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. Dipak Gojamgunde, Joint Commissioner of State Tax, (Member)

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

ARN No.		**AD270522016731D**
GSTIN Number, if any/ User-id		**27AAACW2665A1ZL**
Legal Name of Applicant		**M/s. Wika Instruments India Pvt. Ltd.**
Registered Address/Address provided while obtaining user id		Gat No 94 100, Plot No 40 47 52, Hi Cliff Industrial Estate, Kesnand, Pune, Maharashtra, 412207.
Details of application		GST-ARA, Application No. 14 Dated 18.05.2022
Concerned officer		RANGE-V, DIVISION-V,VIMAN NAGAR
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Factory/ Manufacturing**
B	Description (in brief)	Applicant is engaged into the business of manufacturing various types of process control instruments like pressure gauges, pressure transmitter, diaphragm seals etc. - The applicant has engaged service provider to provide passenger transportation facility to its employees in non-air-conditioned bus on a specified route. - Similarly, the applicant has also engaged outdoor catering service provider to provide canteen facilities to its employees. - Against service provided as mentioned above, applicant is recovering nominal charges from its employees.
Issue/s on which advance ruling required		➢ applicability of a notification issued under the provisions of the 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.

NO.GST-ARA- 14/2022-23/B-39 Mumbai, dt. 27.02.2026

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. Wika Instruments India Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following questions.

1. **Whether passenger transport facility provided by employer to its employee; is a supply under GST, when only nominal amount is recovered form employees?**
2. **If answer of question no. 1 is negative, whether exemption under Sr. No. 15 clause (b) of Notification No. 12/2017 - Central Tax (Rate) dated 28th Jun 2017 is applicable to the Applicant?**
3. **If answer of question no. 2 is affirmative, wherever ITC is available on such service, whether it will be restricted to the extent of cost borne by the Applicant (employer)?**
4. **Whether canteen facility provided by employer to its employees' is a supply under GST, when only nominal amount is recovered from employees?**

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 FACTS:

1.1 M/s. WIKA Instruments India Pvt. Ltd. (hereinafter referred to as "Applicant"), located Gat No 94 100, Plot No 40 47 52, Hi Cliff Industrial Estate, Kesnand, Pune, Maharashtra, 412207 having GSTIN 27AAACW2665A1ZL is engaged in the manufacturing of various types of process control instruments like pressure gauges, pressure transmitter, diaphragm seals, etc. Applicant has 425 number of employees working in their factory. The Applicant has engaged service provider who provides transportation facilities to its employees in non-air-conditioned bus on specified routes, having seating capacity of more than 13 passengers.

1.2 Agreement for transport services are renewed on an annual basis. Acceptance letter, with specified route, seating capacity of vehicle, package kilometers and agreed consideration, has been attached herewith.

1.3 Transportation facilities have been provided to all employees who are desirous to avail for commuting to/from workplace. The Applicant recovers nominal fixed amount from its employees of Rs. 400 each per month.

1.4 The service provider is a permit holder of contract carriage under Motor Vehicle Act, 1988 and rules made thereunder are enclosed herewith to the copy of Contract Carriage Permit.

1.5 It is pertinent to note bus facility cannot be used by any person other than the employees of the Applicant and **that employer-employee relation is must to avail this facility. In case, employee ceases to be in employment with Applicant, he/ she is not authorized to use the said transportation facility.**

1.6 Similarly, applicant also provides canteen facility to its employees which is mandatory in accordance with the provisions of Factories Act, 1948 considering number of employees. The Applicant recovers nominal fixed amount from its employees of Rs. 400 each per month.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.1 Applicant's interpretation with respect to the recoveries made from employees for providing bus facility which are without prejudice to each other -

2.1.1 Whether passenger transport facility provided by employer to its employees' is a supply under GST, when only nominal amount is recovered from employees??

2.1.1.1Recovery against passenger transport facility is not covered under the scope of supply. As per section 7(1) of CGST Act, 2017, supply includes 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.***

2.1.1.2 Clause 17 of Section 2 defines business as follows -

-business includes —

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

(b) any activity or transaction in connection with or incidental 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;

(h) 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]5

(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

As per clause (a), business includes any trade, commerce, manufacture, profession, vocation, adventure, wager or **any other similar activity**. Further, as per clause (b), any activity or **transa**ction **in connection with or incidental or ancillary to sub clause (a)**, shall be construe as business.

