

Tata AutoComp Systems Ltd Canteen and Transport Policy, engaged canteen service providers [for short CSP], transport service providers [for short TSP] who provide food and transportation facilities to the applicant's employees. which states that the canteen policy is applicable to all employees on the rolls of the Company ie Management staff, staff, workmen, trainees, temporary, etc in Tata AutoComp Systems Ltd and its group entities based in India. 1a. Whether the deduction of nominal amount by the applicant from the salary of the employees who are availing 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 CGST & GGST ? HELD The deduction of amount by the applicant from the salary of the employees who are availing facility of food provided in the factory premises would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017. (2) Whether ITC is available to the applicant on GST charged by the CSP for providing the catering services? HELD Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its employees other than contract employees working in their factory', in view of the provisions of Section 17(5)(b) as amended effective from 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees. (3) Whether the services by the way of non air conditioner bus transportation facility provided by transport service providers would be construed as 'supply of service' by the applicant to its employees under the provisions of section 7 of CGST and GGST? HELD The services by the way of non air conditioned bus transport facility provided by TSPs would not be construed as 'supply of service' by the applicant to its employees under the provisions of section 7 CGST and GGST. (4). Whether ITC is available to the applicant on GST charged by the transport service providers for providing the non air conditioned bus transportation services? HELD ITC is available to the applicant on GST charged by the TSPs for providing the non air conditioned bus transport services however subject to the condition that the buses hired are more than 13 seater wef 1.2.2019. ITC on the above is restricted to the extent of the cost borne by the applicant for providing transportation services to its employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees. 4. Whether GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter? HELD No GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter.

ADVANCE RULING NO. GUJ/GAAR/R/2023/23, Dated 19th June, 2023

GUJARAT AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,

AHMEDABAD - 380 009.

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/07)

Name and address of the applicant	:	Tata Autocomp Systems Ltd, Plot No. A-2, Tata Motors Vendors Park, North Kotpura, Ahmedabad Gujarat - 382110
GSTIN of the applicant	:	24AAACTI848EIZN
Date of application	:	15.02.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)(e)(g)
Date of Personal Hearing	:	08.05.2023
Present for the applicant	:	Shri Suyash Maheshwari, CA, Shri Vikash Agarwal, CA

Brief facts:

M/s. Tata AutoComp Systems Ltd, Plot No. A-2, Tata Motors Vendors Park, North Kotpura, Ahmedabad, Gujarat-382110 [for short-'applicant'] is registered under GST and their GSTIN is 24AAACT1848E1ZN. The applicant is a group entity of Tata AutoComp Systems Ltd. [for short 'TACO'].

2. The applicant is engaged in the manufacture, sale and trading of automotive parts and provides products and services to the Indian and global automotive OEMs as well as other Tier 1 suppliers. The applicant has engaged canteen service providers [for short CSP], transport service providers [for short TSP] who provide food and transportation facilities to the applicant's employees.

3. The applicant employs 322 employees, other than contract employees and is registered under the Factories Act, 1948. The applicant has appointed CSP, who is responsible for providing skilled manpower for the preparation of food and maintenance of canteen premises.

4. Being a part of TACO, policies set out by them are applicable to all its group entities. TACO has set out Tata AutoComp Systems Ltd Canteen and Transport Policy, which states that the canteen policy is applicable to all employees on the rolls of the Company ie Management staff, staff, workmen, trainees, temporary, etc in Tata AutoComp Systems Ltd and its group entities based in India. They have also specifically reproduced paras 5.01 and 5.02 of their Canteen policy.

5. The applicant has also relied upon the provisions of memorandum of settlements entered into with Tata AutoComp Systems Kamdar Sangh Sanand which states that for employees availing the canteen facility, the applicant shall deduct Rs. 500/- per month from their salary except for contract employees. This deduction finds a mention in their respective salary slip also.

6. The canteen facility is provided at a nominal rate in the course of employment in pursuance of the Factory Act. The facility is restricted to employees of the Company. Further, to avail the canteen facility, the employees would be required to display company issued employee IDs. The applicant has attached the agreement executed with the CSP as Annexure 1, employment contract as Annexure 2 and Canteen Policy as Annexure 3 with their application.

