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.		**AD270921005312I**
GSTIN Number, if any/ User-id		**27AAXCS4352F1ZW**
Legal Name of Applicant		**M/s Sigma Electric Manufacturing Corporation Pvt. Ltd.**
Registered Address/Address provided while obtaining user id		Gate No. 154/1, 155; Mahalunge Village, Chakan Telegaon Road, Chakan, Pune, 410501.
Details of application		GST-ARA, Application No. 39 Dated 27.09.2021
Concerned officer		**PUNE-I, Division-IV, Chakan, Range-IV**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Factory/Manufacturing, EOU**
B	Description (in brief)	The Applicant is involved in the business of manufacturing and export of ferrous and nonferrous castings, precision machined components and sub-assemblies.
Issue/s on which advance ruling required		• Applicability of a notification issued under the provisions of this Act • 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 and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

MEMBER ADVANCE RULING AUTHORITY * MAHARASHTRA STATE, MUMBAI *

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 Sigma Electric Manufacturing Corporation Pvt. Ltd.**, the applicant, seeking an advance ruling in respect of the following question.

Q 1: Whether the deduction of a nominal amount by the Applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service" by the Applicant under

the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

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

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

Q 2: Whether the deduction of nominal amount by the Applicant from the salary of employees for availing the non-airconditioned bus transportation facility provided by Transport Service Providers, would be construed as "Supply of Service" by the Applicant to its employees?

a. **If answer to above question is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of its employees?**

b. **b. Whether ITC is available to the Applicant on GST charged by the Transport Service Providers for providing the transportation services? If yes, whether ITC is restricted to the extent of cost borne by the Applicant only?**

Q 3: 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, 2013, having its manufacturing plant (hereinafter referred to as 'the Factory') situated at Gate No 154/1, 155 Mahalunge Village, Chakan Talegaon Road, Khed, Pune 410501. In addition to the State of Maharashtra, the Applicant is also registered in the State of Rajasthan. The Applicant is involved in the business of manufacturing and export of ferrous and nonferrous castings, precision machined components and sub-assemblies.

1.2 It supplies the goods to MNCs in several market segments like electrical, industrial, power tools, instrumentation, appliances, telecom etc. The Applicant is registered under the GST regime in the State of Maharashtra vide GSTIN 27AAXCS4352F1ZW and in the state of Rajasthan vide GSTIN 08AAXCS4352F1ZW.

1.3 The Applicant has engaged various food and transport service providers, who provide the respective services of food and transportation to the employees of the Applicant as per the company policy. It is with respect to the taxability of, as well as the availability of ITC against; the amounts paid towards the said services 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 food facility by the applicant to its employees.

1.4 The Applicant has about 3400 direct and indirect employees, who are carrying out day to day business activities of the Applicant. 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, the Applicant also refers 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 are located far away from local city limits and considering the time and efforts required for arranging food on daily basis, there arose a basic need for the provision of food facility to the Applicant's employees by engaging Canteen Service Providers.

1.7. To cater to the above-mentioned requirement, the Applicant has set up a canteen facility a demarcated area within 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 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. Additionally, the service provider would also be made responsible for deployment of trained staff for serving food and fulfillment of all the statutory requirements of such deployed staff; such as Provident Fund, Gratuity, Employee State Insurance, etc.

1.9. The food will be served to the employees of the Applicant in the demarcated area directly and the employees, who wish to avail this facility can access this by using their Food punching card or their biometric details, which would enable the recording of the requisite details of the employees availing of the said facility in the recording system. Based on the cumulative records of punching of the card during the month, the canteen service provider will accordingly raise his invoice on the Applicant.

1.10 Further, the Applicant has set out the Canteen Policy No. HR/Policies/2018 dated 31 March 2008, for availment of such canteen facility. The relevant para of such policy is reproduced herewith.

Guidelines of the Policy

1. All the employees are advised to avail lunch in the prescribed lunch break.
2. The guidelines will be prepared as per the need and local practices.
3. The Canteen Committee as may be appointed by the management will meet periodically to discuss overall hygiene, quality of food and based on suggestions and feedback of employees, Committee will suggest the management about menus. Copy of policy is enclosed with this application.

1.11 Further, a separate communication is given to all the employees wherein the amount of deduction for per plate of food consumed by the employee is circulated. The extract of the same has been laid below:

Grades / Category	Food Items	Actual Cost per item	Company Contribution	Revised Employee Recovery Per Item	Total Amount of Recovery for 26 Days
Associates	Meal	48	38.4	9.6	250
	Snacks	17.5	14.0	3.5	91
	Total	65.5	52.4	13.1	341

Grades / Category	Food Items	Actual Cost per item	Company Contribution	Revised Employee Recovery Per Item	Total Amount of Recovery for 26 Days
L3, L2, L1, T3, T2, T1, DET, Trainees, Trade apprentices & Contract labour Snacks	Meal	48	19.20	29.0	749
	Snacks	17.5	6.50	10.8	280
	Total	65.5	25.70	39.8	1029

Grades / Category	Food Items	Actual Cost per item	Company Contribution	Revised Employee Recovery Per Item	Total Amount of Recovery for 26 Days
L4 & Above employees	Meal	48	19.20	29.0	749
	Snacks	17.5	6.50	17.5	455
	Total	65.5	25.70	46.5	**1204**

1.12 It may be stated at this juncture that the above-mentioned policy is applicable only to the employees of the Applicant. No one else including the Visitors of the Applicant's factory would be allowed to avail the food facility since it is meant only for Applicant's employees. Every employee, who wishes to avail the canteen services would have to necessarily punch in his/her food card or bio matric record and avail the facility. Thereafter, the above stated amount of cost of plates consumed during the month is deducted from the respective employee's salary. 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. If the relationship does not exist, food card or biometric record will not be created in favour of the individual employee and consequently the canteen facility cannot be availed.