In the instance case, applicant is engaged in the business of manufacturing various types of Process control instruments like pressure gauges. Pressure transmitter, Diaphragm Seals, etc. Bus facility provided to employees is not in the nature of business or any incidental or ancillary activity to business as it is having no direct nexus with the business activity. Even if bus facility is not provided, business of applicant would still be continuing. Hence, providing bus facility to employees shall not be treated as supply.

2.1.1.3 Further without prejudice to the above, applicant has engaged service provider to provide transportation facility to its employees in non-air conditioned busses having seating capacity of more than 13 persons. Such facility has been provided to all employees who are desirous to avail such transportation facility commuting to and from workplace. The applicant recovers nominal amount from its employees. **It is pertinent to note that employer-employee relation is must to avail this facility. In case, employee ceases to be in employment with Applicant, he/she is not authorized to use the said transportation** facility. Further, bus facility cannot be used by any person other than the employees of the Applicant.

2.1.1.4 Section 7(2)(a) starts with non obstante clause which states that certain activities or transactions specified in schedule III are not to be treated as supply and overrides provisions of section 7(1) of CGST Act, 2017. Entry 1 of the schedule specifies that services by an employee to the employer in the course or in relation to his employment.

2.1.1.5 The said transaction of providing transportation facility forms part of facility provided to its employees against the service provided by an employee to the employer in the course of or in relation to his employment at concessional rate and hence has been specifically excluded from the ambit of supply by virtue of section 7(2) read with entry 1 of schedule III. Whatever cost is borne by the applicant is cost to Company by virtue of the employment agreement. Applicant relies upon press release dated 10th July, 2017, wherein it was stated that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Also, when goods or services are provided in terms of the contract between the employer and employee is part and parcel of the cost to company (C2C) and cannot be subject to GST.

2.1.1.6 In view of above submissions, Applicant submits that transportation facility provided is not a supply under GST as it is a merely a facility provided in the course of employment.

2.1.2 If answer of question no. 1 is negative, whether exemption under Sr. No. 15 clause (b) of Notification No. 12/2017 - Central Tax (Rate) dated 28th June 2017 is applicable to the Applicant?

2.1.2.1 Applicant submits that, assuming but without admitting, even if recovery from employees is treated as supply, Sr. no. 15(b) of Notification no. 12/2017- CT (Rate) dt. 28th June, 2017 specifically ***exempts "Transport of passengers,*** *with or without accompanied belongings,* ***by non air conditioned contract carriage*** *other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire." As specified in the facts above, service provider is having a contract carriage permit issued by the relevant regulatory authorities* ***and*** *hence the said service would be exempt in the* ***present case.***

2.1.2.2 Further, as per paragraph 2(t) of Notification no. 12/2017 - CT (Rate) dt. 28th June, 2017, "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 wherein ***"contract carriage" means a motor vehicle which carries a 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-- a axicab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers;

2.1.2.3 In applicant's case,

(a) Service provided is for transportation of passengers

(b) By a non-air-conditioned contract carriage

(c) The vehicle has a contract carriage permit under Motor Vehicles Act, 1988

(d) The transportation is not for the purpose of tourism, conducted tours, charter or hire

2.1.3 If answer of question no. 2 is affirmative, whether ITC will be restricted to the extent of cost borne by the Applicant (employer)?

2.1.3.1In the subject case, the applicant has availed transportation service in non-air conditioned buses ***having approved capacity of more than 13 persons.*** *Section 17(5)(b)(i) of CGST Act, 2017 which has been amended w.e.f. 1st February, 2019, blocks ITC on leasing, renting or hiring of motor vehicles having approved seating capacity of not more than 13 persons. Hence, in subject case, ITC is ought to be allowed. Relevant abstract of the Section 17(5) is reproduced as under for your ready reference:*

Section 17(5)

(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:

2.1.3.2 Further, in similar transactions carried out in pre-GST regime, it was held by various courts that credit is not admissible to manufacturer on part of cost borne by employee and thus ITC will be allowed only to the extent of cost borne by the employer.

2.1.3.3 Hence, in instance case, either Applicant needs to reverse ITC to the extent cost is borne by employees or he can avail ITC on pro-rata basis adopting a scientific method by calculating ratio of amount recovered from employees to total cost of input service.

2.1.4 Whether canteen facility provided by employer to its employees' is a supply under GST, when only nominal amount is recovered from employees??

