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.		AD2704240416370
GSTIN Number, if any/ User-id		27AACCJ5370R1ZX
Legal Name of Applicant		M/s. KION INDIA PVT LTD
Registered Address/Address provided while obtaining user id		Gate no. 134/1, off pune Nagar Road, Vadhu Road, Koregaon Bhima, Taluka shirur, Pune, Maharashtra 412 216.
Details of application		GST-ARA, Application No. 12 Dated 13.05.2024
Concerned officer		DC-GST-E-805
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Factory/ Manufacturing
B	Description (in brief)	The applicant is engaged in the design, manufacture and distribution of palletized material handling equipment including diesel forklift, electrical forklift and other warehousing equipment.
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 or services or both amounts to or results in a supply of goods or service 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- 12/2024-25/B- 162 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. KION INDIA PVT LTD, 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 Provider for providing the catering services?

Question 2:

Whether the deduction of nominal amount by the Applicant from the salary of the employees who will be availing the non-air-conditioned bus transportation facility proposed to be provided by the prospective Transport Service Provider will be construed as '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 will be available to the Applicant on GST that would be charged by the Transport Service Provider 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 is a Company incorporated under the provisions of the Companies Act, 1956 having a manufacturing plant (hereinafter referred to as 'the Factory') situated at Gat no 134/1, Vadhu Road, Off Pune Nagar Road, Koregaon Bhima, Taluka Shirur, Pune, Maharashtra 412216 and is *inter alia* engaged in the design, manufacture and distribution of palletized material handling equipment including diesel forklift, electrical forklift and other warehousing equipment. The Applicant is registered under the GST regime in the State of Maharashtra *vide* GSTIN 27AACCJ5370R1ZX.

1.2. For the purposes of the present application, it is stated that the Applicant has engaged canteen service provider, who provides food facility and wishes to engage transport service provider, who will provide transportation facility to the Applicant's employees.

1.3 It is with respect to the taxability of the amount recovered/ to be recovered from the employees and the availability of ITC of the GST paid on amount paid/ payable to the vendors, that the Applicant has filed the instant application.

1.4 In order to 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 FOOD FACILITY BY THE APPLICANT TO ITS EMPLOYEES

1.5 In the course of undertaking its business, the Applicant, has employed around 350 workers. 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(1) of the Factories Act which defines the term '*worker*' to mean '*a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer whether for remuneration or not in* any *manufacturing process,* or *in cleaning any part of the machinery* or *premises used for a manufacturing process, or in any other kind of* work *incidental to, or connected with the manufacturing process,* or *the subject of the manufacturing process but does not include any member of the armed forces of the Union*'. Further, 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*'.

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 has 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 defined utensils, cold room, storage section for keeping the cooked food, washrooms and wash basin, etc.

1.8 In order to provide such canteen facilities, the Applicant appoints vendor who would be responsible for the preparation of food for the employees and also 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 fulfillment of all the statutory requirements of the 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 KION Canteen 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 3. Policy Highlights

a. The policy gives the guidelines for *the canteen facility* for *the KION India employees*

b. *Subsidized canteen facility will be provided to all the employees of KION India* as *per the policy guidelines*

c. In case canteen facility is not possible due to *any of the reasons, the company will provide Sodexo Coupons to the employees*

d. The cost *of the canteen deduction is same* for *all employees.*

e. *The canteen committee will be administrative incharge* of *the canteen who will have interactions with the Canteen manager for the smooth functioning of the canteen services.*

1.10 Pursuant to the Canteen Policy, where employees avail the canteen facility provided by the Applicant, the Applicant would deduct INR 450 as cost of such canteen facilities from the salary of the employee 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.

PROVISION OF THE PROPOSED 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 proposes to engage contractual service provider to provide transportation services for its employees.

1.13 In this regard, the Applicant wishes to enter into a contract with a Transport Service Provider 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, the proposed bus transportation facility will be offered to the employees working at the middle and lower level management. In order to avail the bus transportation services, the employees would be required to display bus cards and employee IDs issued by the Applicant to board the bus and avail the bus facility. The prospective service provider will provide transportation services according to the pre-approved routes provided by the Applicant.

