MAHARASHTRA AUTHORITY FOR ADVANCE RULING

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

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

BEFORE THE BENCH OF

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

(2) Ms. Himani Dhamija, Joint Commissioner of Central Tax, (Member)

ARN No.		**AD270921002041Q**
GSTIN Number, if any/ User-id		**27AAACC5292M1ZB**
Legal Name of Applicant		**M/s Carraro India Private Limited**
Registered Address/Address provided while obtaining user id		B2/2, Pune-Nagar Road, Ranjangaon MIDC, Pune-412220
Details of application		GST-ARA, Application No. 36 Dated 17.09.2021
Concerned officer		**Deputy Commissioner, Division-VII (Shirur), CGST Pune-I Commissionerate**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Factory Manufacturing**
B	Description (in brief)	The applicant is involved in the business of manufacture and sale of Transmissions, Axles, Skid Steer Assembly and Final Drives for Windmills. The Applicant has a factory wherein manufacture of the aforementioned goods is carried out and has about 900 full-time employees working on a permanent as well as contractual basis. The Applicant has entered into a contractual relationship with Chef's Corner (hereinafter referred to as 'the Canteen Service Provider') with terms and conditions to serve the ready to eat food to its employees within the Applicant's factory premises. The Applicant would make payment to the Canteen service providers and as per the Applicant's policy, it recovers a nominal amount based on the percentage of the cost of plate as a deduction from the monthly salaries payable to the Applicant's employees.
Issue/s on which advance ruling required		➢ Admissibility of input tax credit of tax paid or deemed to have been paid ➢ Determination of the liability to pay tax on any goods or services or both ➢ Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or 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 Carraro India Pvt. Led.,** the applicant, seeking an advance ruling in respect of the following question.

Q1. Whether the deduction of a nominal amount by the Applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service" by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

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

b. Whether input tax credit (ITC) is available to the Applicant on GST charged by the Canteen Service Providers for providing the catering services? If yes, whether ITC is restricted to the extent of cost borne by the Applicant only?

Q 2: Whether GST is applicable on payment of salary in lieu of notice pay 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?

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

1. FACTS AND CONTENTION – AS PER THE APPLICANT:

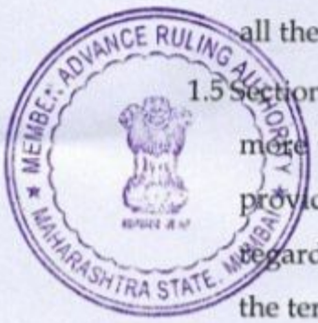
1.1 The Applicant is a company incorporated under the provisions of the Companies Act, 1956 having a manufacturing plant (hereinafter **referred to as 'the Factory'**) situated at B2/2, Pune Nagar **Road,** Ranjangaon MIDC, Pune-412220 and is *inter alia* involved in the business of manufacturing and sale of transmissions, axles, skid steer assembly and final drives for Windmills. The Applicant is registered under the GST regime solely in the State of Maharashtra *vide* GSTIN 27AAACC5292M1ZB. Apart from domestic sale transactions, the Applicant also undertakes exports to Carraro S.P.A. (a related party located in Italy) which in turn sells the same to original equipment manufacturer.

1.2 For the purposes of the present Advance Ruling Application, it is stated that the Applicant has existing set up of canteen in a demarcated area wherein the Canteen Service Provider provides ready to eat food to employees of the Applicant at the prescribed time slot. The Applicant has entered into a contractual relationship with its Vendor with specific terms and conditions of the contract.

1.3 It is with respect to the taxability of, as well as the availability of ITC against; the amounts paid towards the said service that the Applicant has filed the instant Application. In addition, the Applicant also wishes to seek clarity on leviability of GST on Notice Pay Recovery in existence in the Applicant's entity. At the outset, the Applicant seeks to elaborate upon the existing arrangements in the ensuing paragraphs.

EXISTING ARRANGEMENT WITH RESPECT TO PROVISION OF FOOD FACILITY BY THE APPLICANT TO ITS EMPLOYEES

1.4 The Applicant, for the manufacture of the above-mentioned products has about 900 employ**ees.** Since the Applicant is registered under the provisions of the Factories Act, 1948 (hereinafter **referred to as "Factories Act**"), it is required to comply with all the obligations and responsibilities cast under the provisions of the said Act.



1.5 Section 46 of the Factories Act, 1948 provides that "in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens, shall be provided and maintained by the 'Occupier' for the use of the workers." In this regard, we shall also refer to Section 2(n) of the Factories Act, 1948 which defines the term 'occupier' of a factory to mean "the person who has ultimate control over the affairs of the factory". In the instant case, the Applicant has the ultimate control over the affairs of the factory and hence will be treated as the occupier.

1.6 Since the factory premises of the Applicant is located far away from local city limits and considering the time and efforts required for arranging food on daily basis, the Applicant had decided to provide canteen facility to its employees by engaging the Canteen Service Provider to comply with the statutory requirement laid down by the Factories Act.

1.7 To cater to the above-mentioned obligation, the Applicant has set up the canteen in **a demarcated area w**ithin its factory premises wherein tables, chairs, utensils, washrooms, wash basins, storage rooms for keeping the cooked food, washing the utensils etc. have been provided and maintained by the Applicant.

1.8 The Applicant has entered in contractual relationship with the Canteen Service Provider with separate roles and responsibilities.

1.9 As per the contractual arrangement, it will be the Canteen Service Provider's responsibility to bring ready-to-eat food to the factory for immediate consumption by the Applicant's employees Additionally, he is also made responsible for

subsequent deployment of trained staff for serving food and fulfilment of all the statutory requirements of such deployed staff, such as Provident Fund Gratuity, Employee State Insurance, Group Accident Policy etc.

1.10 Further, the Applicant has set out the **Personnel Policy No. CIL/HR/PERS/02 dated 01 April 2008** (hereinafter **referred to as 'the Personnel** Policy', wherein the procedure for the availment of such facility has been laid out. The relevant para of such policy is reproduced herewith.