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.

Existing arrangement with respect to transportation facility provided to the employees of the applicant as part of the employment agreement and deduction of nominal amount from employees' monthly salary.

1.14 The factory of the Applicant is situated at a remote location in Pune where public transport is very minimal and could hinder the convenience and safety of employees to reach/ leave the Factory. Accordingly, in order to carry out its business without any disruption and for efficient functioning of the business as a whole, the Applicant has engaged various contractual service providers to provide transportation services and ensure that employees of the Applicant are able to reach the factories in time during their Day Shift or Night Shift, as scheduled.

1.15. In this regard, the Applicant has entered into a contract with several Transport Service Providers to provide transportation facility to its employees for *'to and fro'* commutation between office and residence in non-air conditioned buses having seating capacity of more than 13 persons.

1.16 As a part of Emp**loyment contract,** Guide to the structure of compensation and benefits, the facility of Company Transport has been specified which provides that:

"The Company's Transport Service to commute between Chakan Works & pick-up point as per conveyance policy of the company. The cost of such services will be deducted from monthly emoluments of employee, as may be applicable."

Copy of the Appointment letter is hereby enclosed with this application.

1.17 Further, the provision of this transportation facility is stipulated in the employment contract at the time of joining the Applicant and is therefore considered to arise out of the Applicant's contractual obligation with the employees. Further, to ensure that this facility would only be used by the authorized persons/employees of the Applicant, the Applicant would continue to issue a specific pass / employee card to eligible employees so as to ensure that no employee can avail the bus transportation service without showing the said pass/ employee card.

1.18 The Transport Service Providers would have contract carriage permit issued by the relevant regulators authorities in respect of buses deployed for employee transportation service. The service providers shall provide point to point transportation facility to employees by ensuring that driver only take routes approved by the Applicant.

Background with respect to deduction on account of employee leaving the applicant without serving the notice period:

1.19 As a part of internal business process of the Applicant, every employee, at the time of joining the Applicant's concern, 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.

1.20 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.

1.21 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.

"An employee's appointment after confirmation is terminable by two or three months' notice or payment of two or three months' Basic salary in lieu thereof by either side. In case an employee affects such termination by resignation, the employee is required to serve complete two months before he / she can be relieved from the services of the company. However, relieving from the company will take place after the company is satisfied that proper handing over of papers, documents, information, and assets is completed.

The company will not be liable to pay notice pay in case the appointment is terminated on grounds of (0) Breach of confidentiality (ii) Gross negligence (iii) Violation of law or willful

non-compliance of law (iv) Misconduct (v) Violation of the code of Conduct or (vi) Providing false information at the time of appointment."

1.22. 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 deducted from employee's salary and the basis of calculation will be last drawn salary (Basic Salary).

b. **For Resignation of an employee confirmed in services** - The notice period will be of 2 or 3 months and any shortfall in the notice period will be deducted from employee's salary and the basis of calculation will be last drawn salary (Basic Salary).

1.23. The Notice pay deduction condition has been specified in Annexure l of the Applicant'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.

1.24. 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 of 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. 39/2021-22. 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.

No GST to be levied on third-party canteen and transport charges collected by the employer from 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]** wherein it has been observed as under:

'10.4 The provision of services of transport and canteen facility to its employees is as per the contractual agreement between the employee and the employer in relation to the employment. As cited in the above-referred provisions of Schedule III and the clarification issued vide Circular No. 172/04/2022-GST dated 06-07-2022, the provision of the services of transportation and canteen facility cannot be considered as supply of goods or services and hence cannot be subjected to GST.

2.12 The Gujarat AAR has taken a similar view in the case of **M/s. SRF Limited** vide Advance Ruling No. Guj/GAAR/R/2022/41 dated 28.09.2022, it has been ruled that "GST is not leviable on the amount representing the employees portion of canteen and transportation charges, which is collected by the applicant and paid to the canteen and bus transport service provider". As per the arrangement, part of the Canteen charges is borne by the applicant, whereas the remaining part is borne by its employees. The applicant does not retain any profit margin in this activity of collecting employees' portion of canteen charges, and also does not charge any markup therein. The Applicant is not a provider of a bus transportation facility to its employees; rather, it is a receiver of such services. In view of Circular No. 172/04/2022-GST dated 06-07-22, the provision of the services of transportation and canteen facility cannot be considered as supply of goods or services and hence cannot be subjected to GST on the amount deducted/ recovered from the employees.

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

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

2.13 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.

2.14 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.

2.15 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) exceptwhen 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."

2.16 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.

2.17 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."

2.18 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.

2.19 The Applicant submits that multiple rulings under the GST regime affirm the eligibility of Input Tax Credit for employee transportation services, particularly where vehicles with approved seating capacity exceeding 13 persons are used. Notable among them are the rulings in the following cases, which unequivocally hold that ITC is admissible in such circumstances post 01.02.2019, i.e. post the amendment in the GST law.

2.20 Reliance is placed on the ruling issued by this Hon'ble Authority in case of **Tata Motors Limited [GST-ARA -23/2019-20/B-46 dated 25 August** 2020], wherein it was held that ITC would be applicable to the Applicant of the GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace.

