

**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 Rajiv Magoo, Joint Commissioner of Central Tax, (Member)  
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAAGS0002D1Z0
Legal Name of Applicant		<b>M/s. SENOR GENERAL MANAGER ORDNANCE FACTORY</b>
Registered Address/Address provided while obtaining user id	Ordnance Factory Chanda, OFCh Estate, Bhadrawati, Chandrapur, Maharashtra, 442501	
Details of application		GST-ARA, Application No. 58 Dated 25.10.2019
Concerned officer		CHA-VAT-E-002, Chandrapur, Nagpur Division.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	<b>Factory / Manufacturing ; Recipient of Goods or Services ; Service Provision</b>
B	Description (in brief)	Ordnance Factory Chanda (OFCh) is a unit under the Ordnance Factories Board (OFB) functioning under the Department of Defence Production of Ministry of Defence, Government of India The main business of OFCh is to manufacture various types of ammunitions like bombs, shells, cartridges, rockets etc. It is also engaged in manufacture of explosive and non-explosive components such as Initiator, Primer, Cap, Fuze, Paper Components & Packages. The products are supplied mainly to Indian defence and military forces. Some of the produce is also supplied to sister Ordnance factories that use such goods for their production and manufacturing process.
Issue/s on which advance ruling required		(i) Applicability of a notification issued under the provisions of this Act (ii) Admissibility of input tax credit of tax paid or deemed to have been paid (iii) Determination of the liability to pay tax on any goods or services or both (iv) 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.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

### 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. SENOR GENERAL MANAGER ORDNANCE FACTORY**, the applicant, seeking an advance ruling in respect of the following questions.

*1) Is audit by a Chartered Accountant or Cost Accountant under section 35(5) of the CGST Act, 2017 applicable to our organization for-*

*a) The F.Y 2017-18?*

*b) The F.Y 2018-19 & succeeding financial years*

*2) Whether the exemption to a 'defence formation' for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings (PSU's) that function under the Ministry of Defence, Government of India?*

*3) Whether exemption on payment of GST on transport of 'military or defence equipments' through a goods transport agency applicable to goods transported by our organization?*

*4) Whether availing of eligible Input Tax Credit on inputs & input services relating to the main business activity of manufacturing is allowed against GST liability on renting of immovable property (which is an ancillary business activity)?*

*5) Whether Input Tax Credit is allowable in respect of food and beverages consumed in industrial canteen?*

*6) Whether Input Tax Credit is allowable in respect of manpower services hired for industrial canteen and LPG cylinders refilled for use in industrial canteen?*

7) *Whether Input Tax Credit is allowable in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital?*

2. **FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions, made by the applicant are as under:-

A. **Statement of relevant facts having a bearing on the question (s) raised:**

- 1) *Ordnance Factory Chanda (OFCh), the applicant, is a unit of Ordnance Factories Board (OFB) functioning under the Department of Defence Production and Supply, Ministry of Defence, Government of India. Established in the year 1964, the main business of OFCh is, to manufacture various types of ammunitions like bombs, shells, cartridges, rockets etc. It is also engaged in manufacture of explosive and non-explosive components such as Initiator, Primer, Cap, Fuze, Paper Components & Packages. The said products are supplied mainly to Indian defence and military forces. Some of the products are also supplied to sister Ordnance factories that use such goods for their production and manufacturing process. OFCh also supplies a small part of its manufactured goods to state police, Defence Public Sector companies like Bharat Dynamics Ltd., units under the Ministry of Home Affairs and defence laboratories like Defence Research & Development Laboratory.*
- 2) *The manufacturing process involves procurement of various raw materials from sister Ordnance factories and private entities. The output is transferred to sister Ordnance factories/units of armed forces as per order. The consideration for transfer is fixed by OFB and is booked in the financial accounts of applicant's organization and the adjustment is done through book transfer. Money consideration is involved only for a small portion of the produce, where the goods are sold to units under Ministry of Home affairs, paramilitary forces like BSF, units of state police, defence PSU's and private entities.*
- 3) *The goods are sent in finished condition to proof establishments (such as PXE Balasore, CPE Itarsi) for testing purpose. Such proof establishments are located outside the factory premises across the country and they also function under the Ministry of Defence, Government of India. Such sample goods are destroyed during testing process and the value of such destroyed goods is apportioned as Overheads on the final goods that are manufactured.*
- 4) *Apart from sale/transfer of manufactured goods, the applicant factory also supplies the scrap generated during the manufacturing process and other used and waste goods to private entities through auction process.*

- 5) Employees of the factory from all over the country come down and reside in the factory estate to help run the factory and it is the statutory obligation of the factory to maintain and upkeep their residential units along with maintenance of estate including playground, community hall, hospital, roads, school etc.
- 6) Expenditure on maintenance of Guest houses for stay of various persons visiting the factory is also incurred by the applicant organisation.
- 7) The factory estate is huge and some portion of it has been let out for construction of leasehold property for commercial purposes like daily needs shops and bank. Applicant organisation collects rent from such let out immovable property.

