 26.12.2024. Mr. Mohit Airan, Advocate, Authorized Representative, appeared and made oral and written submissions. Jurisdictional Officer Mr. Harishchander Yadav, Assistant Commissioner of CGST, Division-IV, appeared. We heard both the sides.

5. OBSERVATIONS AND FINDINGS:

5.1 Taxation of nominal recovery of Canteen Services

5.1.1 We have carefully considered all the material on record and the relevant provisions of Law. The Applicant is before this authority for seeking clarification as to whether recovery of nominal amount from the employees towards the food served in the canteen maintained by the applicant through third-party service provider, as mandated in the Factories Act, 1948 would attract tax under GST.

(1) The Applicant is a Company incorporated under the provisions of the Companies Act, 1956. It is involved in the business of manufacture and sale of radial tyres, tubeless tyres, steel radial tyres and other automobile tyres and tubes. The Applicant has a factory in the state of Maharashtra where the aforementioned goods are manufactured and approximately 1074 full-time permanent and contractual workforce are employed. The Applicant has entered into a contractual relationship with Sodexo India Services Private Limited (hereinafter referred to as 'the Canteen Service Provider') for the supply of food to its employees within the Applicant's factory premises.

(2) We observe that, in order to comply with the obligation under Factories Act 1948, Applicant provides canteen facility to all the workers through a third-party Canteen Service Provider.

(3) As per the employment contract, the employees of the Applicant are eligible for all the benefits and allowances according to the Company's policy. Pursuant to the Canteen Policy, where employees avail the canteen facility provided by the Applicant, All the employees are eligible for canteen facility at subsidized rates. The

Applicant makes payment to the Canteen Service Provider for the supply of such food to its employees. Employees bear 1/3rd cost of the amount on all items whereas 2/3rd cost of the amount is borne by the company.

(4) Applicant has contended that the canteen facility is provided in terms of the contractual agreement entered into between the employer and employee. The contractual agreement specifically provides for availment of benefits and allowances as per the Company's policy which apart from other benefits also provides for canteen services to the employees. In view of this, Applicant contends that the said transaction should not be treated as a supply as per Section 7 of the CGST Act read with Schedule III and thus GST is not be leviable on the recovery of nominal amount from the employees.

(5) Various grounds raised by the Applicant to contend that the recovery of nominal amounts from the employees for providing canteen services are discussed as below.

5.1.2 Whether supply of canteen services is in the course or furtherance of business.

(1) We observe that the Applicant has argued that he is in the business of manufacture and supply of various types of automobile tyres and tubes and supply of canteen services is not his business, rather, it is their obligation under the provisions of the Factories Act, 1948. The Applicant has taken view that supply of canteen services' cannot be regarded as 'in the course or furtherance of business'. CGST Act, 2017 defines the expression 'business' under section 2(17) of the CGST Act, 2017. The definition of 'business' as given in Section 2(17) of the CGST Act, 2017 is as under: -

"(17) "business" includes -

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

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

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

.....

.....

This is an inclusive definition wherein various aspects have been listed in the clauses that would be included in 'business'. Clause '(a)' of this definition mentions various activities like trade, commerce, manufacture, profession, vocation, adventure, wages or any other similar activity. Thus, this clause covers

these activities or any other similar activities. The last phrase 'whether or not it is for a pecuniary benefit' widens the scope of business to include non-profit activities. Clause (b) mentions that any activity or transactions in connection with or incidental or ancillary to activities mentioned in (a) would also be included in 'business'. Clause '(c)' provides that there would not be requirement of volume, frequency, or regularity of such transactions.

(2) It is an accepted fact that the Applicant is not carrying out supply of canteen services as his principal activity. No doubt his principal activity remains as manufacture and supply of tyres which is covered by clause 'a' of above definition. Let's see whether the activity of supply of canteen services, falls under the definition of business, as extracted above. Clause (b) mentions that any activity or transaction incidental or ancillary to principal activity would also be included in 'business'.

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.

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

The reading of all above definitions clarify 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 activity of providing food in canteen to its workers who are pivotal to his principal activity can definitely be said to be in connection with or incidental or ancillary to his main activity of manufacture and supply of tyres.

(3) Further, in terms of Section 2(17) (c), as mentioned in para (1) 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, the activity of supply of canteen services, falls within the definition of "business".

(4) Thus, as discussed above, the activity of supply of canteen services provided to the employees falls under the definition of 'business' on account of following two aspects.

1. The activity of supply of canteen services to the employee is in connection with or incidental or ancillary to the principal activity of the taxpayer as explained above.