2.21 Order passed by Authority for Advance Ruling Uttar Pradesh in case of Dr Willmar Schwabe (1) Private Limited wherein it was held that the Applicant was specifically using motor vehicles having approved seating capacity of more than thirteen persons (including the driver) would be eligible for Input tax after 01.02.2019. The relevant portion of the said ruling is reproduced below:

'In the subject case, since the Appellant has specifically submitted that they are using motor vehicles having approved seating capacity of more than thirteen persons (including the driver), the Appellant shall be eligible for Input Tax Credit. In this case, however we would like to make it very clear that if the motor vehicle hired by them does not have an approved seating capacity of more than thirteen persons (including the driver), then in that case the Appellant will not be eligible for Input Tax Credit'

2.22 The Applicant further submits that the Hon'ble Appellate Authority for Advance Ruling, Madhya Pradesh, in Bridgestone India Private Limited [MP/AAAR/03/2024 dated 31 December 2024] held that Input Tax Credit (ITC) is available on GST charged by the transport service provider for providing non-air-conditioned bus transportation services, subject to the condition that the buses hired have a seating capacity of more than 13 passengers.

2.23 We wish to reiterate and emphasise the position discussed during the virtual hearing held on 3rd September 2025 regarding the applicability of GST on the payment of salary in lieu of notice pay, which is typically recovered from employees as part of their full and final settlement when they leave the Company without serving the complete notice period as specified in their appointment letter. In this context, it is crucial to refer to the clarification provided by the Central Board of Indirect Taxes and Customs (CBIC) in Circular No. 178/10/2022-GST dated 3rd August 2022,

specifically paragraph 7.5. These circulars address the issue of forfeiture of salary or recovery of bond amounts in cases where an employee leaves employment before completing the minimum agreed period.

2.24 The circular makes it clear that such recoveries are not made as consideration for tolerating the act of premature resignation. Instead, these amounts are characterised as penalties or deterrents, incorporated into employment contracts to discourage non-serious candidates from taking up employment and to compensate the employer for the disruption caused by an employee's early departure. The employer does not provide any service or benefit to the employee in exchange for the notice pay recovery; rather, the employee is required to pay this amount solely as a consequence of not fulfilling the contractual notice period. The circular explicitly states that these amounts are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

2.25 Given the clear and unambiguous guidance provided by the CBIC, we respectfully submit that notice pay recovery from employees should not attract GST. Any GST that may have been paid on such recoveries is, therefore, liable to be refunded. We request that this position, as clarified by the CBIC in Circular No. 178/10/2022-GST, be accepted and that no GST demand be raised or sustained in respect of notice pay recovery from employees. This approach is consistent with both the letter and the spirit of the law, as well as the administrative guidance issued by the competent authority.

2.26 Further reliance has been placed in case of ***Posco India Pune Processing Center Private Limited***, wherein the Applicant was paying the premium towards Mediclaim taken for their employees and the parents of such employees. Against such payments made they were recovering 50% from their employees. The AAR Maharashtra held that *there is no way that the 50% amount recovered can be treated as amounts received for services rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents. Such recovery of 50% premium amounts by the applicant from their employees cannot be supply of services under the GST laws.*

2.27 It is further stated that a similar ruling has been passed in case of *in Re: M/s* ***Jotun India Pvt Ltd*** by the Authority For Advance Ruling, Maharashtra, wherein it was held that *the recovery of 50% of Parental Health Insurance Premium from employees does not amount to "supply of service" under Section 7 of the CGST Act, as the Assessee was not in the business of providing insurance service.*

2.28 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.

2.29 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.

2.30 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 1; and The Supply of goods or services or both shall be effected by a person **in the course or furtherance of business.**

We have discussed each of the above-mentioned limbs in the ensuing paragraphs.

Provision of canteen facility to the employees only due to a statutory obligation and there is no legal intention to provide any service.

2.31 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.

2.32 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.

2.33 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'

2.34 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.

2.35 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.

2.36 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.

2.37 Also, the Applicant wishes to place reliance on the judgement of Bombay High Court in the case of Bai Mamubai Trust, V**ithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra4,** has held that for GST to be payable on any payment, there must be **the necessary quality of reciprocity to make it a 'supp**ly'.

2.38 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.

2.39 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."

2.40 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.

2.41 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.

2.42 In the light of the above interpretation by the Hon'ble Apex Court as well as the Hon'ble Allahabad High Court, it is reiterated that canteen services cannot be treated as ancillary to the business activity of the Applicant. Further, the canteen services provided are an ingredient of the wage negotiation with the employer and would form part of the consideration under employment agreement.

2.43 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**. CCE8.

2.44 We wish to also refer the judicial precedent passed in the case of **Ultratech Cement Limited Vs.** CCE, Nagpuro 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.

2.45 The Applicant wishes to submit that transportation facility has been provided in accordance with terms of employment since the factory premises are situated far from the City limits. Also, enough means of public transportation are not available at the factory premises of the Applicant.

2.46 As a part of **Employment contract**, Guide to the structure of compensation and benefits, the facility of Company Transport has been specified which provides that:

*"The Company's **Transport Service to commute between Chakan** Works & pick-up point. The cost of such services will be deducted from monthly emoluments of employee, as may be applicable."*

2.47 As per the terms agreed with the employee at the time of issuance of Appointment letter, the Applicant is required to provide the transport services to its employees to commute between the factory premises and pick-up point as per the policy of the Company. Therefore, it can be construed that the transportation facility is rendered in accordance with employment terms with the employees of the Applicant.

The supply shall be effected for a 'consideration'.

2.48 The Applicant wishes to reiterate its submissions mentioned *vide* Paragraphs 2.19 to 2.23 *supra*, which is also equally application in the given situation. Thus, it can be said that there is an absence of consideration in the given facts of the case.

The supply should be effected in the course or furtherance of business under the CGST act, 2017.