2.1.4.1Recovery against canteen facility is not covered under the scope of supply. As per section 7(1) of CGST Act, 2017, supply includes 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.***

2.1.4.2 Applicant is engaged in the business of manufacturing various types of Process control instruments like pressure gauges. Pressure transmitter, Diaphragm Seals, etc. Canteen facility provided to employees is not in the nature of business or any incidental or ancillary activity to business as it is having no direct nexus with the business activity.

2.1.4.3 The submissions made by applicant in respect of bus transport facility above are squarely applicable to this case also and it is excluded from the ambit of supply by virtue of section 7(1), section 7(2)(a) read with schedule III of CGST Act, 2017.

2.1.5 The applicant has relied on following judgments rulings which are discussed in discussion part of this order.

1. Maharashtra AAR in M/s. Emcure Pharmaceuticals Ltd (Order No. GST-Ara- 119/2019-20/B-03 dated 04.01.2022)
2. Maharashtra AAR in M/s. Tata Motors Ltd ((Order No. GST-ARA-23/2019-20/B-46 dated 25.08.2020)
3. Madhya Pradesh AAR in M/s. Bhavika Bhatia (Order No. 18/2019 dated 25.09.2019)
4. Panacea Bitotech Limited vs Commissioner Trade and taxes [(2013) 59VST 524(Del)
5. State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966)
6. CCE Nagpur vs Ultratech Cements Ltd as reported in 2010 (260) ELT 369 (BOM)
7. Hon Banglore Tribunal judgment in case of M/s. Foods, Fats & Fertilizers Ltd. vs Commissioner of C.Ex. Guntur, 2009 (247) E.L.T. 209(Tri-Bang)

3. CONTENTION – AS PER THE CONCERNED OFFICER:

The applicant has sought clarification regarding the taxability of the services provided to its employees under the Goods and Services Tax (GST) regime. The questions raised, as well as the ruling on each, are discussed below.

3.1 Whether the passenger transport facility provided by the employer to its employees is a supply under GST, when only a nominal amount is recovered from employees?

3.1.1 Under Section 7 of the **CGST Act, 2017**, the term "supply" is broadly defined to include all forms of supply of goods or services for consideration in the course or furtherance of business. This includes activities performed by an employer for the benefit of its employees, provided that a consideration is involved.

3.1.2 In this case, the applicant is recovering a nominal amount from its employees for providing passenger transport services. The fact that a nominal amount is recovered establishes the presence of consideration, no matter how small the amount. Hence, the provision of transportation services qualifies as a supply of service under GST.

3.1.3 Further, under **Schedule** I of the CGST Act, activities performed without consideration between employer and employees are considered a supply, but this applies only to activities performed without any consideration. Since the employer is charging a nominal fee, Schedule I does not apply.

3.1.4 As per **Schedule II,** the provision of services for consideration in the course or furtherance of business is always considered a supply. Since the transportation service is provided in the course of business and is paid for, it qualifies as a supply.

3.1.5 Sr. No. 1 of **Schedule-III** of the CGST Act states:

"*Services by an employee to the employer in the course of or in relation to his employment*" are **not treated as a supply of goods or services** under GST. This implies that any services provided by an employee to the employer as part of their employment duties are not subject to GST.

1.5.1 Sr. No. 1 of Schedule-III pertains to **services provided by the employee** to **the employer**. These services are rendered in the capacity of an employee and are part of the employment contract. Typical examples include an employee's work duties, responsibilities, and actions performed as part of their job description.

1.5.2 The clause covers only services **from the employee to the employer** and does not extend to services provided by the employer to the employee, even if related to employment. In other words, services rendered by the employer to employees do not fall within the scope of this provision.

1.5.3 In this case, the employer (the applicant) is providing passenger transportation services to the employees and recovering nominal charges for the same. This is a service provided **by the employer to the employee**, not the other way around.

1.5.4 The relationship here is one of service provision (by the employer) and consumption (by the employee), with consideration involved. Even

though the service benefits the employee in relation to their employment (e.g., commuting to work), it is not a service that the employee provides to the employer as part of their employment contract.

1.5.5 Another important factor is that the employer is recovering nominal charges from the employees for the transportation services. The presence of consideration (even if nominal) means that this is a service being supplied in exchange for payment, further removing it from the scope of Schedule-III.