2. This activity is mandated by the factories Act, 1948 and sine-qua-non for businesses having more than 250 workers.

5.1.3 Whether there is supply of canteen services from the company to the employees

(1) Fundamentally, the subject issue pertains to the transaction between the Applicant and employees, i.e., with respect to the canteen services being supplied by the Applicant to employees for a consideration, although at subsidized rates. The Applicant pays the total consideration for the supply of canteen services to the canteen service provider and the Applicant in turn supplies the canteen services to their employees.

(2) It is an undisputed fact that the money consideration charged, although at subsidized prices, for the supply of canteen services to their employees is being collected by the Applicant.

(3) Therefore, it is evident on record that there are two distinct and totally different transactions in the event of supply of canteen services to the employees of the Applicant. They are: -

i) Supply of canteen services by the canteen service provider to the Applicant (employer); and

ii) Supply of canteen services by the Applicant (employer) canteen to their employees.

(4) In respect of the first transaction, the canteen service provider has been supplying food/beverage to the Applicant (employer) for which the canteen service provider receives consideration from the Applicant on which the Applicant has been paying GST at the applicable rates to the canteen service provider.

(5) Similarly, in the second transaction, the Applicant (employer) is supplying the service of providing food/beverages to their employees for which the Applicant is receiving consideration, although at the subsidized rate, from their employees. The canteen service provider invoices the appellant for the entire canteen services. He charges the consideration along with GST thereon. There is no privity of contract

between the canteen service provider and the employees. It is the Appellant (employer) which is providing canteen services to the employees. Applicant deducts certain amount from salary of the employees against this supply. Applicant makes only part of the recovery and balance cost is borne him. Hence, the criteria of 'business', 'consideration' are met in the transaction of supply of canteen services by Applicant to the employees. Thus, there is supply of canteen services from the Applicant to the employees, u/s. 7 (1) of CGST Act, 2017.

5.1.4 Taxability of Supply of Canteen services to the employees

(1) Another contention of the Applicant was 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?	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 supple 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 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.

Thus, it is derived from Entry 1 of Schedule III that "services by an employee to employer in the course of or in relation to his employment" shall be neither supply

of goods nor supply of services. It could be seen here that Schedule III basically deals with 'services by an employee to employer', and not the other way round. Only as a corollary, the 'services by the employer to the employee', especially when provided in the form of perquisites, has been discussed in the CBIC Circular No. 172/04/2022 - GST dated 06.07.2022 in its para 2 mentioned above. From the above, it could be inferred that perquisites in terms of a contractual agreement between the employer and employee are not to be subjected to GST.

(2) It may be seen that in order to place any service provided by the employer to employee outside the ambit of GST, the same should be in the form of a perquisite. Though the term 'perquisite' has not been defined under the provisions of GST, the same is discussed under the Income Tax Act, where it has been stated in Section 17(2) as follows: -

"perquisite" includes-
(i) the value of rent-free accommodation provided to the assessee by his employer;
(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;
(iii) ----------"

.....

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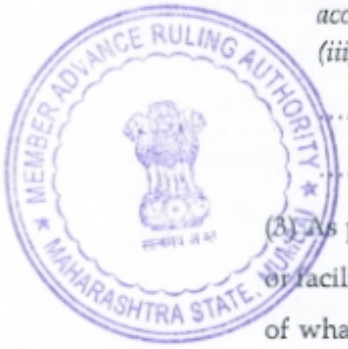

(3) As per Income Tax Act, 1961, perquisite is defined to be the value of free benefit or facility given by the employer to his employees. The collection from the employees of whatever value, is not covered under 'perquisite'. It could be inferred from the above, that any service rendered free of charge, or, any service rendered on a concessional basis shall qualify as a perquisite. But, it is to be noted that only the value/portion to the extent of concession offered by the employer is to be treated as a perquisite and not the remaining portion/value that has been charged by the employer. Applying the said analogy to the instant case, in respect of the canteen services provided by the applicant to its employees, it becomes clear that the exemption provided in Entry 1 of Schedule III to the CGST Act, 2017 applies only to the concession part extended to the employees and not on the value charged to the employees. Thus, the recoveries made from the employees are liable to levy of tax.