7. The applicant's contention is that the canteen facility provided to their employees is not in the nature of supply u/s 7 of the CGST Act, 2017 & hence would not be leviable to GST owing to the following reasoning viz

O the canteen facility is provided in pursuance of a statutory obligation under factories act;

O that the facility is provided to employees in the course of their employment;

O that it is not provided in the course of furtherance of business; that there is no quid pro quo and no intention to undertake the business of providing canteen facilities;

O that the recovery made from employees is ultimately paid to the CSP;

O that they would like to rely on the below mentioned rulings/circular which substantiate their averment that no GST is leviable;^

O Tata Motors Ltd [GST-ARA-23/2019-20/B-46 dtd 25.8.2020] & [GUJ/GAAR/R/39/2021];

O Circular no. 172/04/2022-GST dtd 6.7.2022;

O Bai Mamubai Trust v/s Suchitra [Commercial Suit (1) No. 236/2017];

O Cinemax India Ltd [SCA No. 8032/2010 & 707/2011];

O Raipur Mfg Co Ltd [CA 603/1965]

O IIT [WP No. 1768/1973]

O Encure Pharmaceuticals Ltd [GST-ARA-119/2019-20/B/03 dtd 4.1.2022;

O Anneal Pharmaceuticals Ltd [GUJ/GAAR/R/50/2020 dtd 30.7.20]

O Posco India Pune Processing Centre P Ltd [GST-ARA-36/2018-19/B-I 10 dtd 7.9.2018]

O Jotun India P Ltd [GST-ARA-19/2019-20/B-108]~

O that they are eligible to avail ITC on the GST charged by the CSP on account of the following reasoning viz^

O Circular 6.7.2022. supra clarifies that proviso at the end of section 17(5)(b), ibid is applicable to the entire clause (b);

O that ITC on food and beverages would not be restricted provided it is obligatory for an employer to provide the same to its employees law for the time being in force;

O that the canteen facility to its employees is in furtherance of its obligations under Factories Act; that the restriction imposed u/s 17(5). ibid is not applicable in the instant case since the canteen facility is extended to its employees as a part of its statutory obligations under the provisions of Factories Act;

O that they would like to rely on the below mentioned rulings/circular which substantiate their averment that no GST is leviable;^

-- Bharat Oman Refineries [MP/AAAR/7/2021]

-- Hindustan Coca Cola Beverages P Ltd [Appeal No. E/89199/2013]

-- Cerna Electric Lighting Products India P Ltd [Appeal No. E/787/2012]~~

8. The applicant has further entered into a contract with TSP to provide transportation facility to its employees between the factory premises & the residence in non air conditioned buses having capacity of more than 13 persons. This facility is offered only to employees of the Company. Employees are required to display company issued ID card to board the bus & avail the facility TSP according to the pre approved routes provide the services to the employees. The applicant has further enclosed the transport policy as Annexure 3 and the copy of the agreement with the TSP as Annexure 6.

9. The applicant's contention is that the transportation facility provided to their employees is not in the nature of supply u/s 7 of the CGST Act, 2017 & hence would not be leviable to GST owing to the following reasoning viz^

o that the transportation facility provided by the applicant is in the course of employment and therefore does not qualify as supply under the CGST Act;

o that the facility is made available to the employee for their convenience;

o that it is offered only to the employees;

o that the TSP provides transportation services according to the pre-approved routes provided by the applicant;

o the employee is not authorized to avail the transportation facility the moment he ceases to be an employee;

o that there should be an element of reciprocity for an activity to be taxable; that the absence of an identifiable supply in the case of provision of transportation facility makes the activity out of the scope of supply & would not constitute consideration;

o that the provision of the facility cannot be construed to be in the course of or in furtherance of its business operations and cannot be construed as supply u/s 7 of the CGST Act;

o that they would like to rely on the below mentioned rulings/circular which substantiate their averment that no GST is leviable;^

- o Tata Motors Ltd [GST-ARA-23/2019-20/B-46 dtd 25.8.2020];
- o Integrated Decision & Systems India P Ltd [GST-ARA-116/2019-20/B-1131
- o North Shore Technologies P Ltd [Order No. 59]
- o Ion Trading India P Ltd [2020 113 taxmann.com 609 (AAR-UP)];
- o Circular no. 177/9/22-TRU dtd 3.8.22;~
- o that they are eligible to avail ITC on the GST charged by the TSP on acc following reasoning viz^
- o services provided are in pursuance of the applicant's obligatory to provide such facilities to its employees in the course of its employment