**B. Statement containing the Applicant's interpretation of law and /or facts**

**I) For Question No. 1:**

Is audit by a Chartered Accountant or Cost Accountant under section 35(5) of the CGST Act, 2017 applicable to applicant's organisation for

a) the F.Y 2017-18?

b) the F.Y 2018-19 & succeeding financial years.

**It is requested that question No.1 may kindly be withdrawn.**

**II) For Question No. 2:**

Whether the exemption to a 'defence formation for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings (PSU's) that function under the Ministry of Defence, Government of India?

As per para 14(k) of Rule No. 138 of the CGST Rules, 2018(Notification No. 12/2018 - Central Tax, e-way bill is not required to be generated, irrespective of the value of movement of goods where movement of goods is being caused by defence formation under the Ministry of Defence **as a consignor or a consignee**. The term 'defence formation under the Ministry of Defence' has not been defined in the CGST Act, 2017 or the rules made there under.

Since OFCh is functioning under the Ordnance Factory Board (OFB) which in turn is functioning under the Department of Defence Production and Supply of Ministry of Defence, Government of India, it gets covered under the term 'defence formation under the Ministry of Defence'. So, the aforementioned exemption should be applicable to OFCh whenever it causes movement of goods as a consignor. The factory also causes movement of goods to units of the Indian Armed Forces.



The Indian Armed Forces are under the Ministry of Defence (MOD) Government of India and are therefore under the term 'defence formation under the Ministry of Defence'. So, the aforementioned exemption should be applicable when OFCh causes movement of goods to such units of the Indian Armed Forces since the consignee in this case is a 'defence formation under the Ministry of Defence'.

Similarly, the factory also causes movement of goods to proof establishments for testing of its goods. These proof establishments are also under the management of the Ministry of Defence (MOD) of the Government of India. So, the aforementioned exemption should be applicable when OFCh causes movement of goods to such proof establishments since the consignee in this case is a 'defence formation under the Ministry of Defence'.

Lastly, defence Public Sector Undertakings, Defence research Organisation (DRDO) or any other organisation under the management of the Ministry of Defence, Government of India should also get covered under the term 'defence formation under the Ministry of Defence' and the aforementioned exemption should be applicable when OFCh causes movement of goods to such proof establishments since the consignee in this case is a 'defence formation under the Ministry of Defence'.

### **III) For Question No. 3:**

#### **Whether exemption on payment of GST on transport of 'military or defence equipments through a goods transport agency applicable to goods transported by applicant organisation**

As per Sr. No. 21 of the Notification No. 12/2017- Central Tax (Rate), "Services provided by a goods transport agency, by way of transport in a goods carriage of defence or military equipment" are exempt from the levy of GST. The term defence or military equipment has not been defined in the CGST Act, 2017. As per Oxford dictionary, the word equipment means 'the necessary item for a particular purpose'. Hence the term 'defence or military equipment' should mean items/goods that are to be used by Indian defence or military forces. So, the question arises that whether the following category of goods shall get covered under 'defence or military equipment':

#### **Production Goods:**

OFCh uses services of Goods Transport Agencies (GTA) for transporting goods like propellant & explosives that are used in preparation of ammunition. Such goods are transported by OFCh to units of the defence forces, its sister Ordnance factories, proof establishments and other organisations under the Ministry of Defence, Government of India.

i) Transport to units of the defence forces:-When such goods are transported to units of the defence forces then they should get covered under the term defence or military equipment since they are used

directly by Indian defence and military forces and hence the aforementioned exemption should apply on transportation of such goods.

ii) Transport to sister Ordnance factories: - When such goods are transported to sister Ordnance factories, then also the goods should get covered under the term 'defence or military equipment' since Ordnance factories are part of the Department of Defence Production, Ministry of Defence.

iii) Transport to Proof establishments: - When such goods are transported to proof establishments outside the factory for testing purpose, then also the goods should get covered under the term 'defence or military equipment' since the proof establishments are also a part of Ministry of Defence.

iv) Transport to Research institutions: - When such goods are transported to research organisations like DRDO, ARDE etc., then also the goods should get covered under the term 'defence or military equipment' since such research institutions are also a part of Ministry of Defence.

v) Transport to Defence Public Sector Units (PSU's): - When such goods are transported to Defence PSU's, then also the goods should get covered under the term 'defence or military equipment' since such PSU's are also under the aegis of the Department of Defence Production, Ministry of Defence.

vi) Transport to private entities: - The factory is also engaged in Civil Trade where it supplies its manufactured goods to select private entities. In such a scenario also, the goods should get covered under the term 'defence or military equipment' since the supplier of goods is applicant organisation which is a part of the Department of Defence Production, Ministry of Defence.

#### **Goods transferred from stock:**

The factory also uses GTA services for transporting goods that are not manufactured by it but are issued from its stock. Such goods maybe anything that are lying in the stock of the factory. Such goods are transported to the following:

i) Transport to sister Ordnance factories: - When such goods are transported to sister Ordnance factories, then the goods should get covered under the term "defence or military equipment" since Ordnance factories are part of the Department of Defence Production, Ministry of Defence.

ii) Transport to Research institutions: - When such goods are transported to research organisations like DRDO, ARDE etc., then also the goods should get covered under the term 'defence or military equipment' since such research institutions are also a part of Ministry of Defence.

iii) Transport to private entities: - When old used goods & scrap are sold through auction process to private entities and transportation of such goods is carried out through GTA, then also such goods

should get covered under the term 'defence or military equipment' since the supplier of goods is our organisation which is a part of the Department of Defence Production, Ministry of Defence.