2.49 The Applicant has engaged a certain third-party Transport Service Providers to provide transportation facility to its employees for 'to and fro' commutation between office and residence in non-air-conditioned buses. **The provision of the said facility is in accordance with the contractual obligation with the employees since this is one of the terms of their employment contract.**

2.50 Further, to ensure that this facility is used only by the bona fide employees of the Applicant's concern, the Applicant issues a pass to employees. It is reiterated that the employees cannot avail the bus service unless and until the said passes are produced, and therefore no outsider can avail the said facility. Further, it is intended that once an employee ceases to be in employment with Applicant, he/she is not authorized to use the transportation facility. In other words, an employer – employee relationship is a mandatory requirement to avail this facility.

2.51 Further, the Applicant wishes to state that it is in the business of manufacturing and export of ferrous and nonferrous castings, precision machined components and sub-assemblies - which is the Applicant's main business activity in accordance with the definition of business as provided in Section 2(17) of the CGST Act, 2017 (as mentioned in Para 1.2 above).

2.52 Based on the analysis of the definition above, we infer that arrangement of transport facility to their employees and making payment to the third party service providers for arranging such facility is definitely not an activity which is incidental or ancillary to the activity of manufacturing ferrous and nonferrous goods etc. nor can it be called an activity done in the course of or in furtherance of manufacturing these finished goods.

2.53 In the instant case, the applicant is transferring the entire amount collected from their employees, to the third-party service providers who is providing transport services to their employees. Further, we wish to highlight that apart from nominal amount collected from the employees, the Applicant is also contributing a considerable amount and then paying the said amount to the third-party service providers. Thus, the applicant is not retaining any amount collected from the employees towards said transportation charges.

2.54 Based on the above, it could be inferred the Applicant is not supplying any services to its employees but is fulfilling the terms and conditions as mentioned in the appointment letter with respect to the availment of the specified facility. Therefore, the transaction between the applicant & their employees is due to "Employer-Employee" relation as stated above in the facts of the case and therefore cannot be considered to be business of the applicant in accordance with Section 2(17) of the CGST Act, 2017.

2.55 The above view that the applicant is not engaged into the business of provision of transportation service has been affirmed by the AAR authorities in the Advance Ruling pronounced by the Maharashtra Authority for Advance Ruling in **M/s. Posco India Pune Processing Center Private** Limited, in M/s Jotun India Pvt. Ltd, to vindicate their stand (as laid above in Para 1.41 to 1.44) and in M/s Ion Trading **India Private limited** reported in [2020] **113 taxmann.com 609 (AAR UTTAR**

PRADESH), wherein the amount recovered from the employees towards self or parental insurance premium payable to the insurance company would not be deemed as "Supply of service" by the applicant to its employees.

2.56 Similar view has been provided in case **of In re M/s North Shore Technologies Private Limited,** Order No. 59 dated 29 June 2020, wherein AAR Uttar Pradesh provided that *subsidized shared transport facility by the applicant to its employees* ***in terms of employment contract*** *through third party vendors,* ***would not be construed as "supply of service" by the applicant to its employees.***

2.57 From the aforesaid legal provisions, judicial precedents and discussions, it is stated by the Applicant that arranging the transport facility for the employees and deduction of nominal amount from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service in the course of furtherance of business. Thus, the activity of providing transportation facility to employees is nowhere connected with the business of the applicant.

2.58 Thus, in the light of the above discussions, the Applicant believes the transaction shall not be treated as Supply of Service under Section 7 of the CGST Act and would not liable to pay GST on the nominal amount recovered.

2.59 Alternatively, without prejudice to the above submissions, we also wish to place reliance on the exemption provided *vide* Notification No. 12/2017 - C.T. (Rate) dated 28 June 2017, which exempts *service provided for "transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage other than radio taxi for transportation of passenger, excluding tourism, conducted tour, charter or hire.*

2.60 As per explanation provided in the notification, the term contract carriage has the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988). It is now necessary to refer to the definition as provided under the Motor Vehicles Act, 1988. Section 2(7) of the said act has defined the term "contract carriage" as *a motor vehicle which carries a passenger or passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum, (a) on a time basis, whether or not with reference to any route or distance; or (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes – (i) a maxicab; and (ii) a motor cab notwithstanding that separate fares are charged for its passengers.*

2.61 Thus, in order to take benefit of Sr.No. 15b of exemption notification, following criteria shall be satisfied

- Service is provided for transportation of passengers
- By a non-air-conditioned contract carriage
- The vehicle should have a contract permit under the Motor Vehicle Act
- Requirement under Section 217) of the Motor Vehicle Act shall be fulfilled
- The transportation shall not be for the purpose of tourism, conducted tours, charter or hire
- It should not be a radio taxi

2.62 As observed by the Hon'ble AAR Maharashtra *vide* Para 2.12 of the **Tata Motors Limited** Ruling: in such circumstances, even though the Applicant recovers nominal amount from its employees, it cannot be said that particular employee has obtained the bus on hire or charter from the Applicant. Consequently, the Applicant would be eligible for the aforesaid exemption provided to transport of passengers in a non-air conditioned contract carriage. In light of the same, the Applicant in the instant case is eligible for the above-mentioned exemption.

2.63 Thus, in the light of the above-mentioned exemption notification, the Applicant wishes to submit that the GST shall not be leviable to the extent of nominal value recovered from the employees of the Applicant towards the cost of the transport facility.

Input tax credit of the GST paid by the applicant to the vendor eligible to the extent of cost born by the applicant.

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 GST of the GST paid to the Canteen Service Provider would be available to the Applicant.

(c) Pass a ruling as to whether services provided by the way of transportation facility to employees would be construed as supply of service.

