



**HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICE TAX,**



**HARYANA VANIJYA BHAWAN, PLOT NO. 1-3,
SECTOR 5, PANCHKULA-134 151 (HARYANA)**

ADVANCE RULING NO. HR/ARL/19/2022-23 DATED

| | |
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| Name & Address of the Applicant. | M/s Rites Limited, Rites Bhawan, Plot No. 1, Sector-29, Gurugram Haryana-122001 |
| GSTIN of the Applicant. | 06AAACR0830Q1ZA |
| Date/Receipt of Application: | 13.04.2022 |
| Clause of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised. | Section 97(2) Clauses – (a) Classification of any goods or services or both (b) Applicability of notification issued under the provisions of this Act. (e) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. |

Memo] 362

Dated: 18.10.2022

APPLICANT'S ELIGIBILITY FOR SEEKING AN ADVANCE RULING:

To file an application before the Authority of Advance Ruling, the applicant must satisfy the conditions prescribed under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as HGST Act, 2017). Since the provisions of both the Acts are *parimateria*, any reference to provisions of CGST Act, 2017 in this order should be construed as a reference to corresponding provisions of the IGST Act, 2017/HGST Act, 2017 as well.

Sections 97(2) of the CGST Act, 2017 prescribes that Advance Ruling may be sought inter alia on the question of (a) Classification of goods or services or both (b) Applicability of a notification issue under the provisions of this Act. (e) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.

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Proviso with reference to the Section 98(2) of CGST Act, 2017 states that where the questions raised in the application is already pending or decided in any proceedings in the case of the applicant under any provision of this Act, the application may be rejected by the Advance Ruling Authority after providing an opportunity of being heard to the applicant. And in the present case, the applicant has undertaken in form ARA-01 that the issue is neither pending nor decided in any proceedings under any of the provisions of the Act. Besides the applicable fees stands deposited by the applicant. So, he is eligible to seek an Advance Ruling under the above provisions and the case is being heard on merits.

Statement of Facts as per ARA-01:-

RITES Limited, a Government of India Enterprise was established in 1974, under the aegis of Indian Railways. RITES Limited is incorporated in India as a Public Limited Company under the Companies Act, 1956 and is governed by a Board of Directors which includes persons of eminence from various sectors of engineering and management. It is a multi-disciplinary consultancy organization in the fields of transport, infrastructure and related technologies. It provides a comprehensive array of services under a single roof and believes in transfer of technology to client organizations.

The Applicant has discussed the nature of various other charges/amounts received or forfeited in the course of routine business of the company *in extenso* which are as following:-

A. Notice pay recovery: Whenever the Applicant company hires an employee in the organization, it enters into an employment contract with such employee. The employment agreement of employees (other than contractual employees) (i.e., Terms & Conditions for Appointment in RITES) states that if the employee of the company resigns from the organization, then such employee has to mandatorily serve the minimum notice period as mentioned in the said agreement. However, in case if the employee is unable to serve the stipulated notice period, then in such cases, the Applicant company recovers an amount as Notice Pay or deducts the said amount from the salary of the employee in lieu of the notice period which has remained un-served by the said outgoing employee. It is in the nature of a compensation for the breach of the terms of the Employment Agreement. The clause of the Agreement is as following:-

"You will be required to give one month notice period if you wish to resign from service during probation. However, on completion of probation period, you will be required to give notice of three months."

Therefore, in case any employee wishes to leave the company & resigns, he needs to serve a notice period of 1 month if he resigns during probation period, and, if such employee resigns from the company after completion of probation period, he/she needs to serve a notice period for 3 months.

However, in case, such notice period as stipulated in employment agreement is not served by the said employee and employee leaves the Applicant company before such period, The applicant recovers certain amount, namely notice pay recovery i.e. charges for not serving the notice.



B. Bond Forfeiture of the Contractual Employees:

In addition to the recovery of the Notice Pay, the Applicant, in contractual agreements, offers job to the candidates with a pre-condition that the employee has to serve a minimum period, known as, bond period. Also, in case of contractual employment, a surety bond of a fixed sum, say Rs. 1,00,000/- is executed by the Applicant company from such employee at the time of joining itself.