Para VIJ Lunch Hours - time and canteen facility

*Employees are advised to avail lunch in the prescribed lunch break. The lunch/dinners to be **taken** only in the canteen. The deduction for availing the food from the canteen is done on a monthly **basis** @ Rs. 500 per month. Prorated deductions are made if the employees avails the canteen facility for less than 20 days in a month with prior notice. Employees desiring to discontinue the **canteen** facility are advised to inform before 25th of the preceding month*

1.11 The Personnel Policy, as referred above, is applicable only to the employees of the Applicant. The Visitors of the factory are not allowed to access such food facility since it is meant only for Applicant's employees. Every employee who wishes to avail or discontinue the food facility shall give a prior notice to the Applicant as per the timelines provided for in the Personnel Policy. Thereafter, on a monthly basis, a fixed amount of Rs. 500/- is deducted from his salary on account of food provided to the employee from the canteen irrespective of the actual monthly cost of food plate. The balance monthly cost of the food plate is borne by the Applicant.

1.12 Thus, it can be said that the Canteen facility has been provided to the Applicant's employee only on account of employer-employee relationship i.e. the existence of an employer-employee relationship is vital for providing as well as availing the said canteen facility. If the relationship does not exist, the individual employee will not be able to avail the canteen facility.

1.13 Also, at the cost of reiteration, the Applicant would like to submit that such canteen facility is set up by the Applicant out of the mandate laid down by the Factories Act, 1948.

BACKGROUND WITH RESPECT TO DEDUCTION ON ACCOUNT OF EMPLOYEE LEAVING THE APPLICANT WITHOUT SERVING THE NOTICE PERIOD:

1.14. As a part of internal process of the Applicant, every employee is issued an appointment letter highlighting various terms and conditions of employment such as job band, designation, date of appointment, place of posting etc. and the salary structure.

1.15 One of the terms is in relation to the resignation of an employee; which mandates that a specified notice period is to be served before the employment with the Applicant ceases. For a shorter notice period, the condition for deduction of notice pay is included in the appointment letter and the Applicant's policy.

1.16. We wish to share the relevant extract of the appointment letter wherein it is mandated on the part of its employee to serve the notice period.

During the probation period, the service can be terminated by either party by giving one month notice or payment of salary in lieu of shortfall in the notice period. On successful completion of the probation period the notice period will be two months on either side, ***or payment of salary in lieu of shortfall in the notice period,*** *if mutually agreed.*

1.17 Further, we wish to highlight Applicant's policy with respect to Notice pay:

Notice Pay Policy -

a. **For Resignation of Employees during Probation period** - The notice period will be of 1 month and any shortfall in the notice period will be recovered from employee and the basis of calculation will be last drawn salary (Basic salary +Personal allowance).

b. **For Resignation of an employee confirmed in services -** The notice period will be of 2 months and any shortfall in the notice period will be deducted from employee and the basis of calculation will be last drawn salary (Basic salary +Personal allowance).

1.18 The Notice pay deduction condition has been specified in clause 3(9) of the Company's Personnel Joining and Relocation Policy. In terms of the said clause, if an employee decides to terminate his employment, he shall necessarily give 1- or 2-months' notice, as the case may be. Upon the Applicant's prior written consent, the employee may terminate his/her employment without serving the notice period on payment of an amount to be computed on the basis of last drawn salary for the part of notice period which is not served.

1.19 The amount of notice pay is deducted from the full and final settlement of the employee and is not collected **as a separate** payment from the employees. The said amount of notice pay deducted is to discourage the employees from serving a shorter notice period and is in the nature **damages for** breach of the terms of the Employment Agreement by the Employee.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

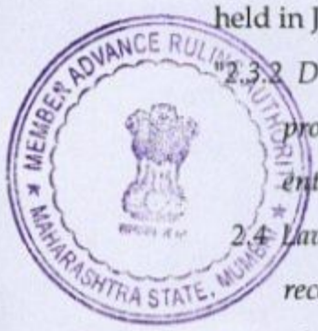
2.1 At the outset, the applicant wishes to reiterate the submissions made in the AAR submitted before the Advance Ruling Authority Mumbai on 27 September 2021, bearing ref. no. 36/2021-22. In addition to the same, the applicant wishes to make the following additional submissions in support of multiple developments in the GST law.

2.2 In light of the above, the applicant would like to submit additional submissions based on the discussion as per the direction of your good office, as explained in the submissions below. To this end, the applicant prays before the Advance Ruling Authority Mumbai, to kindly treat the following additional submissions as a part and parcel of the original AAR submitted dated 27 September 2021.

1. Additional submission with respect to Question 1(a):-

Perquisites provided by an employer to employees in accordance with the terms of the contract are not subject to GST as per Schedule III of the Central Goods and Services Tax Act, 2017 ("CGST Act")

2.3 In support of the above argument, the applicant wishes to draw the attention of your good self towards the below-highlighted paragraphs of the 47th GST Council Meeting held in June 2022, which state:



2.3.2 Doubts have also been raised regarding the taxability of various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee.

2.4 Law Committee in its meeting dated 11.04.2022 deliberated on the issue and recommended that the issue may be clarified through a circular that -

i. proviso after sub-clause (iii) of section 17(5)(b) of CGST Act is applicable for all sub-clauses (i), (ii) & (iii) of section 17(5)(b);

ii. "leasing" referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items;

iii. ***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*** *[this aspect was earlier made known to the public through press release dated 10.07.2017]*

2.4 Further, we also wish to reproduce Para 7.23.3 of the minutes of the 47th GST Council meeting:

"Another issue was whether various perquisites provided by employer to its employees as per contractual agreement, were liable for GST. The Law Committee clarified that any perquisites provided by employer to its employees in accordance with the terms of contract were in lieu of services provided by the employee and as per Schedule III of the CGST Act, the same would not be subjected to GST."

2.5 In light of the discussions and recommendations recorded in the agenda and minutes of the 47th GST Council meeting, and as clarified by the Law Committee, it is established that any perquisites provided by an employer to its employees in accordance with the terms of the contractual agreement are in lieu of services provided by the employee.

2.6 As such, these perquisites are not considered a supply of goods or services under Entry No. 1 of Schedule III of the Central Goods and Services Act, 2017 ("CGST Act") and, therefore, are not subject to Goods and Services Tax ("GST"). This position was also earlier made known to the public through the Press Release dated 10 July 2017, attached as Annexure. Accordingly, it is submitted that perquisites extended by an employer to its employees pursuant to the terms of the contractual agreement of employment shall not be regarded as a 'supply' for the purposes of the Central Goods and Services Tax Act, 2017. Consequently, no Goods and Services Tax is leviable on such perquisites.