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

(e) Pass a ruling on whether GST would be applicable on the salary deducted in lieu of the notice period from the full settlement of the employees leaving the company without completing or serving the complete notice period as specified in the Appointment letter

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

3. CONTENTION – AS PER THE CONCERNED OFFICER:

3.1 The Applicant has sought advance ruling on the following three questions:

Question 1: ***Whether the deduction of a nominal amount by the applicant from the salary of the Employees who are availing the facility of food provided in the factory premises would be considered as a "Supply of Service" by the applicant under the provision of section 7 of CGST Act, 2017 and Maharashtra Goods and Service Act, 2017?***

3.2 The Applicant has a canteen policy where the Canteen Service Providers provide food to the Applicant's employees at subsidized rates in the company premises. The Applicant would make payment to the Canteen service providers and as per Company policy, the Applicant recover 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.

3.3 The Applicant has submitted that canteen facility is being provided only to its employees and no outsider can avail of the facility. Further, the canteen facility is being provided in the factory of the Applicant due to the mandatory requirement as per the Factories Act, 1948 and that the Canteen Policy is a part and parcel of the employment terms and conditions.

3.4 The term, *'outward supply'*, has been defined in Section 2(83) of the CGST Act, 2017, as below:

'Outward Supply' in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business".

The term *"business"* is defined in Section 2(17) of the CGST Act, which reads like this:

"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); …

3.4.1 From the plane reading of the definition of "business", it can be safely concluded that the supply of food by the applicant to its employees would come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business.

Schedule II to the CGST Act, 2017 describes the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service:

"supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than

alcoholic liquor for human consumption), where such supply or service is-for cash, deferred payment or other valuable consideration."

3.4.2 Even though, Applicant have claimed the activity would not constitute "consideration" for any supply to its employees, there is a "supply", as provided in Section 7(1)(a) of the CGST Act, 2017. The applicant would definitely come under the definition of "Supplier", as provided in sub-section (105) of Section 2 of the CGST Act, 2017.

3.4.3 The term *'consideration'* is defined in Section 2(31) of the CGST Act, 2017, which is extracted 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.

3.4.4 Since the applicant recovers the cost of food from its employees, there is *'consideration'*, as defined in Section 2(31) of the CGST Act, 2017.

3.5 In view of the above, we hold that recovery of amount from employee on account of third party canteen services provided by the Company, which is obligatory under Section 46 of the Factories Act, 1948 would come under the definition of 'outward supply' as defined in Section 2(83) of the CGST Act, 2017 and therefore, taxable as a supply under GST.

3.5.1 In the pre-GST period, vide Sl No. 19 and 19A of Notification No. 25/2012 ST dated 20.60.2012 as amended by Notification No. 14/2013-Service Tax dated 22.10.2013 the 'services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), including a canteen having the facility of air-conditioning or central air-heating at any time during the year' was exempted from service tax. But there is no similar provision under the GST laws.

3.6 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.

3.7 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.

3.8 Similarly, 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.

3.9 Section 17(5) of the CGST Act prescribes a list of few goods and services on which ITC is not admissible. Relevant provision reads as under:

Section 17: Apportionment of credit and blocked credits

(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*

3.10 Therefore, the recoveries made by the Applicant from the employees for providing canteen facility to its employees is taxable under the GST laws, and the ITC of GST paid on canteen facility provided by applicant to its employees is not available to the Applicant.

Question 2) ***Whether the deduction of nominal amount by the applicant from the salary of employees for availing the non-airconditioned bus transportation***

facility provided by Transport Service Providers, would be construed as "Supply of Service" by the Applicant to its employees?

3.11 Applicant has submitted that they have entered into a contract with several Transport service providers to provide transportation facility to its employees for 'to and fro' commutation between office and residence in non-air-conditioned buses having seating capacity of more than 13 persons. The provision of this transportation facility is stipulated in the employment contract at the time of joining the company and is therefore considered to arise out of the Applicant's contractual obligation with the employees. Specific pass /employee card is issued to eligible employee to avail this facility. The cost of such services are deducted from monthly emoluments of the employee.

3.11.1 They have submitted that the transport arrangements to their employees and making payment to the third party service providers is not an activity which is incidental or ancillary to the activity of manufacturing ferrous and non-ferrous goods nor can it be called an activity done in the course of furtherance of manufacturing these finished goods. Therefore the Applicant is not supplying any service to its employees but is fulfilling the terms and conditions as mentioned in the appointment letter. Therefore the transaction between the applicant and their employees is due to "Employer-Employee" relation and cannot be considered to be business of the applicant in accordance with section 2(17) of the CGST Act.

3.11.2 Thus they have submitted that the transaction cannot be treated as supply of service under section 7 of the CGST Act and would not be liable to pay GST on the nominal amount recovered.

They have also relied on the exemption provided vide Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 which exempts service provided for "transport of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage..."

3.12 Department's views:

3.12.1 Schedule III to the CGST Act, lists activities which shall be treated neither as a supply of goods nor a supply of services.

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

3.12.2 In this case it is seen that services are not being provided by the employee to the employer. 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. Therefore, said clause cannot be applied to this case and GST appears to be applicable in the case of recoveries made from employer for providing passenger transportation services under tariff heading 9964.

3.12.3 From the plane reading of the definition of "business", it can be safely concluded that transportation service to its employees would come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business.

3.12.4 Further, even though, there is no profit as claimed by the applicant on the service to its employees, there is a "supply", as provided in Section 7(1)(a) of the CGST Act, 2017. The applicant would definitely come under the definition of "Supplier", as provided in sub-section (105) of Section 2 of the CGST Act, 2017.The supply is also for a consideration which is recovered from the employees.