Now, if such employee decides to leave/resigns from the organization before the completion of such bond period, the surety bond furnished by such employee is being forfeited by the company as a compensation for the loss caused to it due to non-completion of bond period by the contractual employee. For example, an employee has a bond period of 1 year and executed surety bond of Rs. 1,00,000/- at the time of joining. Now this employee decides to leave the Applicant company after working for 2 months i.e. before completing remaining period of 10 months as per his employment contract, then his bond amount of Rs. 1,00,000 will be encashed/forfeited by the Applicant company. The condition is described as under:-

"In case of resignation during the training period or within a period of 3 years after completion of training, you are required to serve 3 months notice/equivalent salary in lieu thereof (GST additional as applicable) besides getting yourself absolved of the bond liability of Rs.1,00,000 (GST additional as applicable) for GENERAL/OBC (NCL) and Rs. 50,000 (GST additional as ES Limit applicable) for EWS/SC/ST/PWD."

C. Canteen Charges:

The Applicant company for the ease & comfort of its employees, has arranged canteen facility in its company premises only. In order to provide this facility to the employees, the Applicant has entered into contract with 3rd party service vendor i.e.. M/s Gemini Associates and provided the space to the service vendor to establish canteen facility in the company's premises. The 3rd party canteen service provider charges an amount of Rs. 58 plus applicable GST thereon (which are subject to revision from time to time as agreed between the Applicant company and M/s Gemini Associates) from the Applicant company on per meal basis, i.e., per meal consumed by Applicant's employees. The Applicant company recovers a nominal amount/subsidized amount from its employees for the meals consumed by them. However, in order to pay such amount to the 3rd party canteen service provider, the company deducts a nominal subsidized amount of Rs. 650/- (from the highest rank employee) on monthly basis from the salary of employee of the company (which shall be roughly equivalent to maximum Rs. 29.55 per meal, assuming 22 working days/meals in a month and bears the remaining cost incurred for providing such facility from its own pocket.

Office Order dated 20 June 2017 issued in respect of lunch facility arranged for employees of the company is tabulated verbatim as under:-

| Category of employees | Class of city & amount to be deducted per month X-Class | | | | | |
|-----------------------|---|---------|----------|---------|----------|---------|
| | X- Class | | Y- Class | | Z-Class | |
| | Existing | Revised | Existing | Revised | Existing | Revised |
| DGM's and above | 600.00 | 650.00 | 550.00 | 600.00 | 450.00 | 500.00 |
| E-0 to Manager | 500.00 | 550.00 | 450.00 | 500.00 | 360.00 | 410.00 |
| Non-Executives | 400.00 | 450.00 | 350.00 | 400.00 | 290.00 | 340.00 |

From the perusal of above stated facts/modus-operandi, following points are worthwhile to note:



i. Applicant has engaged M/s Gemini Associates ("3rd party canteen service provider") who will provide food & beverages to the employees of the Applicant company in Applicant's factory premises. Thus, 3rd, party canteen service provider is facilitating catering services to the employees of the company.

ii. Rate of meals to be provided by 3rd party canteen service provider to the employees of the Applicant is finalized & fixed in advance.

iii. An invoice of the catering services provided by the 3rd party canteen service provider is raised upon the Applicant along with applicable GST.

iv. Against the same, Applicant recovers a nominal & subsidized amount from its employees and disburses the same to the 3rd party canteen service provider and remaining cost is incurred by the Applicant from its own pocket as a facility extended to its employees.

D. Recovery on account of Loss/Replacement of ID Cards:

Each employee of the Applicant company, in the event of loss of identity cards or when the card is damaged/becomes unserviceable, has to apply for re-issuance of fresh identity cards (ID Cards). The Applicant company shall issue the identity card post verification of the application from the manager concerned. In such cases mentioned supra, i.e., on account of loss/mutilation of ID Card, the applicant company charges Rs. 100/- per card from the employee for the re issuance of the Id Card. Here it is pertinent to mention that no separate services of any third-party contractor are availed by the Applicant company to issue/to print identity cards instead the same are printed through in-house facility of Applicant company. The expense of printing the identity card is transferred by the Applicant to general expenses, i.e., printing expenses.