2.7 Furthermore, the Applicant respectfully places reliance upon *Circular No. 172/04/2022-GST* dated 6 July 2022, wherein it has been categorically clarified that any benefit or perquisite extended to employees pursuant to the terms of the employment contract shall not be subject to the levy of Goods and Services Tax. The relevant extract of the said Circular is reproduced below for ready reference:

> *"Q5. Whether various perquisites provided by the employer to its employees in terms of the contractual agreement entered into between the employer and the employee are liable to* GST?
>
> *1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.*
>
> *2.Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee."*

2.8 In the present case, it is submitted that the Applicant provides the canteen facility in terms of the contractual agreement entered into between the employer and employee. The contractual agreement specifically provides for the availment of benefits and allowances as per the Company's policy, which, apart from other benefits, also provides canteen services to employees. In view of this, the said transaction should

not be treated as a supply as per Section 7 of the CGST Act, read with Schedule III. Hence, GST shall not be leviable on the recovery of a nominal amount from the employees.

2.9 The applicant also wishes to rely on the recent ruling of Gujarat AAAR in the matter of Amneal Pharmaceuticals Pvt. Ltd [TS-569-AAAR(GUJ)-2021-GST] wherein the ruling of AAR was modified, and it was ruled that no GST is to be levied on third-party canteen charges collected by the employer from employees.

2.10 The applicant places reliance on the decision of the Uttar Pradesh Advance Ruling Authority in the case of North Shore Technologies Private Limited (2021 (49) G.S.T.L. 315 (A.A.R. - GST - U.P.), wherein the authority held that "arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of employment contract, cannot be considered as supply of service in the course of furtherance of business. Providing transport facility to employees is nowhere connected with the business of the applicant". Accordingly, it was ruled that the subsidised shared transport facility to the employees in terms of the employment contract through third party vendors would not be construed as "Supply of Service" by the company to its employees.

2.11 Reliance in this regard is also placed on the Advance Ruling passed in **Re: Zydus Lifesciences Ltd. [Guj/GAAR/R/2022/42]** and **M/s. SRF Limited** vide Advance Ruling No. Guj/GAAR/R/2022/41 dated 28.09.2022.

Additional submission with respect to Question 1(b):-

Mandatory for the company to provide a canteen facility for the employees of the factory.

2.12 The applicant respectfully seeks to draw the attention of your esteemed office to the statutory obligations imposed on factory occupiers under the Maharashtra Factories Rules, 1963, specifically concerning the provision of canteen facilities for workers. Rule 79 of the said Rules mandates that every factory in which more than 250 workers are ordinarily employed, and which is notified by the State Government, must provide an adequate canteen facility in or near the factory premises. This requirement is designed to ensure the welfare and well- being of workers by providing them with access to hygienic and affordable food within a reasonable proximity to their workplace. The Rules further prescribe detailed standards regarding the construction, maintenance, and operation of such canteens, thereby underscoring the importance of this statutory facility as an essential component of worker welfare in industrial establishments across Maharashtra.

2.13 The provisions of the Maharashtra Factories Rules, 1963, make it unequivocally clear that the establishment and operation of canteen facilities in factories employing more than 250 workers is not merely a matter of administrative discretion, but a statutory

mandate. The Rules comprehensively regulate not only the physical standards and hygiene of the canteen premises but also the manner in which food and other items are to be provided to workers, specifically requiring that such services be rendered on a non-profit basis, with only limited exceptions for co-operative societies.

Availment of credit on canteen services is not restricted under section 17(5) of the CGST Act when the employer is under a mandatory obligation to provide such services.

2.14 Applicant wishes to draw the attention of your good office towards Section 17(5) of the CGST Act, 2017, which generally restricts ITC on specific goods and services, including food and beverages. However, an important exception exists where these services are mandatorily provided by an employer to employees under prevailing laws. This aspect is particularly relevant for the applicant operating a factory in Maharashtra, where legal obligations under the Maharashtra Factories Rules, 1963, require certain facilities to be provided to employees.

"Section 17(5) of the CGST Act, 2017 (Relevant Extract):

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

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

Provided further that input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."

2.15 In light of the above, it is amply clear that factories in Maharashtra employing more than 250 workers are statutorily required to provide a canteen facility for their workers, and the canteen must be operated on a non-profit basis, with the cost of rent for land and building, depreciation, and other specified overheads excluded from the price charged to workers. As the provision of canteen facilities is obligatory under the Maharashtra Factories Rules, 1963, the factory is entitled to claim input tax credit

on the GST paid on food and beverages supplied through the canteen, as per Section 17(5) of the CGST Act, 2017.

2.16 The applicant seeks to place reliance on Trade Circular No. 3T of 2022, issued by the Commissioner of State Tax, Maharashtra State, Mumbai. This circular, in turn, refers to Circular No. 172/04/2022-GST dated July 6, 2022. The latter provides crucial clarification regarding the application of the proviso at the end of clause (b) of Section 17(5) of the CGST Act. The clarification specifies that the proviso applies to the entirety of clause (b) of Section 17(5). It further elucidates that input tax credit on food and beverages, outdoor catering, health services, and other similar supplies referenced in Section 17(5) will not face restriction, on the condition that these supplies are obligatory for employers to provide to employees under current law. The pertinent paragraph of the Circular is provided below:

"Q3. Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST

Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?

1. *Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under:*

"Provided that the input tax credit in respect of such goods or services or both shall available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."

2. *The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."*

3. *Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of Section 17 of the CGST Act."*

2.17 In light of the aforementioned legal provisions and circulars, the Applicant provides canteen facilities to its employees pursuant to its obligations under the Factories Act. Consequently, the Applicant submits that the restrictions articulated under Section 17(5) of the CGST Act, 2017, do not apply in this case. This is due to the fact that the

canteen facilities are supplied to employees as part of the Applicant's statutory obligations under the Factories Act.

2.18 Further reliance has been placed on AAR in case of ***Posco India Pune Processing Center Private Limited, and M/s Jotun India Pvt Ltd*** by the Authority For Advance Ruling, Maharashtra

2.19 Without prejudice to the aforementioned submissions, the Applicant wishes to also submit that in order to attract GST on the nominal cost being recovered from the employees, it is essential that it shall fulfil all the essential conditions of Supply, as defined under Section 7 of the CGST Act, 2017, as mentioned above.