3.13 The applicant is not eligible for exemption from GST under Sl. No. 15(b) of **Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017** for the above reasons.

Question : 3 ***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?***

3.14 The Notice Pay policy of the Applicant as stated by them:

a) For resignation of employees during Probation period: The Notice Period will be one month and any shortfall in the notice period will be deducted from employees' salary.

b) For resignation of employee confirmed in services: The Notice Period will be 2 or 3 months and any shortfall in the notice period will be deducted from employees salary

3.14.1 The Applicant has referred to serial No. 5(e) of Schedule II of the CGST Act, 2017 which treats the listed services as supply of services: -

5(e): agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

3.14.2 The Applicant has contended that serial No. 5(e) is not applicable to them as said transaction (notice pay recoveries) cannot be construed as supply of services, due to the following reasons as stated by them:

i) that 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 that the period stipulated in the employment contract. Here the employer is merely exercising his own contractual rights arising out of the employment contract, without carrying out any activity per se at his end, as a reciprocal gesture.

ii) Further, the deduction of notice pay by the employer occurs as an incidence of the employment contract and was already in existence. Therefore, the applicant (who has simply accepted the resignation and exercised his existing right in pursuance of the said employment contract to deduct the amount of notice pay as pre-determined) cannot be alleged to have agreed to any kind of obligation to tolerate any situation, in pursuance of any separate and distinct activity contract, which does not exist.

iii) Further, the mere deduction of a certain amount of money from the employee for non-completion of the stipulated notice period cannot be termed as "supply of service" since the applicant is engaged in the manufacture and export of various types of ferrous..... and the said deduction cannot, under any circumstances, be held to be in the course of the provision of supplies rendered by the Applicant. They have referred to the case of **M/s Jotun India Pvt Ltd** wherein it was held that the recovery of 50% of Parental Health Insurance premium from employees does not amount to supply of service under section 7 of the CGST Act, 2017 as the assessee was not in the business of providing insurance service.

iv) Since notice pay is a sum mutually agreed by the parties for breach of contract it can be regarded as a liquidated damage flowing from the employment contract itself read with Section 74 of the Indian Contract Act, 1872 and not under any other separate contract wherein employer has agreed to refrain from doing any act against the concerned employee. Hence, said transaction (notice pay recoveries) cannot be construed as supply of services.

3.15 **Department view**: Serial No. 5(e) of Schedule II of the CGST Act, 2017 is applicable in the subject case and said transaction (notice pay recovery) can be treated as a "supply of service" because the Applicant, as employer, is tolerating the act or situation whereby the employee is not giving the notice for the agreed period before leaving the service of the applicant-company. Thus, by relieving an employee without notice period or by accepting a shorter notice period, the Applicant is tolerating an act or a situation created by such action of the employee, and therefore, it is covered by Para 5(e) of Schedule II of the CGST Act, and is a supply of service. Here the company is actua lly "providing a service" to an employee and hence GST should be applied on that. Under the GST framework, tax is levied on any activity that is viewed as supply of service-whether directly or deemed supply.

3.16 Relied upon cases: (1) The Gujarat Authority of Advanced Ruling in July 2020 on an application by **M/s. Amneal Pharmaceuticals Pvt Ltd, Ahmedabad** the GST authority had ruled that the applicant is "liable to pay GST on recovery of notice pay" from the employees leaving the company without completing the notice period as specified in the appointment letter issued as per the contract entered between the employer and the employee.

3.16.1 (2) Further, in the ruling related to **Bharat Oman Refineries**, a subsidiary of state-owned Bharat Petroleum, the AAR has clarified that the employee is liable to pay GST on salaries received for the notice period since the company is "providing a service" to an employee in the case of notice pay, and that's why GST should be applied on such transactions. The AAR also noted that tax is chargeable on activity viewed as a supply of service under the GST framework. The supply of service could be direct or deemed supply.

4. HEARING

Preliminary e-hearing in the matter was held on 01.02.2022. Applicant and Mr. Pratik Shah, Associate Director along with others and Jurisdictional Officer Mr. Ashok Kuruvathy, Superintendent, Range-IV Division-IV Pune-I was present.

The application was admitted and called for final e-hearing on 03.09.2025. Shri. Pratik Shah (CA) Authorized Representative appeared made oral and written submissions. Jurisdictional Officer Shri. Subhodh Kumar Mishra, Assistant Commissioner of CGST appeared. We heard both the sides.

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 and transportation service to its employees is supply and taxable under the GST law and whether GST is applicable on deduction of salary in lieu of notice pay from the full and final settlement of the employees leaving the Company. Facts of the case as submitted by the applicant are as below.

5.2 Provision of Canteen Services to the employees.

(1) Sigma Manufacturing Corporation Pvt. Ltd. (hereinafter referred to as 'Applicant') is a company having its plant at Gate No 154/1, 155 Mahalunge Village, Chakan Talegaon Road, Khed, Pune 410501. It is engaged in the business of manufacturing and export of ferrous and nonferrous castings, precision machined components and sub-assemblies.

(2) It supplies the goods to MNCs in several market segments like electrical, industrial, power tools, instrumentation, appliances, telecom etc.

(3) The Applicant is registered under the GST regime in the State of Maharashtra vide GSTIN 27AAXCS4352F1ZW and in the state of Rajasthan vide GSTIN 08AAXCS4352F1ZW.

(4) The Applicant has about 3400 direct and indirect employees, who are carrying out day to day business activities of the Applicant. 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.

(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, the Applicant also refers 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.

(6) Such canteen facility is set up by the Applicant out of the mandate laid down by the Factories Act, 1948 as well as Maharashtra Factories Act 1963.