**D) For Question No. 4:**

**Whether availing of Input Tax Credit (ITC) on inputs & input services relating to the main business activity of manufacturing is allowed against GST liability on renting of immovable property (which is an ancillary business activity)?**

As per section 2(17) of the CGST Act, 2017, "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); OFCh has let out several commercial establishments on rent in its estate. Such activity of letting of immovable commercial property is incidental or ancillary to the main business activity of manufacturing since OFCh estate has been formed primarily for the business of manufacturing and the commercial establishments on such estate have been formed only as a consequence or ancillary to such main business activity of manufacturing. Thus, such letting of immovable is considered as "business" as per the said section 2(17) and GST liability is regularly discharged by OFCh on it.

As per section 17 of the CGST Act, 2017, where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. Thus, from the above, it becomes clear that the intention of the law is to restrict the availability of ITC to only so much as is attributable to "business" of a person and not to non-business activities. Accordingly, the eligible ITC on inputs and input services that are used for the main business activity of manufacturing should be attributable to and available for discharging the tax liability on such ancillary activity of renting of immovable property since as already explained, such renting of immovable property is a "business" as per the said section 2(17) of the CGST Act, 2017 and ITC is attributable to the purposes of business of a registered person as per the said section 17 of the CGST Act, 2017.

**E) For Question No. 5:-**

**Whether ITC is allowable in respect of food and beverages consumed in industrial canteen?**

As per section 9 of the CGST Amendment Act, 2018 that is in force from 01/02/2019, an amendment to section 17(5) (b) of the CGST Act, 2017 has been brought about where ITC shall not

be available in respect of supply of food and beverages and outdoor catering except where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.

As per section 46 of the Factories Act, 1948, the State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

Approximately 3000 persons have been employed by OFCh and thus the aforementioned provision relating to maintenance of canteen is obligatory for OFCh to provide to its employees under the Factories Act, 1948. So, an industrial canteen has been provided for its employees within the factory where the employees have food and beverages by paying a nominal amount of money on no-profit-no-loss basis. Thus, ITC should be allowable in respect of food and beverages consumed in industrial canteen.

**F) For Question No. 6:**

**Whether ITC is allowable in respect of manpower services hired for industrial canteen and LPG cylinders refilled for use in industrial canteen?**

Reference is once again made to section 9 of the CGST Amendment Act, 2018 as mentioned above. Since approximately 3000 persons have been employed by OFCh and thus the aforementioned provision relating to maintenance of canteen is as per section 46 of the Factories Act, 1948 which is obligatory for OFCh to provide to its employees under the Factories Act, 1948.

So, an industrial canteen has been provided by OFCh for its employees within the factory where the employees have food and beverages by paying a nominal amount of money on no-profit-no-loss basis. Also, as per section 16(1) of the CGST Act, 2017, "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."

Thus, ITC in relation to the following used for supply of food and beverages inside the industrial canteen and maintenance of industrial canteen should be allowed as per amended section 17(5) (b) & 16(1) of the CGST Act, 2017:

**a) Manpower services hired for industrial canteen:**

OFCh hires manpower services for maintenance, cleaning & daily running of industrial canteen. The ITC in relation to such manpower services should be allowed since the industrial canteen has been formed and maintained as per statutory obligation as elaborated above and is thus essentially used in the course or furtherance of business of OFCh.

**b) LPG cylinders refilled for use in industrial canteen:**

LPG cylinders are re-filled for use in industrial canteen. ITC in relation to such refilling should be allowed keeping in view the same principle as elaborated above.

As per Clause 6 of Schedule II to the CGST Act, 2017, "supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration shall be treated as a supply of services. Thus, such supply of food and beverages by the factory to factory employees inside the industrial canteen falls within the category of 'services' as per the aforementioned clause 6.

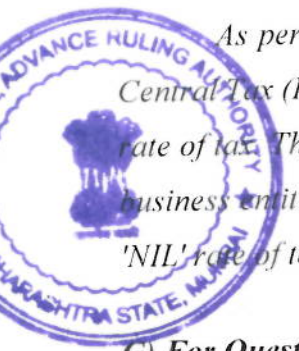
As per Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017-Central Tax (Rate), supply of services by the Central Government to non-business entities attract 'NIL' rate of tax. Thus, since such supply of food and beverages is done to factory employees that are non-business entities, the charges recovered by the factory from such employees for such supply attracts 'NIL' rate of tax since OFCh is "Central Government" as explained above.

**G) For Question No. 7:**

**Whether ITC is allowable in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital?**

Reference is again made to section 9 of the CGST Amendment Act, 2018 mentioned above as per which ITC shall not be available in respect of supply of health services except where the same is obligatory for an employer to provide to its employees under any law for the time being in force. It is submitted that as per Ordnance Factory Medical Regulations, it is mandatory for Ordnance Factories to provide occupational health services through Factory Hospital.