5.1.5 The Applicant has presented following arguments in support of his stand

(1) The applicant submits that the provision of canteen facility to the employees is only on account of a statutory obligation and there is no legal intention to provide any service. We observe that Factories Act, 1948 imposes an obligation to provide

canteen services where there are more than 250 workers. However, it does not ask for free facility. It mandates provision and maintenance of canteen services. However, it does not specify about the business model to be used for making available the same. It may be on own account or through canteen contractor. It does not specify that it should be free or subsidized. It also does not stipulate about any exemption from due taxes. Intention of the person is to be derived from the nature of transaction effected, especially when GST Act defines when a transaction is to be a taxable supply. Based on the definitions of what constitutes to be 'business', 'consideration', 'supply', if a transaction gets covered as 'taxable supply', then the nature of this transaction cannot be altered by saying the said transaction was undertaken as a statutory obligation. The activities ancillary and incidental to principal business which are not for pecuniary gain are also covered under the definition of 'business' as provided in the Act.

(2) The applicant submits that there should be an element of reciprocity for an activity to be subject to GST. The Applicant has argued that the deduction of employees' salary towards the food availed by the employees, would constitute a transaction in money between the Applicant and its employees and would not attain a character of a 'consideration' in the absence of quid pro quo. We find that there is clear reciprocity between the employees and the Applicant regarding provision of canteen services. By the Applicant's own submission, the subsidized canteen facility is provided as a part of the employment agreement. This agreement stipulates how much charges are to be recovered from the employees for providing canteen facility. Clearly, canteen services are provided by the employer and deduction of an amount from employees' salary is the consideration for the same. There is no substance in calling this transaction as a transaction in money and that there is no reciprocity. The intention of pecuniary gain is not necessary for the activity to be called as 'business' or 'supply'. The reliance placed on Hon'ble BHC Judgement of Bai Mamubai Trust is misplaced as the facts & issues are different. In that case, the issue was whether royalty payment made for remaining in possession of suit premises falls within the definition of supply. Hon'ble court observed that defendant's occupation pursuant to an order of the Court cannot be said to be contract involving a supply for consideration. In the applicant's case, Applicant is providing canteen services and in turn is receiving consideration though at subsidized rates.

(3) Applicant has referred to decision of Cinemax India Ltd v/s. Union of India of Hon'ble Gujarat High Court. The facts of the case are different than the current case.

This case pertains to validity of section 65(105) under erstwhile Service Tax Act. How the definition of 'business' under GST Act covers canteen services provided by applicant is discussed in para 5.1.2 Applicant has further quoted judgements in case of M/s Raipur Mfg Co. Vs State of Gujarat & IIT Kanpur V/s. State of UP. However, the facts in these cases and the provisions of law involved are completely different.

(4) In this regard, we notice that the applicant has further placed reliance on the ruling of Gujarat AAR in RE: Emcure Pharmaceuticals Limited [2022-VIL-231-AAR], the ruling of Maharashtra AAR in RE: Tata Motors Limited in [2021-TIOL-197-AAR-GST - 2020-VIL-257-AAR], the appellate ruling by Gujarat in AAAR in RE: Amneal Pharmaceuticals Limited [GUJ/GAAAR/APPEAL/2021/07] , the Maharashtra AAR in a ruling in RE: Posco India Pune Processing Centre Pvt Ltd (Order dated 07.09.2018), Authority for Advance Ruling, Maharashtra in M/s Jotun India Pvt Ltd (Order dated 4.10.2019), the Authority for Advance Ruling, Gujarat in M/s. Zydus Lifesciences Ltd. (Order dated 28.09.2022), M/s. Cadmach Machinery Pvt. Ltd.(Order dated 12.04.2022), M/s. Dishman Carbogen Amcis Ltd.(Order dated 09.07.2021), M/s. Astral Ltd. .(Order dated 07.03.2022), M/s. Intas Pharmaceutical Ltd.(Order dated 07.03.2022), the Authority for Advance Ruling, Andhra Pradesh in M/s Brandix Apparel India Private Limited. We would like to place on record that an advance ruling pronounced by the Authority or the Appellate Authority shall be binding only on the applicant who had sought it, and the concerned officer or the jurisdictional officer in respect of the applicant. Further, this authority has placed reliance on Rulings in case of Himachal Pradesh AAAR dated 26.09.2023 in case of M/s Federal-Mogul Anand Bearings India Limited, Tamil Nadu AAAR dated 05.05.2023 in case of M/s Kothari Sugars and Chemicals Limited and Tamil Nadu AAR dated 20.12.2023 in case of M/s Faiveley Transport Rail Technologies India Private Limited.