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

2.21 It is pertinent to study various facets of the Supply concept, as mentioned under Section 7 of the CGST Act, from the perspective of the facts under discussion. The Applicant believes that the following criteria, *inter alia*, plays a crucial role to determine the GST implications on provision of such a facility:

- There shall be **a legal intention** of both the parties to the contract to supply and receive the goods or services or both. The absence of such intention would not amount to Supply within a meaning of CGST Act, 2017;
- It should involve **quid pro quo- viz.**, the supply transaction requires something in return of equivalent value, which the person supplying will obtain, which may be in monetary terms/ in any other form except in cases of deeming provision as specified in Schedule I; and
- The Supply of goods or services or both shall be effected by a person **in the course or furtherance of business.**
- Provision of canteen facility to the employees only due to a statutory obligation and there is no legal intention to provide any service

2.22 The Applicant wishes to reiterate the facts that they provide a demarcated space for **canteen** facility, as mandated under the provisions of the Factories Act, 1948, to its employees for eating the food during the specified time i.e. lunch and dinner break. To comply with the same; the Applicant has decided to arrange for a food facility in the form of separate arrangement with the Canteen Service Providers.

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

2.24 In the instant case, the Applicant has set up the canteen facility out of statutory obligation, as imposed by the Factories Act, 1948 on the Applicant in its capacity as the 'occupier' of the Factory which is complied with through arrangement made with the Canteen Service Providers.

THE SUPPLY MUST BE EFFECTED FOR A 'CONSIDERATION'

2.25 With respect to the definition of supply, as mentioned in Section 7 of the CGST Act, (supra) it is pertinent to evaluate another element of supply which states that an activity could be considered as a supply only if it is "made or agreed to be made for a consideration. Thus, it becomes **very** critical to analyze the term 'consideration' against the deduction of nominal amount from its employees' salary.

2.26 The term 'consideration' has been defined in Section **2(31) of the CGST Act, 2017** which is provided below:

'consideration' in relation to the supply of goods or services or both includes, -

a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

2.27 The Applicant wishes to submit that a supply must involve ***enforceable reciprocal obligations.*** If something has been used, but there was no agreement for its supply between the relevant **parties,** ***any payment subsequently received by the aggrieved***

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

2.28 Also, the Applicant wishes to place reliance on the judgement of Bombay High Court in the **case of *Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra",*** has held that for *GST to be payable on any payment, there must be* ***the necessary quality of reciprocity to make it a 'supply'***.

2.29 In the instant case, the Applicant deducts a nominal amount from the employee**'s salary towards** the cost of services availed by them from the canteen service providers and without any commercial objective. Based on the above interpretation, it can be said that there is no reciprocity of any activity or transaction i.e. when is no express or implied reciprocity i.e. quid-pro-quo, between the Applicant and the employees. Thus, in the absence of an identifiable supply, **the activity would not constitute consideration' for any supply.**

THE SUPPLY SHOULD BE EFFECTED IN THE COURSE OR FURTHERANCE OF BUSINESS UNDER THE CGST ACT, 2017

2.30 Further reliance is also placed on the **case of Cinemax India Limited Vs Union of India wherein** the term 'furtherance of business' has been pointed out as:

"The meaning of 'furtherance', as per Black's Law Dictionary, 6th Edition, 11th reprint, 1997, is act of furthering, help forward, promotion, advancement or progress. Furtherance of business will, thus mean, act of furthering business, helping forward business, promotion of business, ***advancement*** *of business or progress of business."*

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

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

2.33 In the light of the above interpretation by the Hon'ble Apex Court as well as the Hon'ble Allah**abad** High Court, it is reiterated that canteen services cannot be treated as ancillary to the busine**ss** activity of the Applicant. Further, the canteen services provided are an ingredient of the w**age** negotiation with the employer and would form part of the consideration under employment agreement.

2.34 The Applicant wishes to draw your kind attention towards various judicial precedents allowing the input tax credit to the **assessee** under negative list regime of taxation of services under Finance Act, 2012. In the case of **M/s Hindustan Coca Cola Beverages Pvt. Ltd.** ***v/s*** **CCE, Nashik**, the Hon'ble CESTAT, Mumbai Bench held that post 2011, *canteen service is excluded from input service definition only when such service is primarily for personal use or consumption of any employee. When the company has borne the cost of canteen and not recovered from the employees, then in that case, it cannot be* ***treated*** *as such canteen service is primarily for* ***personal*** *use or consumption of employee and accordingly, CENVAT credit is allowed.*

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

2.35 We wish to also refer the judicial precedent passed in the case of **Ultratech Cement Limited Vs. CCE, Nagpur** by the Hon'ble High Court of Bombay, wherein it was held that the credit is not admissible to the manufacturer on the part of cost born by worker and proportionate credit embedded in the cost of food recovered from the employees, needs **to be reversed**. It may be noted that the said decision was also referred to by this Hon'ble AAR in the **Tata Motors Limited Ruling** while answering the question pertaining to ITC available to the Applicant in the **said case. The** relevant portion of the said Ruling is reproduced below:

5.4 The last question raised by the applicant is if ITC is available to them, whether it will be ***restricted to the extent*** *of cost borne by the Applicant.*

5.4.1 The applicant, citing the decision of the Hon'ble High Court of Bombay in the ***case of Ultratech Cements Ltd****. (supra) has submitted that ITC is not admissible to Applicant on part of cost borne by employee and thus ITC will be restricted to the* ***extent*** *of cost borne by the Applicant*

5.4.2 The jurisdictional officer has also endorsed the view of the applicant and we ***have no reason*** *to deviate from the view expressed by both, the applicant* ***as well as*** *the jurisdictional officer.*

PRAYER

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

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

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

(c) Allow the applicant to amend, alter and add to the submission made in the present application.

(d) Allow the applicant to produce the additional documents and other material during the personal hearing; and

(e) Pass such other Orders and directions as may be deemed proper and necessary in this regard.