O ITC paid on supply of transportation services by a motor vehicle with the capacity of more than 13 persons shall be available as ITC;

O that they wish to rely on the following circulars and rulings to substantiate their averment that they are eligible for ITC viz^^

-- Tata Motors Ltd

-- Dr William Schwabe (1) P Ltd [UP ADRG 79/2021J~~~

10. Lastly, the applicant issues every employee an appointment letter highlighting various terms and condition of employment such as job band, designation, date of appointment, place of posting etc and the salary structure and the terms and condition governing the employment. In terms of the said agreement, where an employee fails to serve the specified notice period or serves a shorter tenure, the applicant deducts an amount equivalent to salary for the tenure of notice period not served as a compensation for the breach of the terms of the employment agreement by the employees in accordance with the appointment letter. This amount of notice pay is deducted from full and final settlement of the employee and is not collected as a separate payment from the employee. Further it is deducted to discourage the employees from serving a shorter period and is in a nature of damages for breach of the terms of employment agreement by the employee.

11. The applicant's contention is that they are not liable to pay GST on notice pay owing to the following reasoning viz

-- that on account of the employment contract, they have a right to deduct an amount from the full & final settlement in lieu of the notice pay, enabling the employee to exit the company early ie to serve a lesser notice period;

-- in terms of section 7 read with section 2(31) of the CGST Act, 2017, there has to be a co-existence of 'activity' & 'consideration' & the reciprocal relationship between these two is necessary to treat an event as a supply;

-- the deduction is in accordance with the employment contract between the applicant and the employee, which enables an employee to serve a lesser notice period than as laid down in his employment contract;

-- that they would like to rely on the ruling of Emcure Pharmaceuticals Ltd, GE T&D India Ltd, M/s. HCL Ltd, State Street Syntel Services P Ltd, Shriram Pistons & Rings Ltd, Samsung India Electronic P Ltd, Cognizant Technologies P Ltd, CA (India) Technologies P Ltd.

12. In view of the foregoing, the applicant has filed this application, seeking advance ruling on the below mentioned questions viz

1a. Whether the deduction of nominal amount by the applicant from the salary of the employees who are availing 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 CGST & GGST ?

1b. In case answer to above is yes. whether GST is applicable on the nominal amount to be deducted from the salaries of employees?

1c. Whether ITC is available to the applicant on GST charged by the CSP for providing the catering services?

2a. Whether the services by the way of non air conditioner bus transportation facility provided by transport service providers would be construed as 'supply of service' by the applicant to its employees under the provisions of section 7 of CGST and GGST?

2b. Whether ITC is available to the applicant on GST charged by the transport service providers for providing the non air conditioned bus transportation services?

3. Whether GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter?

13. Personal hearing was granted on 08.05.2023 wherein Shri Suyash Maheshwari, CA, Shri Vikash Agarwal, CA and Shri Manish Kumar Mishra, appeared on behalf of the applicant and reiterated the facts as stated in the application. They relied upon the judgments cited in the application. In respect of canteen service provider they informed that the issue remains settled. In respect of transportation recovered it was informed that they have hired the bus. On being asked they informed that there is no legal obligation. For ITC they relied on the 28th GST Council Meeting. Regarding notice pay they believe it is not a supply and relied on a CBIC circular.

Discussion and findings

14. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

15. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

16. Before adverting to the submissions made by the applicant, we would like to reproduce the relevant sections competing tariff entries, for ease of reference:

Section 7. Scope of supply.-

(1) For the purposes of this Act. the expression -

"supply" includes-

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

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

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another:]

(b) import of services for a consideration whether or not in the course or furtherance of business; 2[and]

(c) the activities specified in Schedule I. made or agreed to be made without a consideration;

(d)

(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.