E. Liquidated Damages due to delay in completion:

The Applicant, due to the expertise possessed by it, enters into contract or is awarded work by various organizations who wish to get certain infrastructure developed, for instance, Applicant is entrusted with work of Construction of additional Class Rooms, Toilet Block, Library, Computer Center for Govt. Polytechnic College at Siddapura and ES Limit Construction of additional Class Rooms, Labs, boys and girls common room, exam control room, officers and first aid room for Govt Polytechnic College at Mundgod in Uttara Kannada District in Karnataka for Dept. of Collegiate and Technical Education, Gove of Karnataka. For getting such infrastructure developed, Applicant hires certain contractors who performs the construction activity and Applicant supervises the same as per the technical expertise possessed by it. The Applicant, being a Government of India enterprise, floats tenders & invites bids for various types of works/activities for which the Applicant wish to find a vendor. Accordingly, for getting the work done, as mentioned supra, Applicant floated a Tender No. 5268 vide Open Tender Notice No. RITES/BLR/OT/26/2022 dated 08 March 2022 inviting bid from interested contractors.

As per the terms & conditions of contract entered by the Applicant with any such contractor, if there is any delay in completion of project, the contractor has to pay agreed sum (hereinafter referred to as 'liquidated damages') to the Applicant which is computed as a percentage of the tender

value of the contract subject to maximum limit as envisaged under the contract.

F. Taxability on the forfeiture of Earnest Money And Security Deposit/Bank Guarantee by the applicant:-

The Applicant receives Earnest Money (EM) from the tenderers/bidders who applies for the tender and the amount will be refunded if, the tender bid is found not acceptable, or whose bids are neither lowest or the second lowest or the ones remaining unsuccessful bidders. However, following are the situations where the Earnest Money received by the Applicant from the tenderer/bidder is liable to be forfeited.

In a similar way, Security Deposit & Bank Guarantee so received by the Applicant from its (to whom tender is awarded) is also forfeited/deducted in certain cases owing to any damages, etc.

G. Taxability of amount written off as Creditors balance in the books of account of the applicant:-

Furthermore, the contractor, whose security deposit is deducted/received by the Applicant, after completion of work and when he is eligible to claim back such security deposit, does not come back to seek refund of such security deposit for a certain period of time or sometimes becomes untraceable for refund of Security Deposit. In such cases, after the management's decision, such security deposit of the contractor lying with the Applicant which is in effect expenditure of the Applicant to be incurred and reflecting on Liabilities side of Balance Sheet is written off by way of credit entry in Profit & Loss Account.

Similarly, there may be certain other creditors balance which is lying unpaid/unclaimed for a certain period of time and where such creditor is untraceable, in such cases, the balance of such creditor is written off by the Applicant by way of a credit entry in Profit & Loss Account.

Questions on which Advance Ruling is being sought:-

1. Whether the amount collected by the Applicant company as Notice Pay Recovery from the outgoing employee would be taxable under GST law and if yes, rate of GST thereupon?
2. Whether the amount of Surety Bond forfeited/encashed by the Applicant company from the outgoing contractual employee would be taxable under GST law and if yes, rate of GST thereupon?
3. Whether GST would be payable on nominal & subsidized recoveries made by the Applicant from its employees towards provision of canteen facility by 3rd party service provider to Applicant's employees and if yes, rate of GST thereupon?
4. Whether the amount collected by the Applicant company from its employees in lieu of providing a new identity card (ID Card) would be chargeable to GST and if yes, rate of GST thereupon?
5. Whether the amount collected by the Applicant as liquidated damages for non performance/short-performance/delay in performance is taxable under GST and if yes, rate of GST thereon?



6. Whether the amount forfeited by the Applicant company pertaining to Earned Money, Security Deposit & Bank Guarantee due to the reasons mentioned supra would be chargeable to GST and if yes, rate of GST thereon?
7. Whether the amount of Creditors balance unclaimed/untraceable and written off by the Applicant by way of crediting P&L Account is taxable and if yes, rate of GST thereon?

Applicant's Interpretation of Law with respect to the queries:-

1. (a.) Notice Pay Recovery: The Applicant company charges an amount from the outgoing employees (other than contractual employees) in case the employee leaves the organization without serving mandatory notice period as mentioned in the employment contract.
- (b.) Surety Bond Forfeiture:- In addition to above, the Applicant company also executes a surety bond with the contractual employees of the company as per the employment contract entered by them. By virtue of this, if any employee leaves the organisation without serving minimum contract period as per the employment contract, then the Applicant forfeit the surety bond furnished by the outgoing employee.