Thus, as per the amended section 17(5) (b) of the principal CGST Act, 2017, ITC in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital



should be allowed since such inputs and input services are used in respect of supply of health services to employees and their families that are mandatory to be provided under Ordnance Factory Medical Regulations.

**Additional Submission dated on 30.12.2019**

**1) For Question No. 1:**

Is audit by a Chartered Accountant or Cost Accountant under section 35(5) of the CGST Act, 2017 applicable to applicant's organisation for

a) the F.Y 2017-18?

b) the F.Y 2018-19 & succeeding financial years.

***It is requested that question No.1 may kindly be withdrawn.***

**2) Question No. 2 mentioned above:**

Similar question had been raised by - "General Manager Ordnance Factory Bhandara" vide its Application for Advance Ruling to the Maharashtra Authority for Advance Ruling dtd. 24/09/2018. Such question was ordered in the affirmative by the Maharashtra Authority for Advance Ruling with the following observation:

*\*As per Para 14(k) of Rule No.138 of the CGST Rules, 2018 (Notification No. 12/2018-Central Tax), e-way bill is not required to be generated when any movement of goods is being caused by defence formation under the Ordnance Factory Board (OFB) which in turn functions under the Department of Defence Production and Supply, Ministry of Defence, Government of India, is causing movement of goods to units of the Indian Armed Forces, proof establishments, DRDO, etc. and are eligible for the benefit under Rule 138 (14)(k) of the CGST Rules."*

Since Ordnance Factory Bhandara is a sister concern of Ordnance Factory Chanda, thus, on similar grounds such exemption should be applicable to Ordnance Factory Chanda too as the nature of working of both organisations is similar.

**3) Question No. 3 mentioned above:**

Similar question, which was raised by "General Manager Ordnance Factory Bhandara" vide its Application for Advance Ruling to the Maharashtra Authority for Advance Ruling dtd. 24/09/2018, was answered in the affirmative by the Maharashtra Authority for Advance Ruling with the following observation:

"Services provided by a goods transport agency, by way of transport in a goods carriage of defence or military equipments are exempt from levy of GST. We find that the applicant is manufacturing and transporting goods like propellant & explosives that are used in the manufacture of ammunition and therefore the said exemption is available to them."

Since Ordnance Factory Bhandara is a sister concern of Ordnance Factory Chanda, thus, on similar grounds such exemption should be applicable to Ordnance Factory Chanda too as the nature of working of both organisations is similar.

**4) Question No. 5 mentioned above**

Applicant wishes to specifically ask as to whether or not ITC of GST in relation to various maintenance activities carried out in respect of Industrial Canteen used for supply of food and beverages shall be allowed.

Maintenance of pipeline used for supply of gas from cylinders is carried out in respect of Industrial Canteen at Ordnance Factory Chanda. The ITC in relation to such maintenance activity of pipeline should be allowed in view of section 9 of the CGST Amendment Act, 2018 mentioned above

**5) Question No. 6 mentioned above:**

It is requested to refer the enclosed "The CGST Amendment Act, 2018" for this question.

**6) Question No. 7 mentioned above:**

It is requested to refer the enclosed "The CGST Amendment Act, 2018" for this purpose. Refer Page 8 of such enclosure wherein it is clearly mentioned that: \*All employees working in Ordnance and Ordnance Equipment Factories, their Allied Establishments will be entitled for occupational health services under OFMR including such services statutorily mandated under Factories Act, 1948 irrespective of the entitlement of the employee for healthcare under OFMR or otherwise. Such occupational health services will be provided to them through Factory Health Clinics and Factory Hospitals attached to the Factory where the employee is working."

Thus, it proves that provision of healthcare services to employees through factory hospital is mandatory and obligatory for the applicant under Ordnance Factory Medical Regulations and hence as per the amended section 17(5) (b) of the principal CGST Act, 2017, ITC in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital should be allowed.

**03. CONTENTION – AS PER THE CONCERNED OFFICER Dated 12.03.2020:**

*The submissions made by the concerned officer are as under:-*

**Question No.2:-**

***Whether the exemption to a 'defence formation' for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings (PSU's) that function under the Ministry of Defence, Government of India?***

*As per the provisions of para (14)(k) of Notification No. 12/2018 Central Tax dated 07<sup>th</sup> March, 2018, no e-way bill is required to be generated for any movement of goods cause by defence formation under Ministry of defence as a consignor or consignee. In the present case the applicant working under the Formation of defence Ministry, Government of India, and hence the applicant organization is not required to raise e-way bill at the time of supply of goods.*

**Question No.3:-**

***Whether the exemption payment of GST on transport of, military or defence equipment, through a goods transport agency applicable to goods transported by their organization?***

*As per clause (h), of Sr. No. Sr.21 (heading 9965 or 9967 of Notification No. 12/2012-Central Tax (Rate) dated 28<sup>th</sup> June 2017, services provided by a goods transport agency, by way of transportation in a goods carriage of defence or Military equipment's is NIL. Hence the applicant is entitled for exemption from payment of GST on transport of 'military or defence equipment' through a goods transport agency transported by their organization.*