(7) 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.

(8) Every employee, who wishes to avail the canteen services would have to necessarily punch in his/her food card or biometric record and avail the facility. Thereafter, the part of the amount of cost of plates consumed during the month is deducted from the respective employee's salary. 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 employees only on account of employer-employee relationship - i.e. the existence of an employer-employee relationship is vital for availing the said canteen facility. If the relationship does not exist, food card or biometric record will not be created in favour of the individual employee and consequently the canteen facility cannot be availed.

5.3 **Provision of transportation services to the employees**

5.3.1 The Applicant has entered into a contract with several Transport Service Providers to provide transportation facility to its employees for '*to and fro*' commutation between office and residence in non-air conditioned buses having seating capacity of more than 13 persons.

5.3.2 Applicant has submitted that as a part of Emp**loyment contract**, Guide to the structure of compensation and benefits, the facility of Company Transport has been specified which provides that:

"The Company's Transport Service to commute between Chakan Works & pick-up point as per conveyance policy of the company. The cost of such services will be deducted from monthly emoluments of employee, as may be applicable."

5.3.3 As pet the applicant, the provision of this transportation facility is stipulated in the employment contract at the time of joining the Applicant and is therefore considered to arise out of the Applicant's contractual obligation with the employees. Further, to ensure that this facility would only be used by the employees of the Applicant, the Applicant would continue to issue employee card to eligible employees so as to ensure that no employee can avail the bus transportation service without showing the said employee card.

5.3.4 As per the applicant the Transport Service Providers would have contract carriage permit issued by the relevant regulators authorities in respect of buses deployed for employee transportation service. The service providers shall provide point to point transportation facility to employees by ensuring that driver only take routes approved by the Applicant.

5.4 Taxation of recovery of Canteen and transportation services provided to the employees.

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

5.4.2 Let us analyse whether there is supply of canteen services and transportation services from the Applicant to the employees and consideration.

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

(Relevant extract from the CGST Act, 2017"

(1) *For the purposes of this Act, the expression "supply" inc**ludes***

(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

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.

5.4.4 The applicant has contended that, with respect to the definition of supply, as mentioned in Section 7 of the CGST Act, provision of canteen and transportation services are not in the course or furtherance of business. Thus, it becomes important to analyze whether provision of canteen and transportation facility could be considered as "*in the course or furtherance of business*".

5.4.5 In this regard, the definition of 'business', as defined in Section 2(17) of the CGST Act 2017 is as below:

"business" includes:

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

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

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

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members,

(f) admission, for a consideration, of persons to any premises,

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(n) [activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

5.4.6 Now, let us analyse the definition of 'business'.

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 or transportation services as his principal activity. No doubt his principal activity remains as manufacture and export of ferrous and nonferrous castings, precision machined components and sub-assemblies which is covered by clause 'a' of above definition. Let's see whether the activity of supply of canteen and transportation 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 and transportation 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 and transportation services, falls within the definition of "business".

5.4.7 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 and transportation services (hereinafter both services are referred as 'these 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 transport bus provider respectively and the Applicant in turn supplies these services 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 and totally different transactions in the event of supply of these services to the employees of the Applicant. They are: -

i) Supply of these services by the respective 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 respective service providers have been supplying these services to the Applicant for which the said service provider

receives consideration from the Applicant on which the Applicant has been paying GST to these service providers.

(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 and transportation services from the Applicant to the employees, u/s. 7 (1) of CGST Act, 2017.

5.5 Taxability of Supply of Canteen services and transportation services to the employees

5.5.1 Another contention of the Applicant is that the perquisites forming part of employment contract 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.

Thus, it is derived from Entry 1 of Schedule III that "services by an employee to employer in the course of or in relation to his employment" shall be neither supply of goods nor supply of services. It could be seen here that 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.

5.5.2 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 and transportation 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 and transportation services are liable to levy of tax.

5.5.3 If incidental or ancillary supply of goods or services such as canteen or transportation 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 5.4.6 and 5.4.7, Applicant's activity of supply of canteen and transportation services falls u/s 7(1) of CGST Act, 2017. As discussed in Para 5.5.2 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 and transportation services provided by the Applicant to the employees.

5.5.4 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.

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

5.6.1 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.

5.6.2 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."

5.6.3 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.

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

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

5.6.5 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.

5.6.6 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;"

5.6.7 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 5.7.5, the Restaurant Service compulsorily attracts rate of 5% without ITC in a non-specified premise 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.

5.6.8 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.

5.6.9 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]. The
4. Indian Institute of Technology Vs. State of Uttar Pradesh & Ors [MANU/UP/0242/1974].

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.

5.6.10 The Applicant further relied on following ruling.

1) Maharashtra AAR in RE: Tata Motors Limited in [2021-TIOL-197-AAR-GST-2020-VIL-257-AAR], in which the judgment given by Hon. Bombay High Court in case of M/s. Ultratech Cement Ltd CCE, Nagpur was referred.
2) Maharashtra AAR in a ruling in RE: Posco India Pune Processing Centre Pvt Ltd (Order dated 07.09.2018),
3) Maharashtra AAR, in M/s Jotun India Pvt Ltd (Order dated 4.10.2019).
4) Uttar Pradesh AAR in M/s. North Shore Technologies Private Limited (order dated 29.06.2020)
5) Gujarat AAAR in by M/s. Amneal Pharmaceuticals Pvt Ltd, Ahmedabad (order dated 21.03.2025)
6) Gujarat AAAR in by M/s. Zydus Lifesciences Ltd, (order dated 28.09.2022)
7) Gujarat AAR in by M/s. SRF Ltd, (order dated 28.09.2022)
8) Uttar Pradesh AAR in Dr. Willmar Schwabe (I) Private Ltd (order dated 28.06.2021)
9) Madhya Pradesh AAAR in by M/s. Bridgestone India Pvt. Ltd., (order dated 31.12.2024)

We would like to place on record that an advasnce 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.