3. CONTENTION – AS PER THE CONCERNED OFFICER:

With reference to the above subject in respect of application dated 02.09.2021 filed by M/s **Carraro India Private Limited** (27AAACC5292M1ZB) and the comments sought for in the matter. The submission of this office is as under:-

3.1 The canteen service provided by company to its employee constitutes as supply even if made without consideration. The transaction would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business of the applicant, and therefore the recovery from the employees for canteen/ transport facilities (though at a nominal cost) falls within the definition of 'outward supply' and is liable to tax. Thus, as per the provisions of relevant Sections of CGST Rules, 2017, it appears that the deduction of a nominal amount by the Applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service" by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017.

3.2 Taxability of 'canteen facility' provided to employees:

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

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

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

provided by employer to its employee can be covered in the definition of business.

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

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

2.1 If such services provided for a consideration:

Analysis of Definition of Supply:

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

3.3 Reference to Advance Ruling-Kerala

Further emphasis need to be placed on the Authority for Advance Ruling (in short "AAR") -Kerala in case of Caltech Polymers (P.) Ltd. (Order No. CT/531/18-C3 dtd 26.03.2018), wherein application was filled for a matter involving recovery of food expenses from employees for the canteen facility provided by a Company, whether such recovery falls within the definition of 'outward supply' and are therefore taxable outward supplies under the GST law. The Hon'ble AAR-Kerala has held that the supply of food by the applicant (Company) to its employees would come within the definition of "supply" as provided in Section 7(1)(a) of the CGST Act. Consequently, the employer would come under the definition of "supplier" as provided in Section 2(105) of the CGST Act. Moreover, since the employer recovers the cost of food items from their employees, there is "consideration" as defined in sec 2(31) of the CGST Act and the transaction is incidental or ancillary to the core business (even though there is no profit involved) therefore, falls under sec 2(17)(b) of the CGST Act i.e. definition of business.

3.4 Reference to Appellate Authority of Advance Ruling-Kerala

The applicant to advance ruling being aggrieved with the order of AAR, preferred an appeal to Appellate Authority for Advance Ruling, Kerala (in short "AAAR") wherein AAAR vide in Caltech Polymers (P.) Ltd (Order No. CT/7726/2018-C3 dtd 25.09.2018) upheld the order of AAR, and held that

supply of food items to the employees for consideration run by the company would come under definition of "supply" and would be taxable under GST.

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

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

Further, reference is drawn to the order issued under Advance Ruling No. 107/AAR/2023 dated 05.09.2023 issued by the Authority for the Advance Ruling, Tamilnadu. The relevant para of the said order is reproduced as under:-

".....

7.7 The next contention of the Applicant is that subsidized food is a perquisite to employees forming a part of the wage agreement and HR policy of the Applicant. The Applicant stated that the perquisites forming part of employment contract were excluded from GST as per the Circular no. 172/04/2022-GST dated 06.07.2022 of CBIC. The relevant extract of the said circular is reproduced hereunder for ease of reference:

Sl. No.	Issue	Clarification
5	Whether various perquisites provided by the employer to its employees terms contractual agreement entered into between the employer and	1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. 2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by

	employee are liable for GST?	employee to the employer in relation to his employment. It follows there from 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 ore provided in terms of the contract between the employer and employee.

7.8 As per the contents of the employment appointment orders issued to their employees, it is evident that, inter alia, there exists a clause stating that "*You will be entitled to use the canteen facility within the Factory premises as mandated under the Factories Act, 1948 and the Company will recover charges on a subsidized basis for availing the canteen*". *We find that there exists an express mention in the terms of agreement between the Applicant and the employees.*

7.9 At this juncture, we find that it is pertinent to see the definition of the term Perquisite. As per Section 17(2) of the Income Tax Act, 1961, "Perquisite is defined as

"any casual emolument or benefit attached to an of ice or position in addition to salary or wages."

Thus a 'perquisite' is a non cash benefit attached to an office or position which is in addition to salary or wages. Generally, such perquisites being a part of the salary or Cost to Company of the employee are free of cost i.e. the employee does not pay anything additional for a perquisite.

7.10 A combined reading of the Circular and the term 'perquisite', we find that the intention of the Circular is to clarify that tax is not applicable on perquisite which is part of the employee agreement and which may be free of cost for the employees Accordingly, in case where a recovery is made against a supply, even if it is subsidised, the same will be subjected to tax. We find that the benefit of the non levy of GST could be extended only to the extent of the consideration being borne by the Applicant out of the total cost for supply of the food/beverages, but not to the extent of the consideration being collected at the subsidized rates, by the Applicant from their employees. Thus, we hold that GST is to be levied on the amount recovered be the Applicant from the employees towards canteen provision.

....."

3.6 If such services provided without consideration:

In terms of Section 7(1) (c) of CGST Act 2017 read with Entry 2 of Schedule I, the transactions specified in Schedule-I shall be treated as supply even if provided without consideration and the said entry 2 covers supply of goods or services between related persons i.e. supply to related person without consideration would also be treated as Supply. The definition of related person is not given in Section 2 of the CGST Act 2017 but as per entry (iii) of explanation (a) to Section 15 related person includes employer employee relationship. Therefore, 'Canteen Facility' provided without consideration is covered under the ambit of Supply.

3. The applicant making payment to the canteen service provider on account of services provided by them alongwith GST. The applicant sought advance ruling whether ITC to the extent of cost borne by the applicant on GST charged by the canteen service provider, is available to them?

3.7 This aspect is to be check with provisions under section 17 of the CGST Act, 2017. Sub-clause (b) of sub-section (5) of Section 17 of the CGST Act, 2017, is re-produced below:-

"Section 17. Apportionment of credit and blocked credits.-

1. .....

2. .....

(3) .....

(4) .....

(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) ....

(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.

(c) ……."

3.8 As per clarification detailed in (3) of S. No. 3 of Circular No. 172/04/2022-GST, dated 6- 7-2022, 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. The gist of of the S. No. 3 of the Circular is detailed below: -

S. No.	Issue	Clarification
Clarification on various issues of section 17(5) of the CGST Act		
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	1.Vide the Central Goods and Services Tax (Amendment Act), 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 1-2-2019.After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under :- "Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force." 2.The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21-7-2018. It had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of Goods or

		services which are obligatory for an employer to provide to its employees, under any law for the time being in force." 3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

3.9 However, under provisions of sub-clause (b) of sub-section (5) of Section 17 of the CGST Act, 2017, read with clarification (3) of S. No. 3 of the Circular No. 172/04/2022-GST, dated 06-07-2022, the ITC is available to the applicant for the supply of goods or service or both supplied by Canteen Service Provider. In view of the foregoing discussion, it is felt that Input Tax Credit will be available to the applicant in respect of food provided in the canteen as the said facility is obligatorily to be provided under the Factories Act, 1948, as far as provision of canteen service for employees is concerned. Thus, ITC on GST charged by the canteen service provider will be restricted to the extent of cost borne by the applicant only.