(5) If incidental of ancillary supply of goods or services such as canteen services by the employer to employee were to not fall under 'business', it would not be necessary to provide respite to 'supplies by employer to employees given as perquisite' from falling under 'supply' by taking recourse to schedule III. That is, if a transaction or activity is not a supply u/s 7(1) of CGST Act, then there would not be necessity to place such a transaction u/s 7(2)(a) for deeming it to be neither supply of goods nor supply of services. Hence, as discussed in Para 5.1.2 and 5.1.3, Applicant's activity of supply of canteen services falls u/s 7(1) of CGST Act, 2017. As discussed in Para 5.1.4, only the perquisites i.e., free supplies, in terms of a contractual agreement between

the employer and employee are not to be subjected to GST as these are in lieu of the services provided by employee to the employer in relation to his employment. Hence, the recoveries made from the employees are liable to levy of tax as it is consideration against canteen services provided by the Applicant to the employees.

5.2 Whether ITC of tax paid to caterer for Canteen Services is available

5.2.1 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.

5.2.2 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."

5.2.3 As per Section 17(5)(b) of the CGST Act, ITC on food and beverages, outdoor catering, etc. is not available. However, it is seen that a proviso after sub- clause (iii) of clause (b) of sub- section (5) of section 17 of the CGST Act is provided to clarify that the ITC in respect of such goods or services or both would be eligible where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

We 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 Sr. 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 that vide the CGST (Amendment Act), 2018, clause (b) of Section 17(5) was substituted with effect from 01.02.2019 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.

5.2.4 The Applicant has submitted that they are a manufacturing unit and that there are more than 250 workers in the factory and in accordance with Section 46 of the Factories Act, 1948, it is obligatory on them to provide canteen facilities within the factory premises. Thus, in light of the above-mentioned provisions, the ITC of the GST paid in relation to canteen charges is not blocked under u/s 17(5)(b). However, the issue of eligibility of input tax credit needs to be examined further in the light of the facts of the present case and various Tax Notifications.

5.2.5 As per the provisions of the Factories Act, 1948, the Applicant has the legal responsibility to provide & maintain the canteen. The Applicant has accordingly, instead of maintaining the canteen himself, has engaged another person who is providing canteen services to the workers of the Applicant on behalf of the said Applicant. The service so provided is classifiable as 'Restaurant Service' and liable to tax. 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.

5.2.6 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% rate 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 permitting availment

of ITC. In other words, a Taxpayer providing Restaurant Service has no option of taking ITC by providing Restaurant Service at normal GST rate.

5.2.7 Accordingly, the canteen service provider is providing the restaurant service to the employees 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: -

"(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;"

5.2.8 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 employees as mandated in the Factories Act, 1948 i.e. he is also providing Restaurant Service to its employees. As already mentioned in para 5.2.6, the Restaurant Service compulsorily attracts rate of 5% without ITC in a non-specified premises and the Applicant's premises are not 'specified premises' in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Therefore, though the Section 17(5)(b) of the CGST Act, 2017 does not block availment of ITC, however, in the present case availment of ITC is barred 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.

5.2.9 There is another way of looking at these 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 would be required to pay 5% of GST on taxable supply 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.

5.3 <u>Whether the services by the way of non-air-conditioned bus transportation facility provided by the Applicant to its employees would be construed as 'supply of service' under GST</u>

5.3.1 We observe that the Applicant has engaged third-party Transport Service Providers to provide transportation facility to its employees for commuting between the

factory and residence in non-air-conditioned buses. Applicant states that they do not recover any amount from the employees for this transportation facility. As per the Company policy such bus transportation facility is offered only to employees of the company.

5.3.2 In this regard, it may be seen that entry 1 of Schedule III of the CGST Act, 2017, provides that "services by an employee to employer in the course of or in relation to his employment" shall be neither supply of goods nor supply of services. It could be seen here that Schedule III basically deals with 'services by an employee to employer', and not the other way round. Only as a corollary, the 'services by the employer to the employee', especially when provided in the form of perquisites, has been discussed in the CBIC Circular No. 172/04/2022 - GST dated 06.07.2022 wherein it has been explained as follows: -

"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 and 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".

5.3.3 From the above, it could be inferred that perquisites in terms of a contractual agreement between the employer and employee are to be kept outside the ambit of GST. From the appointment letter given to the employees, it is seen that the Company promises 'other benefits' as per the company policy. As per the HR policy of the company, company offers free transportation facility to its employees. Thus, free bus transportation facility is given to the employees as part of their contractual agreement.