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

5.7.1 The services of bus transportation by the employer to his employee provided as perquisite in terms of contractual agreement entered into between the employer and his employees are in lieu of the services provided by employees to the employer in relation to their employment and will not be subjected to GST.

5.7.2 The service provider of transportation service to the Applicant is required to discharge GST on the said services. It is seen that ITC on leasing, renting or hiring of motor vehicles for transportation of passengers having approved seating capacity of more than 13 persons is not blocked u/s 17(5)(b)(i).

5.7.3 The transportation of employees by picking them from their residence to the factory or office premises is merely for personal convenience of the employees to enable them to reach the premises of the office so as to participate in the business activity.

5.7.4 Hon'ble High court of Bombay in Solar Industries India Limited Vs Commissioner, Central Excise, Customs and Service Tax held that Cenvat Credit is not eligible on facility of transportation provided by the appellant to its employees as same was merely in the nature of service for personal use or consumption of its employees. The substantial question of law involved in the said judgement is:

1. Whether the services provided by a Manufacturer of transportation of its employees, from their designated pick up points to their workplace, by Bus, would amount to a service for personal use or consumption of any of the employees?"
2. Whether the activity of providing bus transport services to its employees, at the cost of the Manufacturer, to reach factory in time and the expenses incurred by the Manufacturer in providing such service, (which amount is taken into consideration, while determining the final price of the product) can be said to be a component leading to the manufacturing activity, so as to entitle the Manufacturer, the benefit of Cenvat Credit?

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

"The transportation of employees from distance of about 40 kms for reaching factory is not an activity which could be said to be a part of manufacturing

activity. It is merely for personal convenience of the employees to enable them to reach the premises of the factory so as to thereafter participate in the manufacturing activity.

In this regard, the reliance is placed on the judgment of the Karnataka High Court in Toyota Kirloskar Motor Private Limited vs The Commissioner Of Central TAX wherein food and beverages were provided by the appellant therein to its employees by engaging the services of an outdoor caterer. This was sought to be treated as "input service" since there was a statutory duty on the appellant to establish a canteen for its employees. Considering the effect of definition of "input service" after 01.04.2011 it was found that establishment of such canteen was primarily for personal use or consumption of the employees and after such amendment no cenvat credit could be availed. This view has been upheld by the Hon'ble Supreme Court while dismissing the Special Leave Petition on 18.11.2021 preferred by the said appellant. The facts of the present case also indicate that the facility of transportation provided by the appellant to its employees was merely in the nature of service for personal use or consumption of its employees."

5.7.5 It is pertinent to note that the Hon'ble High Court held its view on the nature of services, under contention between taxpayer and the department, notwithstanding that they are not explicitly categorized as service for personal use or consumption of its employees under the provisions of the existing laws. Thus, we find that the ratio of court judgment is applicable in the current taxation regime and particularly to the current issue contended by the taxpayer.

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

5.7.7 Section 17(5)(g) of CGST/MGST Act 2017 states that input tax credit shall not be available in respect of goods or services or both used for personal consumption. Provision of service of transportation of employees from residence to factory or office premises has been used for personal consumption or comfort of employees. The applicant is not under any statutory obligation to provide these services to his employees and the services provided comes under category of personal consumption which makes the applicant ineligible to avail input tax credit on the invoices issued to him by the transporter for transportation of employees as per Section 17(5)(g) of CGST/MGST Act 2017.

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

5.8.1 As explained in above paras, supply of canteen services and transportation services to the employees would in normal course constitute to be the supply of services u/s 7 (1) of GST Act 2017. However, it is now clarified by the CBIC circular No. 172/04/2022/GST dated 6th July 2022 that perquisite provided to

the employees in view of the Contractual Agreement would not be subjected to GST. It is clarified that such perquisite are in lieu of the services provided by the employees to the employer in the course of or in relation to his employment, and should not be subjected to GST.

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

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

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

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

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

Further, Explanation to Section 15 reads as below.

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

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

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

(iii) such persons are employer and employee;

.....

As per 'a(iii)', employer and employee are deemed to be related persons for the purposes of this Act. This means any transaction between employer and employee will not come out of 'supply' for the reason of not having consideration. However, respite to such transactions has come through Schedule 3. Section 7(2)(a) states that, notwithstanding anything in sub-section (1), activities or transactions specified in Schedule III shall be treated neither

as a supply of goods nor a supply of services. Serial Number 1 of Schedule III is as below.

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

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

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

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

5.9.1 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."

5.9.2 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)

NO.GST-ARA- 39/2021-22/B- 36 **Mumbai, dt.** 27/02/2026

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

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

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: - Answered in the affirmative

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: - Answered in the Negative.

Question 2: - Whether the deduction of nominal amount by the Applicant from the salary of employees for availing the non-air-conditioned bus transportation facility provided by Transport Service Providers, would be construed as "Supply of Service" by the Applicant to its employees?

Answer: - Answered in the affirmative

Question 2(a) If answer to above question is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of its employees?

Answer: - Answered in the affirmative

Question 2(b) Whether ITC is available to the Applicant on GST charged by the Transport Service Providers for providing the transportation services? If yes, whether ITC is restricted to the extent of cost borne by the Applicant only?

Answer: - Answered in the Negative.

Question 3: 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
(MEMBER)

PLACE - Mumbai
DATE - 27/02/2026

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.