3.10 Question 2: 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?

Such issue has been clarified by the Department vide Circular No. 178/10/2022- GST dated 03-08-2020 which is reproduced as under'

"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 quitting 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."

In the light of the above, the GST is not leviable on the notice pay recovery.

4. HEARING

Preliminary hearing in the matter was held on 25.01.2022. Shri. Sivarajan (Authorised Representative) and Shri. Narayan Kalwane Learned AGM Advocate appeared and requested for admission of the application. The Jurisdictional Officer was absent.

The application was admitted and called for final hearing on 03.09.2025. Mr. Shivranjan Kalyanaraman and Mr. Akash Jain (CA)., authorized representative, appeared made oral and written submissions. Jurisdictional Officer Ms. Manisha Patil Assistant Commissioner of CGST has virtually attended the meeting. Case is heard.

5. OBSERVATIONS AND FINDINGS:

5.1 We have carefully considered all the material on record including additional submission and the relevant provisions of Law. The Applicant is before this authority for seeking clarification as to whether the recoveries made by the Applicant from the employees for providing canteen facility to its employees is taxable under the GST laws. And GST is applicable on payment of salary in lieu of notice pay from the full and final settlement of the employees leaving the Company.

5.2 Facts of the case as submitted by the applicant regarding provision of Canteen Services to the employees are as below.

(1) M/s. Carraro India Pvt. Ltd. (hereinafter referred to as 'Applicant') is a company having its registered office at B2/2, Pune Nagar Road, Ranjangaon MIDC, Pune-412220. It is engaged in the business of manufacture and sale of transmissions, Axles, Skid Steer Assembly and Final Drives for Windmill.

(2) The Applicant is registered under the GST Act in the State of Maharashtra vide GSTIN 27AAACC5292M1ZB.

(3) The Applicant for the manufacture of the above-mentioned products has about 900 employees. Since the Applicant is registered under the provisions of the Factories Act, 1948 (hereinafter referred to as "Factories Act"), it is required to comply with all the obligations and responsibilities cast under the provisions of the said Act.

(4) Section 46 of the Factories Act, 1948 provides that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens, shall be provided and maintained by the Occupier for the use of the workers.

(5) Such canteen facility is set up by the Applicant out of the mandate laid down by the Factories Act, 1948.

(6) As per the arrangement, it would be the Canteen Service Provider's responsibility to bring ready to-eat food to the factory for immediate consumption by the Applicant's employees.

(7) Every employee who wishes to avail or discontinue the food facility shall give a prior notice to the Applicant as per the timelines provided for in the Personnel Policy. Thereafter, on a monthly basis, a fixed amount of Rs. 500/- is deducted from his salary on account of food provided to the employee from the canteen irrespective of the actual monthly cost of food plate. The balance monthly cost of the food plate is borne by the Applicant. Thus, it can be said that the Canteen facility has been provided to the Applicant's employee only on account of employer-employee relationship i.e. the existence of an employer-employee relationship is vital for providing as well as availing the said canteen facility.

5.3 Taxation of recovery made for provision of canteen services provided to the Employees

5.3.1 In order to provide the said canteen facility, the Applicant has engaged third party service provider who are providing the said canteen facilities to the Applicant. Since, the said services are provided by the third party service provider to the Applicant, the service provider is raising his invoices with applicable GST to the Applicant. The Applicant pays the consideration to the third-party service provider for the said canteen facilities. Thereafter, the Applicant recovers certain portion. of the cost of the canteen incurred by the Applicant from its employees. i.e., subsidized amount is deducted from salary of the employees on monthly basis.

5.3.2 Let us analyse, whether there is supply of canteen services from the Applicant to the employees.

The term 'supply' has been defined in Section 7 of CGST Act as follows.

(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;

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

(c) the activities specified in Schedule 1, made or agreed to be made without a consideration

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."

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

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

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

As per this definition two basic conditions for any activity to be called supply u/s 7(1) are as below:

1. It should be in the 'course or furtherance of business'.

2. It has to be made for 'consideration' unless covered by Schedule 1.

5.3.3 The applicant has contended that, provision of canteen services is not in the course or furtherance of business. Thus, it becomes important to analyze whether provision of canteen facility can be said to be *'in the course or furtherance of business'*. The definition of 'business', as defined in Section 2(17) of the CGST Act 2017 is as follows:

"business" includes-

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

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

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

.....

This definition is an inclusive definition wherein various aspects have been listed in the clauses that would be included in 'business'. Clause '(a)'

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

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

The term **'incidental'** has been defined in various dictionaries as under:

Oxford Dictionary - the happening as part of something more important.

Cambridge Dictionary - less important than the thing something is connected with or part of

Dictionary.com - happening or likely to happen in an unplanned or subordinate conjunction with something else.

Similarly word **'ancillary'** has been defined as under:

Oxford Dictionary - provide necessary support to the main work or activities of an organisation.

- In addition to something else but not as important.

Cambridge Dictionary: providing support or help.

Dictionary.com - supporting, secondary, subsidiary

The reading of all above definitions clarify that any activity, which supports the main activity or necessary to carry out the principal activity, is an activity or transaction in connection with or incidental to or ancillary to the principal activity. The activity of providing food in canteen services to its workers who are pivotal to his principal activity can definitely be said to be in connection with or incidental or ancillary to his main activity of manufacture and supply of various goods.

Further, in terms of Section 2(17) (c), as mentioned in para (1) above, the volume of transaction is immaterial for the purpose of coverage under "Business", therefore, even if supply of food is quite insignificant activity in terms of volume of transaction, still in terms of clause (c) of the aforesaid section, the activity of supply of canteen services, falls within the definition of "business".