(3) Subject to the provisions of sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

• **Section 17. Apportionment of credit and blocked credits.- [relevant extracts]**

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

(a) motor vehicles 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:

(aa).....:

(ab).....:

(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

• **CBIC's press release dated 10.7.2017**

Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply 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. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health

and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

• **Circular No. 172/04/2022-GST**

S. No.	Issue	Clarification
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<p>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 subclause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under:</p> <p>"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."</p> <p>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 subsection (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."</p> <p>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.</p>
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?	<p>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.</p> <p>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.</p>

17. The facts having been enumerated supra we do not intent to repeat the same for the sake of brevity.

Canteen

18. The first issue to be decided is whether the deduction of nominal amount made by the applicant from the employees who are availing food in the factory premises would be considered as a 'supply' under the provisions of Section 7 of the CGST Act, 2017. Now, in terms of Section 7 of the CGST Act, 2017, supply means all forms of 'supply' of goods/services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. The exception being Schedule I, which includes the activities made or agreed to be made without a consideration and Schedule III, which includes activities which shall be treated neither as a supply of goods or services. The applicant's case is that they employ about 322 persons other than contract

employees who have been provided with canteen facility in terms of section 46 of the Factories Act, 1948. The applicant's primary role is that he has set up a canteen facility, having a demarcated area in the factory premises, pursuant to & in compliance with the Factories Act; that the said canteen facility has a seating area with tables and chairs, a facility of utensils, refrigeration, storage rooms for keeping the cooked food, washrooms and wash basin, etc..

19. Now in terms of Circular No. 172/04/2022-GST, 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. We find that factually there is no dispute as far as [a] the canteen facility is provided by the applicant as mandated in Section 46 of the Factories Act, 1948 is concerned; and [b] the applicant has provided a sample copy of the employment agreement and a copy of Canteen and Transport policy of Tata AutoComp Systems Ltd, the relevant paras of which is reproduced below viz

05. Canteen

05.01 Canteen facility will be provided to all the employees in all the shifts in each Manufacturing/Engineering Business Unit at each location, wherever it is feasible to do so, on the basis of number of employees. The canteen services should be managed through a canteen contractor only. A cooking facility will be provided in the premises of the Business Unit Plants. Adequate facilities for dining hall, serving of food & proper washing/maintenance & storage area will be provided by the BU/Plant Administration.

05.02 Canteen deduction for all unionized workmen shall be made as per the provisions of respective Wage Settlements. The same will be applicable to other employees working in plant(s) of the Business Unit. However, at some locations, there may be some variation in the amount of deduction for employees other than unionized workmen.

In view of the foregoing, we hold that the deduction made by the applicant from the employees who are availing food in the factory would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017.

20. Since the answer to the above is not in the affirmative, the ruling sought in respect of the second question is rendered infructuous.

Input Tax Credit

21. The next question on which the applicant has sought ruling is whether Input Tax Credit of GST charged by the CSP would be eligible for availment by the applicant. In this connection, before proceeding further, certain factual aspects which we would like to mention, though at the cost of repetition are viz

- that they employ 322 persons other than contract employees at their factory and the corporate office;
- that section 17(5)(b) *ibid*, was amended on 1.2.2019, and is reproduced *supra*;
- that the applicant is mandated vide section 46 of the Factories Act, 1948 to provide canteen facility to its employees within the factory premises;
- that circular no. 172/4/2022-GST clearly clarifies that post substitution, effective from 1.2.2019, based on the recommendation of the GST council in its 28th 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), *ibid*.

22. In view of the foregoing, we hold that Input Tax Credit will be available to the appellant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 as far as provision of canteen service for employees other than contract employees is concerned. It is further held that the ITC on GS1 charged by the CSP will be restricted to the extent of cost borne by the appellant only. Our view is substantiated by the Ruling of the Gujarat Appellate Authority for Advance Ruling order No. GUJ/GAAAR/Appeal/2022/23 dated 22.12.2022 in the case of M/s. Tata Motors Ltd, Ahmedabad.

23. In view of the foregoing, we hold that Input Tax Credit will be available to the appellant in respect of canteen facility which is obligatory under the Factories Act, 1948, read with Gujarat Factories Rules, 1963.

Transportation

24. The second issue to be decided is whether the services by way of non air conditioned bus transportation facility provided by the TSP is supply of service by the applicant to its employees under the provisions of section 7 of the CGST Act, 2017. What section 7 encompasses is mentioned supra in para 18.

25. The applicant's contention is that since they are situated in a remote location outside city limits where transport is scarce, for the convenience and safety of employees to reach/leave the factory & ensure that there is no disruption to business they have engaged contractual TSP to provide transportation services to its employees.