5.3.4 It may be seen that in order to place any service provided by the employer to employee outside the ambit of GST, the same should be in the form of a perquisite. Though the term 'perquisite' has not been defined under the provisions of GST, the same is discussed under the Income Tax Act, where it has been stated in Section 17(2) as follows:

"perquisite" includes

(i) the value of rent-free accommodation provided to the assessee by his employer;

(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

(iii) ----------

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As per Income Tax Act, 1961, perquisite is defined to be the value of benefit given to the employees. This is the value of perquisite which is in lieu of the services of the employees which are not leviable to tax by the virtue of entry-1 of schedule III. The collection from the employees of whatever nominal value is not covered under 'perquisite' and is liable for levy of tax. It could be further inferred from the above, that any service rendered free of charge, shall qualify as a perquisite. We find that in the instant case, Applicant is offering the transportation facility free to its employees. Hence no GST would be applicable in respect of these services provided to the employees.

As explained in para 5.1.3 in respect of canteen services, supply of transportation services to the employees would in normal course constitute to be the supply of services u/s 7 (1) of GST Act 2017. However, it is now clarified by the CBIC circular No. 172/04/2022/GST dated 6th July 2022 that perquisite provided to the employees in view of the Contractual Agreement would not be subjected to GST. It is clarified that such perquisite are in lieu of the services provided by the employees to the employer in the course of or in relation to his employment, and should not be subjected to GST.

Supplies of any services would not be subjected to GST only under the following circumstances.

1. Such services are exempt under the notification number 12/ 2017, CT(R) dated 28/06/2017.
2. Such a transaction in services is a non-GST supply.
3. Such services are not supply as per provisions in section 7 of CGST Act, 2017

As the supply of transportation service in the nature of perquisite by the employer to the employee would not have respite from two aspects mentioned at Sr.No.1 and 2 above as the said supply is neither exempted nor a Non-GST supply. Hence, it needs to be analysed if such services can be called as supply u/s 7.

The activity of provision of transportation services to the employees are in the course of business (as detailed for canteen services in para 5.1.2 above). Though element of consideration is absent, as per Section 7(1)(c), 'the activities specified in Schedule I, made or agreed to be made without consideration' have been defined to be included in 'Supply'. Serial Number 2 of Schedule 1 reads as below.

> ' 2. *Supply of goods or services or both* ***between related persons*** *or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial*

year by an employer to an employee shall not be treated as supply of goods or services or both. '.

Further, Explanation to Section 15 reads as below.

Explanation. – For the purposes of this Act,-- (a) persons shall be deemed to be —related persons

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

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

(iii) such persons are employer and employee;

.....

As per a(iii), employer and employee are deemed to be related persons for the purposes of this Act. This means any transaction between employer and employee will not come out of 'supply' for the reason of not having consideration. The respite has come through Schedule 3. Section 7(2)(a) states that, notwithstanding anything in sub-section (1), activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services. Serial Number 1 of Schedule III is as below.

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

This entry includes only the services by an employee to the employer. However, it has been clarified that as corollary to this provision, the perquisite given to the employees in view of the contractual agreement are in lieu of services given by the employee to the employer and should not be subjected to GST. As the supply of perquisite by the employer to the employee would not have respite from above two aspects mentioned at Sr.No.1 and 2 above as the said supply is neither exempted nor a Non-GST supply. Hence, it would be appropriate to interpret that the perquisite given to the employees in view of the contractual agreement are in lieu of services given by the employee to the employer and would not be subjected to GST by deeming it to be part of Schedule III as a corollary to entry at Sr.No.1 of Schedule III for cohesive interpretation. In view of this, supply of free transportation service provided by the employer to the employee in view of contractual agreement with them will not be 'supply' u/s 7 of MGST ACT.

5.4 <u>Whether ITC is available to the Applicant on GST charged by the Transport Service Providers for providing the non-air-conditioned bus transportation services</u>

5.4.1 The perquisite of free bus transportation by the employer to his employee in terms of contractual agreement entered into between the employer and his employee is in

lieu of the services provided by employee to the employer in relation to his employment and will not be subjected to GST.

5.4.2 The service provider of transportation service to the Applicant is discharging GST on the said services. To substantiate this, the Applicant has also attached few GST bills of independent service provider for reference. It is seen that ITC on leasing, renting or hiring of motor vehicles for transportation of passengers having approved seating capacity of more than 13 persons is not blocked u/s 17(5)(b)(i).

5.4.3 The transportation of employees by picking them from their residence to the factory or office premises is merely for personal convenience of the employees to enable them to reach the premises of the office so as to participate in the business activity.