**Question No.5:-**

***Whether Input tax Credit is allowed in respect of Food and beverages consumed in industrial canteen?***

*As per amended provisions of Section 17(5) (b) in view of CGST Amendment Act, 2018 notified with effect from 01.02.2019, exception A is provided thereto*

*"(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; "*

*Applicant may be covered under provisions of The Factories Act, 1948 (read with respective State Factories Rules), Section 46 of which casts a statutory obligation upon the employer of a factory having more than 250 workers to provide a canteen(s). Further, drawing power from the*



Section 46(2) of the said Act, respective States have drawn Rules with regard to the foodstuffs to be served in such canteen and the charges which may be made therefore. But it is not submitted by the Applicant whether applicant recovers some amount from employees towards foods provided in the canteen i.e. if there is an outward supply in the hands of the applicant, and if the Applicant is recovering/charging the amount in respect of food services supplied to the employees then,

Entry No. 7(i) (read with Explanation 1 thereto) of **Notification No. 11/2017- Central Tax (Rate) dated the 28.06.2017**, as amended from time to time, specifically post amendment vide Notification No. 13/2018 –Central Tax (Rate) dated 26.07.2018, specifies that supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided at a canteen of an industrial unit, will be subject to GST @ 5%, provided that credit of input tax charged on goods and services used in supplying the service has not been taken. The said Notification being a rate notification and not an exemption notification, is not optional to the dealer.

Hence ITC in respect of Food and beverages consumed in industrial canteen is not available to the Applicant in such situation. It is also not submitted by the applicant that whether maintenance activity of gas pipeline has been capitalized or not, if it is capitalized then ITC can't be allowed as per provisions of Section 17(5)(c) of CGST/MGST Act, 2017 read with explanation to Section 17 of CGST/MGST Act, 2017.

**Question No. 6:-**

**Whether ITC is allowable in respect of manpower services hired for industrial canteen and LPG cylinders refilled for use in Industrial Canteen?**

As per amended provisions of Section 17(5) (b) in view of CGST Amendment Act, 2018 notified with effect from 01.02.2019, exception A is provided thereto

“(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force;”

Applicant may be covered under provisions of the Factories Act, 1948 mentioned above. But it is not submitted whether applicant recovers some amount from employees towards foods provided in the canteen i.e. if there is an outward supply in the hands of the applicant, and if the Applicant is recovering/charging the amount in respect of food services supplied to the employees then, Entry No. 7(i) (read with Explanation 1 thereto) of **Notification No. 11/2017- Central Tax (Rate) dated the 28.06.2017**, as amended from time to time, will come into play and the said Notification being a rate notification and not an exemption notification, is not optional to the dealer. Hence Input Tax Credit



*in respect of Food and beverages consumed in industrial canteen is not available to the Applicant in such situation.*

**Question No. 7:-**

***Whether ITC is allowable in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital?***

*The hospital/dispensary maintained by the applicant for its employees and their dependents come within the definition of "Clinical Establishment" and such supply of service is exempted under Sr. No. 74, heading 9993 of the Notification no. 12/2017-C.T.(R) dated 28.06.2017. Consequently, ITC on such exempted supply of services is not available to applicant under sub section (2) of section 17 of the CGST/MGST Act, 2017. As submitted by the Applicant, health care services provided to employees through factory hospital is mandatory and obligatory for Ordnance Factory Chanda (Applicant) under Ordnance Factory Medical Regulation and hence amended provision u/s 17(5)(b) of CGST/MGST Act, 2017 will become applicable thereto. But As per amended provisions of Section 17(5) (b) in view of CGST Amendment Act, 2018 notified with effect from 01.02.2019, exception A is provided thereto*

*"(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force;" but Medical/hospital services provided are not covered under section 17(5)(b) of CGST/MGST Act, 2017, hence not applicable here and sub section (2) of section 17 of the CGST/MGST Act, 2017 will be applicable and ITC has to be reversed in view of the same.*

**04. HEARING**

- 4.1** Preliminary hearing in the matter was held on 02.01.2020. Shri Yatish Kumar, Works Manager and Shri Sagar Sahajwani, CA appeared, and requested for admission of their application. Jurisdictional Officer was not present.
- 4.2** The case was fixed for online hearings on 17.12.2020 and 04.02.2021. On both the occasions the applicant requested for adjournment which was granted.
- 4.3** Final online hearing was further fixed on 29/06/2021. Shri Sagar Sahajwani, C.A attended on behalf of the applicant and made oral submissions. Jurisdictional officer was not present but has made written submissions.

4.4 We heard the matter.

**05. DISCUSSIONS AND FINDINGS:**

5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant as well as the department.

5.2. As per the submissions, we find that the applicant factory is a unit of Ordnance Factories Board (OFB) functioning under the Department of Defence Production and Supply of Ministry of Defence, Government of India. The applicant manufactures various types of ammunitions and explosive and non-explosive components and supplies the same, mainly to Indian defence and military forces and also to sister Ordnance factories that use such goods for their production and manufacturing process. Applicant also supplies a small part of its manufactured goods to state police, Defence Public Sector companies like Bharat Dynamics Ltd., units under the Ministry of Home Affairs and defence laboratories like Defence Research & Development Laboratory.