The Applicant is of the view that the amount received by the Applicant as mentioned supra in Paragraph (a) and (b) from the outgoing employee for non-performance of terms of contract is not taxable to GST due to the following reasons as under:

(i) The amount received as notice pay recovery is covered under Schedule III of CGST Act, 2017 and thus, the same shall be out of the ambit of supply. Ergo, any amount received for an activity which is not considered as supply cannot be considered as taxable under the provisions of GST Law.

(ii) Without prejudice to above, the amount recovered in lieu of un-served notice period does not qualify as 'consideration' instead it is compensation due to breach of the terms of Employment contract. Hence, due to absence of any 'consideration', the scope of supply is itself not fulfilled.

(iii) Furthermore, the amount so received by the Applicant from the employee is a compensation for the loss caused to the Applicant's business due to untimely and immediate leave of its employee without service of due notice period.

(iv) The Applicant has formed the above interpretation of law based on the resources material/judgements/Advance Ruling decisions which have already categorically held (both under GST regime as well as erstwhile Service Tax regime) that no liability to pay tax on Notice Pay Recovery & Surety Bond Forfeiture received from outgoing employee arise:-

2. Taxability of Amount collected for arranging the canteen facility for the employees of the Applicant company

The applicant company enters into a contract with the 3rd party service vendor to provide food facility directly to the employees of the company for which the invoice is raised by the 3rd party service vendor upon the Applicant. The Applicant company charges a nominal amount from its employees and bears the remaining portion from its own pocket. The Applicant is of the view that the amount received by him in respect of arranging the food facility for the employees is not chargeable to tax due to the following reasons as under:-

- i. The services are provided by the 3rd party to the employees of the company and not by the Applicant. It is further pertinent to mention that the invoice has been issued upon the Applicant and the services have been availed by the employees, therefore, in no case it can be said that the services have been provided by the Applicant to the employees of the company.
- ii. Furthermore, GST has already been charged by the 3rd party service provider for the food facility provided to the employees of the Applicant and the Applicant merely charging nominal amount employees recover part cost.
- iii. It also important to highlight that the business of Applicant is not that of providing canteen or outdoor catering services instead it is consultancy organization and engaged in providing consultancy in the field of transport, infrastructure and related technologies. The services provided by the Applicant has no nexus with the services of outdoor catering which itself proves that it is not rendered in the course of furtherance of business.
- iv. The Applicant has formed the above interpretation of law based on the advance ruling orders under GST which has categorically held that no GST liability arises on canteen charges recovery by employer from its employees.

3. Taxability of Amount collected in respect of loss/replacement of ID Cards

The Applicant is of the view that the amount received for reissuance of identity card is not chargeable to tax due to the reason that the applicant is not engaged in the business of printing the identity cards. The Applicant has formed the above interpretation of law based on the advance ruling order Emcure Pharmaceuticals Ltd., cited in [2022] 134 taxmann.com 74 (AAR - MAHARASHTRA) wherein it was held that definition of business (for the purposes of scope of 'supply') is attracted only if the impugned transaction has nexus with the principal business activity of the company.

4. Taxability of Liquidated damages charged due to delay in completion of work

The Applicant has entered into a contract vide which if the contractual obligations are not fulfilled within the time prescribed by the contractee or extended time, if any, then the contractor shall be liable to pay agreed sum which is referred to as 'liquidated damages' in the contract itself. The Applicant is of the view that the amount received as a compensation due to delay in completion of work will not be taxable due to the reason that it is not recovered on account of any services rendered to another person and instead, is claimed towards damages incurred on account of delay/any other reason as stipulated in the agreement.

5. Taxability of forfeiture of Earnest Money, Security Deposit and Bank Guarantee

The applicant forfeit the Earnest Money, Security Deposit and Bank Guarantee of the tenderers /Contractors in certain situations. The same are tabulated as under:-

| Sr. No. | Situation |
|---------|---|
| 1. | If after bid opening, but before expiry of bid validity or issue of Letter of acceptance, whichever is earlier, any tenderer <ol style="list-style-type: none"> i. Withdraws his tender, or ii. Makes any modification to the terms and conditions of tender which are not acceptable to the employer |
| 2. | In case any information/document which may result in the |

| | |
|----|--|
| | tenderer's disqualification is concealed by the Tenderer or any statement/information/document furnished by the Tenderer or issued by a Bank/Agency/Third Party and submitted by the tenderer, is subsequently found to be false or fraudulent or repudiated by the said Bank/Agency/Third Party. |
| 3. | In the case of a successful Tenderer, if the Tenderer fails to furnish the performance Guarantee within the period specified under Clause I of "Clauses of Contract" or fails to commence the work without valid reasons within the period as specified in Contract Data after the date of issue of Letter of Acceptance or from the first date of handing over of the site, whichever is later. |