5.3.4 The term 'consideration' has been defined in Section 2(31) of the CGST Act, 2017 which is provided below:

'consideration' in relation to the supply of goods or services or both includes,

a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

It is seen that applicant deducts certain amount from the salary of the employees on account of canteen services provided to them. This deducted amount is the consideration received by the applicant.

5.3.5 Now, let us analyse the nature of supply.

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

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

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

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

ii) Supply of these services by the Applicant to their employees.

(4) In respect of the first transaction, the service provider has been supplying these services to the Applicant for which the said service provider receives consideration from the Applicant.

(5) Similarly, in the second transaction, the Applicant is supplying these services to their employees for which the Applicant is receiving consideration, although at the subsidized rate, from their employees. The respective service provider invoices the appellant for the entire services. He charges the consideration along with GST thereon. There is no privity of contract between these service providers and the employees. It is the Applicant which is providing these services to the employees. Applicant deducts certain amount from salary of the employees against this supply. Applicant makes only part of the recovery and balance cost is borne by him.

Hence, the criteria of 'business', 'consideration' are met in the transaction of supply of these services by Applicant to the employees. Thus, there is supply of canteen services from the Applicant to the employees, u/s. 7 (1) of CGST Act, 2017.

5.4 Taxability of Supply of Canteen services to the Employees

5.4.1 Another contention of the Applicant is that the perquisites forming part of employment contract are excluded from GST. As per the Circular no. 172/04/2022-GST dated 06.07.2022 of CBIC, the relevant extract of the said circular is reproduced hereunder for ease of reference:

S. No.	Issue	Clarification
5	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supple of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. 2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his

		employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

It is derived from Entry 1 of Schedule III that "services by an employee to employer in the course of or in relation to his employment" shall be neither supply of goods nor supply of services. It could be seen here that Entry 1 of Schedule III basically deals with 'services by an employee to employer', and not the other way round. Only as a corollary, the 'services by the employer to the employee', especially when provided in the form of perquisites, has been discussed in the CBIC Circular No. 172/04/2022 - GST dated 06.07.2022 in its para 2 mentioned above. From the above, it could be inferred that perquisites in terms of a contractual agreement between the employer and employee are not to be subjected to GST.

5.4.2 It may be seen that in order to place any service provided by the employer to employee outside the ambit of GST, the same should be in the form of a perquisite.

Though the term 'perquisite' has not been defined under the provisions of GST, the same is discussed under the Income Tax Act, where it has been stated in Section 17(2) as follows: -

"perquisite" includes-

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

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

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

.....

....."

As per Income Tax Act, 1961, perquisite is defined to be the value of free benefit or facility given by the employer to his employees. The collection from the employees of whatever value, is not covered under 'perquisite'. It could be inferred from the above, that any service rendered free of charge, or, any service rendered on a concessional basis shall qualify as a perquisite. But, it is to be noted that only the value/portion to the extent of concession offered by the employer is to be treated as a perquisite and not the remaining portion/value

that has been charged by the employer. Applying the said analogy to the instant case, in respect of the canteen services provided by the applicant to its employees, it becomes clear that the exemption provided in Entry 1 of Schedule III to the CGST Act, 2017 applies only to the concession part extended to the employees and not on the value charged to the employees. Thus, the recoveries made from the employees for canteen services are liable to levy of tax.

5.4.3 If incidental or ancillary supply of goods or services such as canteen services by the employer to employee were to not fall under 'business', it would not be necessary to provide respite to 'supplies by employer to employees given as perquisite' from falling under 'supply' by taking recourse to schedule III. That is, if a transaction or activity is not a supply u/s 7(1) of CGST Act, then there would not be necessity to place such a transaction u/s 7(2)(a) for deeming it to be neither supply of goods nor supply of services. Hence, as discussed in Para 5.3.5, Applicant's activity of supply of canteen services falls u/s 7(1) of CGST Act, 2017. As discussed in Para 5.4.2, only the perquisites i.e., free supplies, in terms of a contractual agreement between the employer and employee are not to be subjected to GST as these are in lieu of the services provided by employee to the employer in relation to his employment. Hence, the recoveries made from the employees are liable to levy of tax as it is consideration against canteen services provided by the Applicant to the employees.

5.4.4 In the following cases AAR authorities held that GST is leviable on supply of food to the employees for consideration.

(1) The Kerala AAAR in the matter of *Caltech Polymers (P.) Ltd.* held that the provision of food items to the employees for a consideration in a canteen run by company would come under definition of 'outward supply' and hence, shall be taxable as supply of service under GST.

(2) The Haryana AAR in *Musashi Auto Parts Pvt. Ltd.* even when the third-party canteen service provider was involved, held that supply of coupons (for purchasing food) by employer to employees at 25% of the cost of food were taxable. The AAR was of the view that Schedule III of the CGST Act, 2017 only provides that services of employees to the employer were excluded from the purview of GST and not vice-versa.

(3) The Tamil Nadu AAR in ***Mfar Hotels & Resorts Pvt. Ltd.*** discussed the GST liability for food supplied via canteen to their employees on a free-of-cost basis as part of the employment contract. The AAR held that supply of free food to the employees was supply of service as per paragraph 2 to Schedule I of the CGST Act and was in the course or in furtherance of business as it was a part of the employment contract.

5.5 Whether ITC of tax paid to Canteen Service Provider for Canteen Services is available.

5.5.1 Now, coming to the other issue which is to be decided here is, whether input tax credit (ITC) is available to the Applicant on GST charged by the service provider on the canteen facility provided to employees working in the factory.

5.5.2 Before deliberating on this issue, it would be prudent to refer to the Section 17(5)(b) of CGST Act, 2017, which pertains to blocking of ITC:

'Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."