5.3 We further find that, when the output is transferred to sister Ordnance factories/units of armed forces as per order, the consideration for transfer is fixed by OFB and is booked in the financial accounts of OFCh organization and the adjustment is done through book transfer. Money consideration is involved only for a small portion of the produce, where the goods are sold directly to units under Ministry of Home affairs, paramilitary forces like BSF, units of state police, defence PSU's and private entities.

5.4 It is also evident that some part of the factory estate has been let out for commercial purposes like daily needs shops and banks. Applicant collects rent from such letting out the immovable property.

5.5 In our opinion the Applicant is fulfilling all the conditions stipulated for being "Central Government", as provided under clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India, since the Applicant is functioning under the Department of the Defence Production, Ministry of Defence, Government of India, and all its activities are carried out for and on behalf of the President of India. OFB Procurement Manual clearly shows that all defence contracts are in the name and on behalf of the President of India only. Thus, it is adequately evident that the Applicant is covered under



the provision of section 2(53) of the CGST Act, 2017 read with clause (8) of section 3 of the General Clauses Act, 1897 read with Article 53 & Article 77 of the Constitution of India.

5.6 The Hon'ble Appellate Advance Ruling Authority for Maharashtra, in the appeal filed by the Ordnance Factory, Bhandara, for reasons meant in their order, has also held that Ordnance Factory Bhandara, is 'Government' for all practical purposes.

5.7 In view of the above we now take up the questions raised by the applicant as under:.

5.8 **Question No.1** has been voluntarily withdrawn by the applicant vide written submissions made on 30.12.2019.

5.9.1 **Question No. 2 : Whether exemption to a 'defence formation' for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings (PSU's) that function under Ministry of Defence, Government of India?**

5.9.2 During the course of the hearing it was informed by the applicant that the question pertained only to themselves. Rule 138 of the GST Rules, 2017 provides for information to be furnished prior to commencement of movement of goods and generation of E-way bill. As per para 14(k) of Rule No. 138 of the CGST Rules, 2018 (Notification No. 12/2018 – Central Tax), e-way bill is not required to be generated when any movement of goods is being caused by defence formation under the Ministry of Defence as a consignor or a consignee. Since the applicant is functioning as a defence formation under the Ministry of Defence, we are of the opinion that applicant is eligible for the benefit under Rule 138 (14) (k) of the CGST Rules. It is not necessary to issue e-way bills for their supplies whenever movement of goods is being caused by them as a consignor or a consignee.

5.10.1 **Question No.3 :**

**Whether exemption on payment of GST on transport of 'military or defence equipments' through a goods transport agency applicable to goods transported by our organization?**

5.10.2 We find that applicant is supplying the subject goods i.e. military or defence equipment through a goods transport agency to the different units of Government. We find that as per clause (h), Heading 9965 or 9967, of Sr. No. 21 of Notification No. 12/2017- Central Tax (Rate) dated 28.6.2017, "Services provided by a goods transport agency, by way of transport in a goods carriage, of defence or military equipments" are exempt from the levy of GST. In the subject case, we find that the applicant is manufacturing and transporting goods like



propellant & explosives that are used in the manufacture of ammunition. The aforesaid goods manufactured by the applicant are rightly covered under Entry Sr. No. 21. Heading 9965 or 9967, clause (h) of the Notification No. 12/2017- C.T.- (Rate) dated 28.6.2017 and therefore the said exemption is available to applicant's transaction in respect of transport of military or defence equipments.

- 5.11 Sections 16 to 21 of the CGST Act deals with conditions for availment, use and recovery of such ITC by businesses. As per the section 16 of the CGST Act, a registered person, is entitled to take credit of input tax charged on any supply of goods and services or both which are used or intended to be used in the course or furtherance of their business. Section 16 (2) to (4) of the CGST Act restricts availment of ITC in certain cases. Section 17 of the CGST Act deals with apportionment of credit in some cases (credit used for both, business and other purposes) and blocked credits (cases when ITC is not available). Keeping the said provisions of ITC in mind, we now take up the remaining four questions raised by the applicant.

**5.12.1 Question No.4:**

**Whether availing of eligible Input Tax Credit on inputs & input services relating to the main business activity of manufacturing is allowed against GST liability on renting of immovable property (which is an ancillary business activity)?**

- 5.12.2 It has been submitted that the applicant has let out several commercial establishments on rent in its estate and GST liability is regularly discharged by the applicant thereon.

- 5.12.3 As per section 2(17) of the CGST Act, 2017, "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);

- 5.12.4 As per section 17 of the CGST Act, 2017, where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. Thus, from the above, it becomes clear that the intention of the law is to restrict the availability of input tax credit to only so much as is attributable to "business" of a person and not to non-business activities.