1.15 Pursuant to the Transport policy, a pre-agreed nominal amount as a cost of such transportation facility to the Applicant will be deducted from the employee's salary on a monthly basis availing the transportation facility. The balance monthly cost of the facilities will be borne by the Applicant.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

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 The Applicant offers food facilities to its employees at a pre-agreed nominal amount as per the Canteen Policy. The service provider raises an invoice on the Applicant on monthly basis. After the termination of employment services, the employees would not be allowed to access the canteen facilities of the Applicant.

2.2 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.

2.3 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.

2.4 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

2.5 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.

2.6 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.

2.7 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.

2.8 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. 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.'

2.9 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.

2.10 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.'

2.11 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 A CANTEEN FACILITY AND SUBSEQUENT DEDUCTION OF NOMINAL COST WOULD NOT TANTAMOUNT TO SUPPLY UNDER SECTION 7 OF THE CGST ACT

2.12 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.

2.13 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.

2.14 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 on account of a statutory obligation and there is no legal intention to provide any service.

2.15 The Applicant submits that there is no legal intention to enter into any contractual relationship by the Applicant and the provision of canteen facility to the employees is only due to mandatory statutory obligation.

2.16 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 a Canteen Service Provider to undertake the preparation of food and regular maintenance of the facility.

2.17 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 through the Canteen Service Provider appointed by the Applicant.

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

2.18 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.

2.19 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.

2.20 The Applicant wishes to submit that a supply must involve *enforceable reciprocal obligations*. Where there was no agreement for a supply between the relevant parties, *any payment subsequently received by the other 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.

2.21 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*2. 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.

2.22 In the instant case, the Applicant deducts a nominal amount from the employees' 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

2.23 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*'.

2.24 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."*

2.25 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*".

2.26 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.*"

2.27 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.*"

2.28. 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.'

2.29 Additionally, we refer to the order of the Supreme Court in the case of *State* of *Gujarat* vs. *Raipur Manufacturing Co. Ltd.4,* 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'.*

2.30 Further, in the case of Indian Institute of Technology Vs. State of Uttar Pradesh & Ors.5 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.

2.31 In view of the above, in the instant case, 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 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.

2.32 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.*

2.33 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.*

2.34 It is further stated that a similar ruling has been passed in case of *In Re: M/s Jotun India* Pvt *Ltd* 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.*

2.35 Also, reliance has been placed in case of *Ms. Zydus Lifesciences Ltd. (Formerly known* as *Cadila Healthcare Limited.)*11, wherein the Authority for Advance Ruling, Gujarat 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:

> *'Subsidized deduction made by the Applicant from the employees who are availing food in the factory/corporate office would NOT be considered a supply under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Gujarat Goods and Service Tax Act, 2017.*
>
> *The applicant is not liable to pay GST on the amount deducted/recovered from the employees. Further the applicant is recipient of canteen service to facilitate the employees and Canteen Service Provider raised the Bill of canteen charges inclusive of GST as per the contract. The applicant collects/ recovers the partial amount from the employees and is required to pay the gross amount inclusive of GST to the canteen service by adding residual amount in the employees' portion and is required to pay gross amount of Bill inclusive GST to the Canteen Service Provider.'*

This view was reiterated by the Gujarat Authority for Advance Ruling in the case of *M/s. Cadmach Machinery Pvt. Ltd.12, Dishman Carbogen Amcis Ltd.13, M/s Astral Ltd.14 and M/s Intas Pharmaceutical Ltd.15*

2.36 Further, reliance has been placed in case of *M/s Brandix Apparel India Private Limited16*, wherein the Authority for Advance Ruling, Andhra Pradesh held that 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 and should not be subject to tax.

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

> *'The applicant is involved in the supply of manufacture of apparel and not in the activity of provision of canteen service. The canteen service is not an output service of the applicant as it is in the business of apparel manufacture. In fact, the canteen services are being received by the applicant from the third-party providers. Therefore, it can be concluded that the provision of canteen facility by the applicant to the employees is not a supply as it is not in the course or furtherance of business. Further, the applicant is merely collecting a part of the canteen expenses from the employee and this does not tantamount to supply as per Section 7 of the CGST and SGST Act.*
>
> *Further, even if we analyse the transaction between the applicant and its employees, a reference to the GST Policy wing Circular 172/04/2022 dated 6th July 2022, para 2, serial no 5, clarifies that any perquisites provided by the employer to its employee in are In lieu of the services provided by the employee to the employer in relation to the employment and therefore the perquisites provided by the employer to the employee will not be subjected to GST. As provision of canteen facility is a mandate as per Factories Act, 1948, we see that even considering the employee and employer transaction solely, GST is not applicable.'*

2.37 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 no 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. Sarathi Hospitality Industrial Services.
- 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

2.38 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.*

2.39 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.