26. Now in terms of Circular No. 172/04/2022-GST, 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 is provided in terms of the contract between the employer and employee. We find that factually there is no dispute as far as the applicant has provided a sample copy of the employment agreement and a copy of Canteen and Transport policy of Tata AutoComp Systems Ltd, the relevant paras of which are reproduced below viz

06. Transport Facility

Transport facility will be provided to all employees in certain shifts in the Manufacturing/Engineering Business Unit at different locations, as per company's policy announced from time to time. However this shall not form a right on the part of the employee(s) at any time and such a facility may be modified or withdrawn, anytime, purely at the discretion of the Management.

Till the time such facilities are not provided, the employees will manage on their own and the Company will not bear or reimburse any expenses.

Transport deduction for all unionized workmen shall be made as per the provisions of respective wage settlements. The same will be applicable to other employees working in the plant(s) of the Business Unit. However, at some locations, there may be some variation in the amount of deduction for employees other than unionized workmen.

In view of the foregoing, we hold that the deduction for bus transportation facility would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017.

Input Tax Credit

27. In terms of Section 16 of the CGST Act, 2017, ITC can be availed subject to the conditions and restrictions prescribed in the manner specified in section 49. The supply of the services in this case received by the applicant is used in the course of furtherance of their business and therefore prima facie they are eligible to take credit of GST charged by their suppliers. Section 17(5) which speaks of block credit is already reproduced supra.

28. The amended section 17(5) wef 1.2.2019 has allowed availment of ITC on leasing, renting or hiring of motor vehicles for transportation of persons having approved seating capacity of more than 13 persons (including driver).

29. The sample copy of the agreement with the TSP enclosed with the application is dated 16.9.2019, which as per 'Effective date & duration' would last for 3 years. Hence, it is not clear whether the agreement is still in vogue. However, in the said agreement the buses hired are having a capacity of more than 13 seats. Therefore, we are of the opinion that the applicant is eligible for ITC however subject to the condition that the buses they have hired are more than 13 seater, wef 1.2.2019. Our view is substantiated by the ruling in the case of M/s. Fata Motors Limited [GST-ARA- 23/2019-20/B- 46] , Dr. Willmar Schwabe (I) P Ltd [2021 133 taxmann.com] and Emcure Pharmaceuticals Ltd [GUJ/GAAR/ R/2022/22]

30. It is further held that the ITC on GST charged by the TSP will be restricted to the extent of cost borne by the appellant only taking the analogy from the ruling of the GAAAR vide its order No. GUJ/GAAR/Appeal/2022/23 dated 22.12.2022 in the case of M/s. Tata Motors Ltd, Ahmedabad.

Notice pay

31. The third issue of the applicant is about notice pay, wherein the applicant is of the view that deduction of

the amount equivalent to salary for the tenure of notice period not served as a compensation for the breach of the terms of the employment agreement by the employees in accordance with the appointment letter is not leviable to GST.

32. We find that the issue has already been clarified vide Circular no. 178/10/2022-GST dtd 3.8.2022, wherein it is stated as follows:

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature (putting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

33. In view of the foregoing, we hold that the applicant is not liable to pay GST on the amounts deducted towards notice pay.

34. In the light of the foregoing, we rule as under:

RULING

1(a). The deduction of amount by the applicant from the salary of the employees who are availing facility of food provided in the factory premises would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.

1(b). Since the answer to the above is not in the affirmative, the ruling sought in respect of the question listed at 1(a) is rendered infructuous.

1(c). Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its employees other than contract employees working in their factory', in view of the provisions of Section 17(5)(b) as amended effective from 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

2a. The services by the way of non air conditioned bus transport facility provided by TSPs would not be construed as 'supply of service by the applicant to its employees under the provisions of section 7 CGST and GGST.

2b. ITC is available to the applicant on GST charged by the TSPs for providing the non air conditioned bus transport services however subject to the condition that the buses hired are more than 13 seater wef 1.2.2019. ITC on the above is restricted to the extent of the cost borne by the applicant for providing transportation services to its employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

3. No GST is applicable on salary deducted in lieu of notice period from the full and final settlement of the employees leaving the company without completing or serving the complete notice period as specified in the appointment letter.

(MILIND KAVATKAR)

MEMBER (SGST)

(AMIT KUMAR MISHRA)

MEMBER (CGST)

Place: Ahmedabad

Date: 19.06.2023