- 5.12.5 In the present case, the main business activity is manufacturing of Defence goods and ancillary business activity is of renting of immovable property, which are covered under the



term "business" as per the said sub section 2(17) of the CGST Act, 2017. The applicant is charging some rent/consideration from any customers within factory premises on immovable property like shops, which is given on lease basis. However, as mentioned above, the applicant is 'Central Government' and supplies renting of immovable property services. Therefore the provisions of Notification No. 3/2018 Central Tax (Rate) dated 25.1.2018 u/s 9(3) of CGST ACT 2017, which is applicable in the instant case, is reproduced as under :

*GSR.....(E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.13/2017- Central Tax (Rate), dated the 28<sup>th</sup> June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 692(E), dated the 28<sup>th</sup> June, 2017, namely:-*

*In the said notification,- (i) in the Table, after serial number 5 and the entries relating thereto, the following serial number and the entries relating thereto shall be inserted, namely: -*



(1)	(2)	(3)	(4)
54	Services supplied by the Central Government, State Government, Union territory or local authority by way of <b>renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).</b>	Central Government, State Government, Union territory or local authority.	Any person registered under the Central Goods and Services Tax Act, 2017.,";

5.12.6 Considering the above notification and activity and status of the applicant as a 'Government', it has no liability to pay GST on said supply which is liable to be paid under reverse charge mechanism by the recipient of the service. As there are no taxes payable on outward supply the question of availing ITC does not arise as per the provisions of ITC under Sections 17(2) of the CGST Act, 2017. Therefore, the Applicant is not entitled to avail ITC in respect of such expenditures. The Hon'ble Appellate Authority for Advance Ruling, Maharashtra in its order No. MAH/AAAR/SS-RJ/13/2019-20 dated 18.10.2019, passed in respect of appeal filed by Ordnance Factory Bhandara, in a similar issue has also held that the provisions of Notification No. 3/2018 Central Tax (Rate) dated 25.1.2018 was applicable to Ordnance Factory Bhandara.

#### 5.13.1 Question No.5:

**Whether Input Tax Credit is allowable in respect of food and beverages consumed in industrial canteen?**

5.13.2 As per Clause 6 (b) of Schedule II to the CGST Act, 2017, "supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration shall be treated as a supply of services. There is an industrial canteen inside the factory premises that serves food and beverages to employees of the factory. Nominal charges for such food and beverages are recovered from the employees on no profit basis in order to cover the day-to-day expenditure of the canteen. Such industrial canteen is run by the factory itself. However, as per Sr. No. 6 of the exemption list for supply of services in the notification no. 12/2017- Central Tax (Rate), **"supply of services by the Central Government to non-business entities attract NIL rate of tax"**. Since such supply of food and beverages is being made to factory employees, who are in the nature of non-business entities, the charges recovered by the factory from such employees for such supply attracts NIL rate of tax as Ordnance Factory Chanda is "Central Government" as explained above.

5.13.3 The applicant contends that the section 9 of the CGST Act was amended and as per the Amendment Act, 2018 that is in force from 01/02/2019, an amendment in section 17(5) (b) of the CGST Act, 2017 has been brought about where input tax credit shall not be available in respect of supply of food and beverages except where the provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force. In the present case, applicant submitted that approximately 3000 persons have been employed by the applicant and thus the aforementioned provision relating to maintenance **of canteen is obligatory** for OFCh to provide canteen to its employees under the Factories Act, 1948. Hence Applicant contended that ITC would be available to the applicant, due to provision to Section 17(5) (b) of GST Act, from 01.02.2019 onwards only.

5.13.4 We observe that, the Applicant's activities of supply of Food and beverages at the industrial canteen inside the factory premises would attract NIL rate of GST. The said supply is held to be exempt supply in terms of Sr. No. 6 of the Notification No. 12/2017- C.T.(Rate) dated 28.06.2017. Since the subject supply has been held to be exempt supply by the Applicant, the ITC in respect of the food and beverages consumed in industrial factory canteen of the

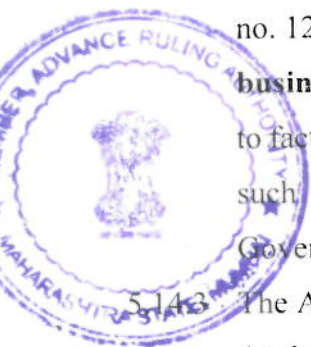


Applicant will not be available in terms of section 17(2) of the CGST Act, 2017. As per CGST Amendment Act, 2018, Section 17(5) (b) provides that ITC shall be available where an inward supply of such goods or services or both is used by registered person for making an outward taxable supply of the same category of goods or service or both or as an element of taxable composite or mixed supply. But in the present case, the applicant's outward supply is exempted by notification. Therefore, provisions of newly amended Section 17 (5) (b) of CGST ACT is not applicable to these specific transactions of applicant. Hence ITC is not available on this transaction to the applicant.

5.14.1 **Question No.6: Whether Input Tax Credit is allowable in respect of manpower services hired for industrial canteen and LPG cylinders refilled for use in industrial canteen?**

5.14.2 To run the canteen, applicant requires manpower services and also requires LPG cylinders refilled whereon GST paid by applicant. The procurement of inputs (goods) and input services are used for the rendering of output supply of canteen foods and other items which, in terms of the aforementioned Sr. No. 6 of the exemption list on supply of services as per notification no. 12/2017- Central Tax (Rate), is **"supply of services by the Central Government to non-business entities attract NIL rate of tax"**. Since such supply of food and beverages are made to factory employees, who are non-business entities, the charges recovered by the factory from such employees for such supply attracts NIL rate of tax, since, applicant is "Central Government" as explained above.