The Applicant company is of the view that the forfeiture of amount received as Earnest Money/Security Deposit or release/forfeiture of Bank Guarantee cannot be chargeable to tax due to the reason as under:-

- a) The nature of Earnest Money is equivalent to penalty charged by the tenderer which is similar to the nature of 'liquidated damages' and therefore, cannot be treated to be 'consideration';
- b) The Security Deposit is collected by the Applicant for the reason that if there is any break, deface, injure or destroy any part of building in which they may be working, or any building, road, road kerb, fence, enclosure, water pipe, cables, drains, electric or telephone post or wires, trees, grass or grassland. etc, the same may be adjusted and the balance shall be refunded back to the contractor; and,
- c) Bank Guarantee is also forfeited for the same reasons as Security Deposit is forfeited.

6. Taxability of amount written off in books as creditor's balance

The Applicant company is of the view that the amount written off in the books of accounts cannot be regarded as the amount is received for rendering any supply of service or goods to another person and instead, merely written off its outstanding expenses (creditors) which Applicant will not pay in future. Therefore, this entry merely amounts to writing off its outstanding expenses, i.e, amount outstanding against services or goods received by the Applicant in past is written off in books of accounts as not payable in future.

Further, the applicant has also referred/submitted the following judgements and advance ruling decisions:-

- Emcure Pharmaceuticals Ltd., cited in [2022] 134 taxmann.com 74 (AAR-MAHARASHTRA);
- Amneal Pharmaceuticals Pvt. Ltd., cited in 2021 (9) TMI 1293 (AAAR-Gujarat);
- Dishman Carbogen Amcis Ltd., cited in [2021] 132 taxmann.com (AAR-Gujarat);
- Bharat Oman Refineries Limited, bearing no. MP/AAAR/07/2021 dated 08 November 2021 (AAAR - MADHYA PRADESH);



- Tata Motors Ltd., cited in [2021] 129 taxmann.com 277 (AAR - GUJARAT);
- North Shore Technologies Pvt. Ltd., cited in [2021] 125 taxmann.com 363 (AAR-UTTAR PRADESH);
- DR Wilmar Schwabe (I) (P.) Ltd., cited in [2021] 133 taxmann.com 434 (AAR-UTTAR PRADESH);
- Integrated Decisions & Systems India Pvt. Ltd., bearing no. GST-ARA 116/2019-20/B-113 dated 16 December 2021.
- Para 2.9.3. of Taxation of Services: An Education Guide released by CBIC itself dated 20 June 2012.
- M/S XL Healthcare Corporation India Private Limited v. Commissioner of Central Tax, Bengaluru South Commissionerate [Bangalore CESTAT Final Order No. 20225-20226/2022];
- Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. v. Commissioner of Central Goods and Services Tax, Customs and Central Excise, Jodhpur [reported in [2022] 135 taxmann.com 6]
- M/s GE T&D India Limited v. Deputy Commissioner of Central Excise LTU, Chennai [reported in 2020 (1) TMI 1096];
- M/s Uniparts India Limited v. Commissioner (Appeals), Central Excise, Meerut [reported in 2019 (7) TMI 1897];
- M/s HCL Learning Limited Vs Commissioner of Central Goods & Services Tax, Noida [reported in 2019 (12) TMI 558];
- South Eastern Coalfields Ltd. v. Commr. of C. Ex. & S.T., Raipur, cited in 2021 (55) G.S.T.L. 549 (Tri. - Del.);
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- M/s Neyveli Lignite Corporation Limited - Chennai Tribunal cited in 2021 (53) G.S.T.L. 401 (Tri-Chennai);
- M/s M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. v. Principal Commissioner CGST&CE - CESTAT New Delhi reported in [2021] 126 taxmann.com 182;
- Commr. of C. Ex., Chandigarh v. H.F.C.L. (Wireless Division) - 2015 (11) TMI 893-CESTAT New Delhi 2015 (321) E.L.T. 300 (Tri.-Del.);
- Victory Electricals Ltd. - 2013 (298) E.L.T. 534 (Tri.-LB);
- M/s. Priyaraj Electronics Ltd. v. Commissioner of Central Excise, Bangalore - 2016 (6) TMI 873-CESTAT Bangalore;
- United Telecom Ltd. - 2006 (204) E.L.T. 626 (Tri.-Bang.)