5..4.4 Hon'ble High court of Bombay in Solar Industries India Limited Vs Commissioner, Central Excise, Customs and Service Tax (Bombay High Court) held that Cenvat Credit is not eligible on facility of transportation provided by the appellant to its employees as same was merely in the nature of service for personal use or consumption of its employees. The substantial question of law involved in the said judgement is:

1. Whether the services provided by a Manufacturer of transportation of its employees, from their designated pick up points to their workplace, by Bus, would amount to a service for personal use or consumption of any of the employees?"

2. Whether the activity of providing bus transport services to its employees, at the cost of the Manufacturer, to reach factory in time and the expenses incurred by the Manufacturer in providing such service, (which amount is taken into consideration, while determining the final price of the product) can be said to be a component leading to the manufacturing activity, so as to entitle the Manufacturer, the benefit of Cenvat Credit?

<u>The view held by Hon'ble High court is produced below:</u>

"The transportation of employees from distance of about 40 kms for reaching factory is not an activity which could be said to be a part of manufacturing activity. It is merely for personal convenience of the employees to enable them to reach the premises of the factory so as to thereafter participate in the manufacturing activity.

In this regard, the reliance is placed on the judgment of the Karnataka High Court in Toyota Kirloskar Motor Private Limited vs THE COMMISSIONER OF CENTRAL TAX wherein food and beverages were provided by the appellant therein to its employees by engaging the services of an outdoor caterer. This was sought to be treated as "input service" since there was a statutory duty on the appellant to establish a canteen for its employees. Considering the effect of definition of "input service" after 01.04.2011 it was found that establishment of such canteen was primarily for personal use or consumption of the employees and after such amendment no cenvat credit could

be availed. This view has been upheld by the Hon'ble Supreme Court while dismissing the Special Leave Petition on 18.11.2021 preferred by the said appellant. The facts of the present case also indicate that the facility of transportation provided by the appellant to its employees was merely in the nature of service for personal use or consumption of its employees."

5.4.5 It is pertinent to note that the Hon'ble High Court held its view on the nature of services, under contention between taxpayer and the department, notwithstanding that they are not explicitly categorized as service for personal use or consumption of its employees under the provisions of the existing laws. Thus we find that the ratio of court judgment is applicable in the current taxation regime and particularly to the current issue contended by the taxpayer.

5.4.6 Hired motor vehicles have been used by the applicant for provision of service of transportation of employees from residence to factory or office premises. As seen in paras 5.3.1 to 5.3.4, free transportation facility provided to the employees is a perquisite provided to them are in lieu of their services as per employment contract. As mentioned in para 5.3.4 above, such perquisites are as a corollary to services mentioned at serial no.1 of Schedule III are taken to notionally fall into the category of neither supply of goods nor supply of services. Thus, the services of leased or hired motor vehicles are consumed for discharging obligation towards employees.

5.4.7 Section 17(5)(g) of CGST/MGST Act 2017 states that input tax credit shall not be available in respect of goods or services or both used for personal consumption. Provision of service of transportation of employees from residence to factory or office premises has been used for personal consumption or comfort of employees. The applicant is not under any statutory obligation to provide these services to his employees and the services provided comes under category of personal consumption which makes the applicant ineligible to avail input tax credit on the invoices issued to him by the transporter for transportation of employees as per Section 17(5)(g) of CGST/MGST Act 2017.

6. **In view of the extensive deliberations as held hereinabove, we pass an order as follows:**

ORDER

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

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1: Whether the deduction of a nominal amount by the Applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service" by the

Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

a. In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees?

b. Whether ITC is available to the Applicant on GST charged by the Canteen Service Providers for providing the catering services?

Answer: - 1. Answered in the affirmative

a. Nominal amounts deducted are not in the nature of perquisite provided to the employees and liable for levy of GST

b. Answered in the negative

Question 2: a. Whether the services by the way of non-air-conditioned bus transportation facility provided by the Transport Service Providers would be construed as 'supply of service' by the Applicant to its employees under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

b. Whether ITC is available to the Applicant on GST charged by the Transport Service Providers for providing the non-air-conditioned bus transportation services?

Answer: - 2. a. Answered in the negative

b. Answered in the negative

MEMBER ADVANCE RULING AUTHORITY * MAHARASHTRA STATE *

D.P. GOJAMGUNDE
(MEMBER)

PRIYA JADHAV
(MEMBER)

PLACE - Mumbai
DATE - 27/08/2025

Copy to:

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.