2.40 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."***

2.41 In this regard, we wish to reiterate the fact that the Applicant is engaged in the business of manufacture and sale of industrial trucks and supply chain management solutions 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(1) of the Factories Act which defines the term 'worker' to mean* 'a *person employed directly or by or through any agency (including a contractor) with* or *without the knowledge of the principal employer whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union'* and 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 employed more than 250 workers and therefore, the provisions relating to the maintenance and provision of canteen facilities for the use of the workers would be applicable and also the Applicant has the ultimate control over the affairs of the factory and hence will be treated as the occupier.

2.42 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.

2.43 Additionally, we refer to the ruling of the Appellate Authority of Advance Ruling Madhya Pradesh in the case *M/s Bharat Oman Refineries17* 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.'*

2.44 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 above the statutory obligation cast upon it under the Section 46 of the Factories Act, to provide canteen facility to its employees.

2.45 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.

Question No. 2.

Whether the deduction of nominal amount by the Applicant from the salary of the employees who will be availing the non-air-conditioned bus transportation facility proposed to be provided by the prospective Transport Service Provider will be construed as *'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 will be available* to *the Applicant on GST that would be charged by the Transport Service Provider* 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 PROPOSED TRANSPORT FACILITY THROUGH THE PROSPECTIVE TRANSPORT SERVICE PROVIDER AND SUBSEQUENT DEDUCTION OF NOMINAL COST WOULD NOT TANTAMOUNT TO 'SUPPLY' UNDER SECTION 7 OF THE CGST ACT

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

2.47 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 proposed to be provided to the Applicant's employees. In the context of whether the transportation facility proposed to be provided by the Applicant qualifies as a 'supply', the Applicant makes the following submissions.

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

2.48 The Applicant wishes to engage third-party Transport Service Provider 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 will offer 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 would be made available by the Applicant to ensure the safety and convenience of the employees.

2.49 The proposed bus transportation facility would be offered only to the employees as specified in the transportation policy of the company. Therefore, in order to avail the bus transportation services, the specified employees would be required to display the bus cards and employee IDs issued by the Applicant to board the bus and avail the bus facility. The prospective service provider will 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.

2.50 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 proposed facility will be provided only to the specified employees and in pursuance of their relationship as employees of the Applicant, it is submitted that the proposed 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.

2.51 This view is substantiated with reference to the ruling issued by this Hon'ble Authority in case of Tata Motors Limited 18, 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 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.*'

2.52 Given the above, it is submitted that the provision of the proposed 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>

2.53 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 proposes to deduct nominal amount from the employee's salary towards the cost of services that would be availed by them from the prospective Transport Service Provider, 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 the proposed transportation facility to the employees, the activity would not constitute 'consideration' for any supply.

<u>The supply should be effected in the course or furtherance of business under the CGST Act</u>

2.54 The Applicant submits that it is engaged in the business of manufacture and sale of industrial trucks and supply chain management solutions - 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.

2.55 In this regard, it is submitted that the provision of the proposed 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.

2.56 In the instant case, the Applicant proposes to collect nominal amount from the employees towards the provision of such transportation services.

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

2.58 We also refer to another ruling of this Hon'ble Authority, in the case *of Integrated Decisions and Systems India Pvt. Ltd.19*, 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.20*

2.59 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 this 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.

2.60 Further, reliance has been placed in case of *M/s Brandix Apparel India Private Limited*, wherein the Authority for Advance Ruling, Andhra Pradesh held that provision of transport facilities is not in the course of business and hence, should not be construed as a 'supply' under

Section 7 of the CGST Act and should not be subject to tax.

From the aforesaid legal provisions, judicial precedents and discussions, it is submitted that the provision of the proposed transportation facility for the employees cannot be considered as supply of service as per Section 7 of the CGST Act, and would not be subject to tax, on account of the following:

- The transport facility proposed to be provided to the employees is 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 transport facility will not be provided in the course or furtherance of business; there is no quid pro quo and no intention to undertake the business of providing transport facilities.
- Moreover, the recovery related to transport facility that will be made by Applicant from its employee will ultimately be paid to the third-party vendor.
- This has been substantiated with reference to various Advance Rulings as provided above which indicates that the transport facility will not be 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 transport facility should not be subject to GST.