PERSONAL HEARING:

The matter has been represented by Sh. Anmol Gupta, Chartered Accountant on behalf of the applicant company on 08.07.2022 in person before the authority. He briefed the authority regarding factual and legal details of the each query. Besides additional submissions dated 13.09.2022 made by the applicant with reference to the queries has advised the authority to take cognizance of the circular no. 178/10/2022-GST dated 03.08.2022 issued by the CBIC.

DISCUSSION AND FINDING:

The matter has been perused by the authority in detail. All the factual and legal aspects on each query has been examined by us. The applicant has submitted a plethora of judgements as well as rulings to support his contentions besides referring the Circular No. 178 dated 03.08.2022 of the Board. The same has been examined by the authority. We have also perused the relevant provision/notifications and the Schedules of the CGST Act, 2017.

Each transaction/activity done by the applicant on which he has sought the advance ruling is being discussed as following:-

1. Notice pay recovery and surety bond forfeiture:-

Both the issues have been clarified in the circular dated 03.08.2022 of the CBIC. The authority is also of same view that the amount received as notice pay recovery by the applicant from the employees who leave the applicant company without serving mandatory notice period mentioned in the employment contract is not a consideration for any supply or services. Similarly, the action of surety bond forfeiture by the applicant (which is furnished by the contractual employee at the time of joining) of the employees who leave the company without serving minimum contract period as per the employment contract is also not a consideration per se. These amounts are covered under Schedule III(1) and not clause 5(e) of schedule II appended with the CGST Act, 2017. So, it is outside the scope of supply because the said amount recovered by the applicant is in lieu of unserved notice period/non serving the contract period by the employees. It cannot be regarded as a consideration which has been defined in the section 2(31) of the Act. Further, the transaction with reference to the Notice Pay recovered/surety bond forfeiture are also not covered under the definition of business 2(17) under the CGST Act, 2017. Notice pay does not result into the provision of service by either party, it is sort of compensation either to employee or employer and not a consideration. It is a safety valve sort of option to both the parties i.e. if one of the party frustrate the employment contract either by reneging or by failing to perform. It is the employee who is the service provider and service supplied by him in the course of its employment is excluded from the definition of Supply under the GST Act.

2. Provision of the canteen facility at its premises by the applicant company for its employees:-

The applicant has apprised the authority that it has arranged/provided the canteen facility for its employees which is being run by the third party service vendor. The employee enjoys the facility of canteen directly. In this mode of supply

the tax invoice is raised by the third party vendor upon the applicant which is inclusion of GST. The applicant company charges a nominal amount from its employees for this facility. The payment of the meals is being made by the applicant in full to the canteen vendor. In this matter, **the authority is of view that the transaction/deduction of nominal amount from the salary of the employees at fixed rate is outside the preview of the taxability under the GST Act.** The principal supply of the applicant is of consultancy in the field of transport, infrastructure and related technology and not of any catering services. Tax already stands charged by the third party service provider from the applicant for the supply of food to the employees of the company. The applicant is charging a nominal amount from its employees to recover part of its cost.

Moreover, the appellate authority for advance ruling, Madhya Pradesh in a similar matter of M/s Bharat Oman Refineries Ltd, Bina dated 08.11.2021 has held that the GST is not applicable on the activity of collection of employees' portion of amount by the appellant without making any supply of goods or services by the appellant to its employee.

We have not found any contrary fact in the present matter, the facility of canteen is being provided by the companies to its employees under the Factory Act, 1948 wherein it is mandatory to the applicant to make provisions of the canteen facility to its employees. There is no independent contract between the applicant and the employees for setting up the canteen facility at the company's premises. It is being undertaken on account of the legal obligation case upon the applicant. So, it is concluded that the said transaction of recovering the part payment of the meals from the staff by the applicant is outside the purview of scope of supply.

3. Whether the charges for re-issuance of ID card to the employees by the applicant company is an taxable event under the GST Act?