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

We observe that that Circular No. 172/04/2022-GST dated 06.07.2022 has been issued, by the CBIC, wherein clarifications on various issue pertaining to GST have been provided. In this Circular, at Sr. No.3 of Para 2, clarification has been provided on the issue as to whether the proviso at the end of clause (b) of Section 17(5) of CGST Act is applicable to the entire clause (b) or only to sub-clause (iii) of clause (b). It has been clarified that vide the CGST (Amendment Act), 2018, clause (b) of Section 17(5) was substituted with effect from 01.02.2019

on the recommendation of GST Council's 28th meeting and accordingly, the proviso after sub-clause (iii) of Section 17(5)(b) of CGST Act, is applicable to whole clause (b) of Section 17(5). The relevant portion of above clarification is reproduced below:

Clarification on various issues of section 17(5) of the CGST Act		
3	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	1. Vide the Central Goods and Services Tax (Amendment Act), 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 1-2-2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: *"Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."* 2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21-7-2018. It had been clarified "*that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.*" 3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

5.5.4 The Applicant has submitted that they are a manufacturing unit and that there are more than 250 workers in the factory and in accordance with Section 46 of the Factories Act, 1948, it is obligatory on them to provide canteen facilities within the factory premises. Thus, considering the above-mentioned provisions, the ITC of the GST paid in relation to canteen charges is not blocked under u/s 17(5)(b).

However, the issue of eligibility of input tax credit needs to be examined further in the light of the facts of the present case and various Tax Notifications.

5.5.5 From the facts of the case, it is clear that Canteen Contractor is providing Restaurant Service to the Applicant which is chargeable to GST at 5% rate in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, without availment of ITC. Under explanation to the aforesaid entry, it has been clarified that the concessional rate is mandatory rate and availing the normal rate of tax will not apply and that is the reason the amended Notification No. 20/2019-C.T. (Rate) dated 30.09.2019 has been issued exercising power under Section 16(1) and Section 148 of the CGST Act, 2017, so as to come out of the provisions permitting availment of ITC. In other words, a Taxpayer providing Restaurant Service has no option of taking ITC and providing Restaurant Service at normal rate.

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

"(93) "recipient" of supply of goods or services or both, means –

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;"

5.5.7 So in the instant case, the flow of the transaction is that the Canteen Contractor is providing service to the Applicant, which is classifiable as Restaurant Service and the Applicant himself is also providing same service to its workers as mandated in the Factories Act, 1948. As already mentioned in para 5.5.5, the Restaurant Service compulsorily attracts rate of 5% without ITC in a non-specified premises and the Applicant's premises is not 'specified premises' in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Therefore, though the Section 17(5) of the CGST Act, 2017 does not block availment of ITC, however, in the present case, availment of ITC is barred in terms of provisions of Notification No. 11/2017-Central Tax (Rate)

dated 28.06.2017 as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019.

5.5.8 There is another way of looking at the transactions, that, had the Applicant not engaged any Canteen Contractor but decided to run the canteen himself, as mandated in the Factories Act, 1948, then also he would be required to pay 5% GST on taxable supply without availment of any ITC in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 supra. 'Therefore, just by engaging, a Canteen Contractor, he can't be allowed to adopt an interpretation for availing ITC which is not available to him in a case of direct supply of the said service.

5.5.9 The Applicant has relied on the following judgments.

1. M/s Hindustan Coca Cola Beverages Pvt. Ltd. v/s CCE, Nashik
2. Cema Electric Lighting Products India Private Limited Vs. CCE8.
3. Cinemax India Limited Vs Union of India. [MANU/GJ/1053/2011].
4. Indian Institute of Technology Vs. State of Uttar Pradesh & Ors

The facts in these cases and the provisions of the law applied to the facts in these cases are different from present case, and hence are not applicable to the present case.

5.5.10 The Applicant further relied on following rulings.

1) Maharashtra AAR in RE: Tata Motors Limited in [Order No. GST-ARA-23-2019-20/B-46 dated 25.08.2020
2) Maharashtra AAR in a ruling in RE: Posco India Pune Processing Centre Pvt Ltd (Order No. GST-ARA-36/2018-19/B-110 dated 07.09.2018),
3) Maharashtra AAR, in M/s Jotun India Pvt Ltd (Order No. GST-ARA-36/2018-19/B-108 dated 4.10.2019).
4) Uttar Pradesh AAR in M/s. North Shore Technologies Private Limited (order no. 59 dated 29.06.2020)
5) Gujarat AAAR in by M/s. Amneal Pharmaceuticals Pvt Ltd, Ahmedabad (order dated 21.03.2025)
6) Gujarat AAR in by M/s. Zydus Lifesciences Ltd, (order no. GUJ/GAAR/R/2022/42 dated 28.09.2022)
7) Gujarat AAR in by M/s. SRF Ltd, (order NO. GUJ/GAAR/R/2022/41 dated 28.09.2022)

We would like to place on record that an advance ruling pronounced by the Authority, or the Appellate Authority shall be binding only on the applicant who had sought it, and the concerned officer or the jurisdictional officer in respect of the applicant.

5.6 Value in respect of which canteen services are taxable.

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

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

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

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

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

' 2. Supply of goods or services or both ***between related persons*** *or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. '.*

Further, Explanation to Section 15 reads as below.

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

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

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

(iii) such persons are employer and employee;

.....

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

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

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

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

5.7 Whether the notice pay recoveries made by the Applicant from its employees for not serving the notice period is taxable under the GST laws.

5.7.1 It is now clarified by the CBIC circular No. 178/10/2022-GST dated 3rd August 2022 that the notice pay recoveries are not taxable. The relevant para of the said Circular is produced as below.

"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 quitting 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."

5.8.2 In view of this clarification, notice pay recoveries made from the employees are not liable to levy of tax under CGST Act, 2017.

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

ORDER

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

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

NO.GST-ARA- 36/2021-22/B- 35 **Mumbai, dt.** 27/02/2026

Question 1: - Whether the deduction of a nominal amount by the Applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service" by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

Answer: - Answered in the affirmative

Question 1(a):- In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees.

Answer: - Yes, GST is applicable on the amount deducted from the salaries of employees.

Question 1(b):- Whether input tax credit (ITC) is available to the Applicant on GST charged by the Canteen Service Providers for providing the catering services? If yes, whether ITC is restricted to the extent of cost borne by the Applicant only?

Answer: - No, ITC is not available to the Applicant on GST charged by the Canteen Service Provider.

Question 2: Whether GST is applicable on payment of salary in lieu of notice pay 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?

Answer: - Answered in the Negative

MEMBER ADVANCE RULING AUTHORITY MAHARASHTRA STATE MUMBAI

D.P. GOJAMGUNDE
(MEMBER)

Himani Dhamija 19

HIMANI DHAMIJA
(MEMBER)

PLACE - Mumbai
DATE - 23/02/2026

Copy to: -

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

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