THE APPLICANT WOULD BE ELIGIBLE TO AVAIL INPUT TAX CREDIT OF THE GST THAT WILL BE CHARGED BY THE PROSPECTIVE TRANSPORT SERVICE PROVIDER

2.61 In order to determine whether the Applicant would be eligible to avail ITC on the GST that would be charged by the prospective 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.

2.62 Based on a plain reading of the CGST Act, credit of input tax that would be 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 prospective Transport Service Provider will be providing the services to the Applicant in the transportation of employees to and from the premises of the Applicant. Such services that will be provided in pursuance of the Applicant's obligation to provide such facilities to its employees is in the course of its employment.

2.63 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'

2.64 Given the above, it is submitted that ITC of tax payable on the supply of proposed 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 that would be charged on the invoices raised by the prospective Transport Service Provider.

2.65 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.'

A copy of the advance ruling is enclosed with this application.

2.66 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.

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

2.68 In this regard, we refer to the order passed by Authority for Advance Ruling Uttar Pradesh in case of Dr Willmar Schwabe (1) Private Limited 21wherein 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.'

A copy of the advance ruling is enclosed with this application.

In view of the above, it is submitted that the ITC of the tax payable by the Applicant on the value of services that would be provided by the prospective Transport Service Provider will be available as ITC.

3. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

Officer Submitted in respect of M/s Kion India Private Limited holding GSTIN: - 27AACCJ5370R1ZX, the reply in this regard is submitting is as under: -

A) CANTEEN FACILITY.

1. The applicant submitted that it has entered into a contractual relationship with Sarathi Hospitality Industrial Service for the supply of food to its employees within the Applicant's factory premises.
2. As per the Company policy, the Applicant recovers a pre-agreed nominal amount of INR 450 from the monthly salary of all the employees.
3. As per Circular No. 172/04/2022-GST dated 06 July 2022, following clarification is given regarding at Sr no 3 interpretation of section 17(5) of the CGST Act and at Sr no 5 perquisites provided by employer to the employees as per contractual agreement as below:

Sr. No.	Issue	Clarification
3	Whether the proviso at the end of clause (b) of sub-	1. Vide the Central Goods and Service Tax (Amendment Act) 2018, 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)?	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.
5	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. 2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows 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.

4. Now in terms of Circular No. 172/04/2022-GST dated 06 July 2022, it is clarified 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. Hence this office is of opinion that nominal recovery made by the Applicant for Canteen facility from it's employees salary is not subjected to GST.
5. Regarding Input Tax Credit of the GST charged by the Canteen service provider for providing the catering services, it is observed that the Applicant is having approx. 350 workers in the Company. As per section 46 of Factories Act 1948, it is mandatory to provide canteen facility to its employees within the factory premises.
6. Also as per proviso after 17(5) (b) it is mentioned that: "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."
7. Circular No. 172/04/2022-GST dated 06 July 2022 clearly clarifies that post substitution, effective from 1.2.2019, based on the recommendation of the GST council in its 28'h meeting, the proviso after sub clause (iii) of clause (b) of Section 17(5) of the CGST Act,2017 is applicable to the whole of clause 17(5)(b).
8. Hence this office is of opinion that ITC of GST charged by CSP will be available to the Applicant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948 as far as provision of canteen service for employees.

9 It is also submitted that the ITC on GST charged by the CSP will be restricted to the extent of cost borne by the Applicant only. 10. This office has relied on the decision of Hon. Gujrat Advance Ruling No GUJ/GAAR/R/2023/ 23 Dt. 19/06/2023 in case of M/s. Tata Autocomp Systems Ltd.

B) TRANSPORTATION FACILITY:

1. The Applicant proposes to provide bus transportation facility to ensure the safety of their employees. In this regard, the Applicant wishes to enter into a contract with a

vendor for the provisions of bus transportation facility to and from the factory to the employees.

2. This policy would be applicable to employees as specified in the company policy and pre-agreed nominal amount would be recovered from monthly salary of the employees who avail the bus transportation facility.

3. As discussed earlier, in terms of Circular No. 172/04/2022-GST dated 06 July 2022, it is clarified 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. Hence this office is of opinion that nominal recovery proposed to be made by the Applicant for Transportation facility from it's employees salary is not subjected to GST.