It is noticed that the applicant uses the in-house printing facility for the services i.e. re-issuance of identity cards to the employees. Fee of Rs. 100 per card is charged for re-issuance by the applicant from its respective employee for issuance the new identity card. No third party contractor is availed for the printing of Id-cards. The Id-card is reissued in case of loss of the same or the card is in non serviceable condition. In this matter, the authority is of view that this transaction does not fall under the taxable event under the GST as it's covered under the schedule III(1) appended with the CGST Act, 2017.

4. Taxability on the transaction of liquidated damage charged due to delay in completion of work and forfeiture of Earnest Money/ Bank Guarantee /Security Deposit:-

Factual as well as legal detail of the transactions of the matter is examined by us along with the details of the copy of Tender floated/issued by the applicant company for the works. The authority is of view that the matter stands clarified in the circular dated 03.08.2022 of the Board. It's decided accordingly.

5. Taxability of amount written off in the books of account of the applicant as creditors balance:-

The applicant has stated that the any amount of the contractor which was deposited as security before the execution of the contract is not reclaimed by the contractor and similarly certain other creditor's balance which remains unclaimed for a certain period of time and such creditor do not come forward to claim the

amount. In these cases, the said amount is written off by way of credit entry in profit and loss account which was reflecting on the liability side of balance sheet of the applicant. This is expenditure to be incurred by the applicant.

The authority is of view that there are no services received or provided by the applicant company in the above mentioned situations/transactions. So, this transaction of writing off unclaimed amount of the contractors/other creditors is basically an income and not a supply, hence outside the purview of scope of supply under the GST Act.


Conclusion:-


On examination of the factual and legal aspects and documentary evidence and the rulings of various authorities submitted by the applicant and from the above discussion and in the light of legal provisions and the circular of the Board dated 03.08.2022, it can be said that none of the above transactions on which the applicant has sought the advance ruling regarding the taxability under the CGST Act, 2017 falls under the scope of supply.

7. Ruling:

| Questions | Answers |
|--|---------|
| Whether the amount collected by the Applicant company as Notice Pay Recovery from the outgoing employee would be taxable under GST law and if yes, rate of GST thereupon? | No |
| Whether the amount of Surety Bond forfeited/encashed by the Applicant company from the outgoing contractual employee would be taxable under GST law and if yes, rate of GST thereupon? | No |
| Whether GST would be payable on nominal & subsidized recoveries made by the Applicant from its employees towards provision of canteen facility by 3rd party service provider to Applicant's employees and if yes, rate of GST thereupon? | No |
| Whether the amount collected by the Applicant company from its employees in lieu of providing a new identity card (ID Card) would be chargeable to GST and if yes, rate of GST thereupon? | No |
| Whether the amount collected by the Applicant as liquidated damages for non performance/short-performance/delay in performance is taxable under GST and if | No |

| | |
|---|----|
| yes, rate of GST thereon? | |
| Whether the amount forfeited by the Applicant company pertaining to Earnest Money, Security Deposit & Bank Guarantee due to the reasons mentioned sapra would be chargeable to GST and if yes, rate of GST thereon? | No |
| Whether the amount of Creditors balance unclaimed/untraceable and written off by the Applicant by way of crediting P&L Account is taxable and if yes, rate of GST thereon? | No |


 (Sunder Lal)
 Member CGST


 (Kumud Singh)
 Member SGST *o/c*

Regd. /Speed Post

M/s Rites Limited, Rites Bhawan,
 Plot No. 1, Sector-29, Gurugram
 Haryana-122001

Copy to:

1. The Additional Commissioner, Central Goods & Service Tax Commissionerate, Plot No. 5, Sector 25, Panchkula (Haryana).
2. The Deputy Excise and Taxation Commissioner (ST), Range- Gurgaon, Ward-3, District- Gurgaon (East), Haryana.
3. The Deputy/ Assistant Commissioner, Central Goods & Service Tax, Commissionerate:- Gurugram, Division:- East-1, Range:- R-35, Haryana.

Note: An Appeal against this advance ruling order lies before the Haryana Appellate Authority for Advance Ruling for Goods and Service Tax Haryana Vanijya Bhawan, Plot No. 1-3, Sector 5, Panchkula-134 151 (Haryana), within 30 days from the date of service of this order.