5.14.3 The Applicant's activities of the supply of Food and beverages at the industrial canteen inside the factory premises will attract NIL rate of GST, i.e. since the said supply is exempt supply in terms of Sr. No. 6 of the Notification no. 12/2017- Central Tax (Rate) dated 28.06.2017. Since the subject supply is exempt supply, the ITC in respect of the manpower services hired for industrial canteen and ITC on LPG cylinders refilled for factory canteen of the Applicant will not be available in terms of section 17(2) of the CGST Act, 2017. Similarly the newly amended provision of section 17 (5) (b) of CGST ACT are also not applicable to the transactions of applicant because in the subject case the applicant's outward supply is exempted from taxes and is therefore not taxable. Hence applicant is not eligible for ITC on the inputs and input services (used for exempt outward supply) in industrial canteen i.e. on hired man power services and refilled LPG cylinder.



**5.15.1 Question No 7: Whether Input Tax Credit is allowable in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital?**

5.15.2 The Applicant submitted that it is mandatory for the Ordnance Factory Chanda to provide the medical facility to the employees and their dependents free of cost as per the Ordnance Factory Medical Regulations (OFMR) dated 30.01.2009 and accordingly, a hospital is run by the applicant where medicines and other facilities are provided to employees of the factory without any consideration. According to the applicant, as per the amended section 17(5) (b) of the principal CGST Act, 2017, Input Tax Credit in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital should be allowed since such inputs and input services are used in respect of supply of health services to employees and their families that are mandatory to be provided under Ordnance Factory Medical Regulations. Thus they are falling under the exception clause inserted in section 17(5) (b) of the CGST Act, 2017 vide section 9 of the CGST Amendment Act, 2018 w.e.f. 01.02.2019, which provides that input tax credit shall not be available in respect of supply of health services except where the same is obligatory for an employer to provide to its employees under any law for the time being in force.

5.15.3 In light of section 9 of the CGST Amendment Act, 2018, which amends section 17(5)(b) of the CGST Act, 2017 as stated above, we are of the opinion that Applicant is not entitled to avail the ITC (up to 01.02.2019) in respect of inputs like medicines, and input services etc. consumed in the hospitals to provide the health services to its employees and their dependents as per the terms of the Ordnance Factory Medical Regulations. Section 9 of the CGST Amendment Act, 2018, which is in effect from 01.02.2019, has inserted this condition, wherein the ITC in respect of health services will be available to the employer provided such health services are obligatory for the employer to provide to its employees under any law for the time being in force, which, prior to this amendment act, was not available to any registered person under section 17(5) (b) of the CGST Act, 2017.

5.15.4 Considering the amended provision of Section 17(2) of CGST Act, ITC would be available in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital with effect from 01.02.2019. The same view has been taken by the Appellate Authority For Advance Ruling, Maharashtra in its above referred order in the case of M/s Ordnance factory, Bhandara.



06. 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)

NO.GST-ARA- 58/2019-20/B- 28

Mumbai, dt. 13.07.2021

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

**Question 1.** Is audit by a Chartered Accountant or Cost Accountant under section 35(5) of the CGST Act, 2017 applicable to our organization for-

- a) The F.Y 2017-18?
- b) The F.Y 2018-19 & succeeding financial years

**Answer:-** Question is withdrawn by the applicant.

**Question 2.** Whether the exemption to a 'defence formation for preparation and generation of E-way bills is applicable to Ordnance factories & other Central Government & Public Sector Undertakings (PSU's) that function under the Ministry of Defence, Government of India?

**Answer:-** Answer is in affirmative.

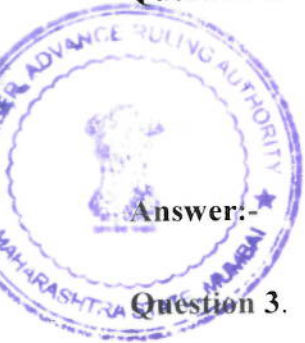
**Question 3.** Whether exemption on payment of GST on transport of 'military or defence equipment's through a goods transport agency applicable to goods transported by our organization?

**Answer:-** Answer is in affirmative.

**Question 4.** Whether availing of eligible Input Tax Credit on inputs & input services relating to the main business activity of manufacturing is allowed against GST liability on renting of immovable property (which is an ancillary business activity)?

**Answer:-** Answer is in negative.

**Question 5.** Whether Input Tax Credit is allowable in respect of food and beverages consumed in industrial canteen?



**Answer:- Answer is in negative.**

**Question 6.** Whether Input Tax Credit is allowable in respect of manpower services hired for industrial canteen and LPG cylinders refilled for use in industrial canteen?

**Answer:- Answer is in negative.**

**Question 7.** Whether Input Tax Credit is allowable in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital?

**Answer:- Answer is in affirmative. It would be applicable with effect from 01.02.2019, and not for the prior period.**



  
**RAJIV MAGOO**  
(MEMBER)

  
**T. R. RAMNANI**  
(MEMBER)

**Copy to:-**

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Principal Chief Commissioner of Central Tax, Churchgate, Mumbai
5. 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, 15<sup>th</sup> 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.