4. Regarding Input Tax Credit of the GST charged by the proposed Transport Service Provider for providing the transport services, ITC will be available subject to conditions specified in section 17 (5) of CGST/SGST Act 2017. i.e. ITC on leasing, renting or hiring of motor vehicles for transportation of persons having approved seating capacity of more than 13 persons (including driver).

5. It is also submitted that the ITC on GST charged by the TSP will be restricted to the extent of cost borne by the Applicant only. 7. This office has relied on the decision of Hon. Gujrat Advance Ruling No GUJ/GAAR/R/2023/ 23 Dt. 19/06/2023 in case of M/s. Tata Autocomp Systems Ltd.

4. HEARING

Preliminary e-hearing in the matter held on 15.10.2024. Mr. Vikas Agarawal, Appeared, and requested for admission of the application. Jurisdictional Officer Mr. Vijay Desai, Deputy Commissioner of SGST, also appeared.

The application was admitted and called for final hearing on 26.12.2024. Mr. Mohit Airan, Advocate, Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Mr Vijay Desai, Deputy Commissioner of SGST 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 the 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 in the business of the design, manufacture and distribution of palletized material handling equipment including diesel forklift, electrical forklift and other warehousing equipment and having a manufacturing plant wherein more than 250 workers are employed.

(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, the Applicant would deduct INR 450 as cost of such canteen facilities from the salary of the employee on a monthly basis. The balance monthly cost of the canteen facilities is borne by the Applicant.

(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 has contended 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) 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, wager 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 a 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 distribution of palletized material handling equipment including diesel forklift, electrical forklift and other warehousing equipment, 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 in connection with or incidental or ancillary to his main activity of manufacture and distribution of various products.

(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 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 connected 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 contractor; and the Applicant in turn supplies the above said 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 contractor to the Applicant (employer); and

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

(4) In respect of the first transaction, the canteen contractor has been supplying canteen services to the Applicant (employer) for which the canteen contractor receives a consideration from the Applicant; on which the Applicant has been paying GST at the applicable rates to the canteen contractor.

(5) Similarly, in the second transaction, the Applicant (employer) is supplying the canteen services to their employees for which the Applicant is receiving consideration, although at the subsidized rate, from their employees. The canteen contractor invoices to the company for the entire canteen services. He charges the consideration along with GST thereon. There is no privity of contract between the canteen operator and the employees. It is the company which is providing canteen services to the employees. Company deducts certain amount from salary of the employees against this supply. Company makes only part of the recovery and balance cost is borne by the company. Hence, the criteria of 'Business', 'Consideration' are met in the transactions of supply of canteen services by applicant to the employees. Thus, there is supply of canteen services from Applicant the company 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 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.

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) --------

.....

....."

(3) As per Income Tax Act, perquisite is defined to be the value of free benefit or facility given by the employer to the 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, concession given for 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 as it is consideration against canteen services provided by the Applicant to the employees.

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 AAR 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 any incidental or 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) 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 this 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	
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, Canteen Contractor, 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 and providing Restaurant Service at normal rate.

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

> "(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 workers as mandated in the Factories Act, 1948 i.e., he is also providing

Restaurant Service to its workers. As already mentioned in para 5.2.6, the Restaurant Service compulsorily attracts rate of 5% without ITC in a non-specified premise and the Applicants premises is not 'specified premises' in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Therefore, though the Section 17(5) of the CGST Act, 2017 does not 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 the transactions, that, had the Applicant not engaged any Canteen Contractor but decided to run the canteen himself, as mandated in the Factories Act, 1948, then also he 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 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

5.3.1 Facts of the case are as below.

(1) The factory of the Applicant is situated at a remote location in Pune, outside the city limits, where public transport is scare. Accordingly, in order to carry out its business without any disruption and for efficient functioning of the business as a whole, the Applicant proposes to engage contractual service provider to provide transportation services for its employees.

(2) In this regard, the Applicant wishes to enter into a contract with a Transport Service Provider 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.

(3) As per the policy of the Applicant, the proposed bus transportation facility will be offered to the employees working at the middle and lower level management. In order to avail the bus transportation services, the

employees would be required to display bus cards and employee IDs issued by the Applicant to board the bus and avail the bus facility. The prospective service provider will provide transportation services according to the pre-approved routes provided by the Applicant.

(4) Pursuant to the Transport policy, a pre-agreed nominal amount as a cost of such transportation facility to the Applicant will be deducted from the employee's salary on a monthly basis availing the transportation facility. The balance monthly cost of the facilities will be borne by the Applicant.

(5) Applicant has raised the question, whether the deduction of nominal amount by the Applicant from the salary of the employees who will be availing the non-air-conditioned bus transportation facility proposed to be provided by the prospective Transport Service Provider will be construed as '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. Applicant has submitted that, 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 proposed facility will be provided only to the specified employees and in pursuance of their relationship as employees of the Applicant, it is submitted that the proposed 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.

5.3.2 In this regard, we observe 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 submission of the Applicant, it is seen that the Company proposes to provide transportation facility to its employees by way of 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) ----------"

As per Income Tax Act, 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 at nominal value to its employees. Hence GST would be applicable on the recoveries made in respect of these services provided to the employees.

5.3.5 Taxpayer has taken similar arguments that were taken for taxation of recoveries for canteen services provided. These have already been discussed in Para 5.1.2, 5.1.3, 5.1.4 and 5.1.5.

5.3.6 Applicant has quoted this Authority AAR 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. We observe that the said Ruling was prior to clarification by Circular No. 172/04/2022 - GST dated 06.07.2022. It was clarified that only the perquisite offered in lieu of employee services would as corollary to services mentioned in entry 1 of Schedule III would be eligible for non-subjection of GST. Perquisite as explained in Para 5.3.4 is defined to be the value of benefit given to the employees. Applicant has proposed to receive services from third party in respect of hire or lease or renting of transportation buses. Applicant is using these buses for transportation of its employees from their home to work place and vice versa. There is no privity of contract between the third-party transport service provider and the employees of the applicant. Hence, the applicant received the service from the transport buses provider and provides transportation services to the employees. However, when these services are provided by charging some consideration of whatever value, it would not be perquisite or a service in lieu of employee services, this would be very much supply of transportation services to the employees and liable to tax.

5.4 Value in respect of which canteen and transportation services are taxable

As explained in above paras, supply of canteen services and 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

The supply of canteen and transportation services 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 canteen and transportation services to the employees are in the course of business (as detailed in paras above). Consideration is absent or nominal. 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. However, respite to such transactions 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 by the above referred Circular 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, 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.

The value of the outward supply of canteen and transportation service can be considered as having two parts. First part is the amount of recovery that is made from the employees, and second part is balance value of the services provided by the employer as perquisite which is in the lieu of the services provided by employees to the employer. The entire balance value of the services for which no amount is charged is the perquisite provided by the employer to the employees. As this part is in lieu of services of the employees to the employer which fall under schedule 3, the perquisite part is not taxable, as a corollary, deeming it to be falling in the said entry of schedule 3. Hence, though the employer and employee are related parties, the value on which tax is a liable to be paid is only the recovered amount from the employee as the remaining part of the value is the perquisite provided by the employer which is not liable to tax as discussed above.

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

5.5.1 The services of 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.

5.5.2 The service provider of transportation service to the Applicant is required to discharge GST on the said services. 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).

5.5.3 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.

5.5.4 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?

The view held by Hon'ble High court is produced below:

"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."

5.5.5 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.

5.5.6 Hired motor vehicles would be used by the applicant for provision of service of transportation of employees from residence to factory or office premises. The services of leased or hired motor vehicles are consumed for discharging obligation towards employees.

5.5.7 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 Provider for providing the catering services?

Answer- 1. Answered in the Affirmative to the extent of recoveries made from the employees

a. Answered in the Affirmative

b. Answered in the Negative

Question 2: Whether the deduction of nominal amount by the Applicant from the salary of the employees who will be availing the non-air-conditioned bus transportation facility proposed to be provided by the prospective Transport Service Provider will be construed as '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 will be available to the Applicant on GST that would be charged by the Transport Service Provider for providing the non-air-conditioned bus transportation services?

Answer: - 1. Answered in the Affirmative to the extent of recoveries made from the employees

a. Answered in the Affirmative
b. Answered in the Negative

D.P. GOJAMGUNDE
(MEMBER)

PRIYA JADHAV
(MEMBER)

PLACE - Mumbai
DATE - 27/03/2025

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.