1.5.6 Since the services provided by the employer are not part of the employment contract and involve consideration, they are taxable under GST and do not qualify as services excluded by Schedule-III.

Conclusion:

Passenger transportation services provided by the employer to employees in exchange for nominal consideration are a taxable supply under GST.

3.2 If the answer to question No. 1 is negative, whether exemption under Sr. No. 15 clause (b) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is applicable to the Applicant?

3.2.1 Relevant Provision - Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate):

This notification provides an exemption from GST for certain services. The relevant portion of Sr. No. 15(b) states:

Sl. No.	Chapter Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent.)	Condition
(1)	(2)	(3)	(4)	(5)
15	Heading 9964	Transport of passengers, with or without accompanied belongings, by - (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour,	Nil	Nil

		charter or hire; or(c) stage carriage other than airconditioned stage carriage.		

3.2.2 To avail of the exemption under Sr. No. 15(b), the following conditions must be met:

a. ***Mode of Transport**: The service must involve the **transportation of passengers in a non-air-conditioned contract carriage** (i.e., the vehicle must not be air-conditioned).*

b. ***Exclusions**: The exemption does not apply to services related to **tourism, conducted tours, charter, or hire**. It is only available for transportation provided under a contract carriage that does not fall under these categories.*

c. ***Nature of the Service**: The transport provided should not be categorized as tourism, a conducted tour, or under a charter or hire arrangement meant for specific events. It must involve the **daily or routine transport of passengers.***

3.2.3 In the present case, the applicant is providing transportation facilities to its employees using a **non-air-conditioned bus**. This satisfies the first condition of Sr. No. 15(b) since the bus used for the transport is not air-conditioned.

3.2.4 The service provided to the employees can be categorized as a contract carriage. A contract carriage, as per the Motor Vehicles Act, refers to a vehicle engaged to carry a group of passengers (in this case, employees) from one point to another under a contractual arrangement for the entire journey. The employer has engaged the service provider to transport its employees on **specified routes**, which qualifies as transportation under a contract carriage.

3.2.5 The transportation provided is purely for the **commuting purposes of employees** and does not involve tourism, conducted tours, or any specific event for which the bus is hired. The bus is used to transport employees on **routine, specified** routes, which further aligns with the exemption criteria.

3.2.6 The nominal amount recovered from the employees does not affect the eligibility for exemption. What matters is the nature of the service (i.e., non-air-conditioned contract carriage) and its use for regular transportation, not for tourism or similar purposes.

3.2.7 The transportation service provided by the employer to its employees in a non-air- conditioner bus on specified routes qualifies for **exemption under Sr. No. 15(b) of Notification No. 12/2017.**

3.2.8 As per this notification, the transport of passengers by a **non-air-conditioned contract carriage**, as long as it does not involve tourism or similar services, is exempt from GST.

Conclusion:

The transportation facility provided by the applicant to its employees is exempt from GST under this notification.

3.3 **If answer to question No. 2 is affirmative, whether ITC is available on such service, whether it will be restricted to the extent of cost borne by the applicant (employer)?**

3.3.1 **Section 16 of the CGST Act, 2017 - Eligibility for ITC:** Section 16 of the Central Goods and Services Tax Act, 2017 provides that a registered person is entitled to claim ITC on goods and services used or intended to be used in the course or furtherance of business.

3.3.2 Section 17(2) of the CGST Act, 2017 - Restriction of ITC on Exempt Supplies:

a) Section 17(2) restricts the availment of ITC on inputs, input services, and capital goods to the extent they are used for providing **exempt supplies**. If the goods or services procured are used for **both taxable and exempt supplies**, the ITC must be proportionately reversed.

b) In the case of exempt supplies, the registered person is not entitled to ITC to the extent that the services are used for making exempt supplies.

3.3.3 As per Section 2(47) of the CGST Act, exempt supply includes supplies attracting a **Nil rate of tax**, supplies wholly exempt from tax, and non-taxable supplies. Since passenger transportation in a **non-air-conditioned contract carriage** is exempt under Notification No. 12/2017 (Sr. No. 15(b)), it is treated as an **exempt supply** under GST.

3.3.4 Since the transport of employees in a non-air-conditioned bus is **exempt from GST**, the following implications apply regarding the availability of ITC:

a) **No ITC on Exempt Services**: Under Section 17(2) of the CGST Act, ITC cannot be availed on goods or services that are used to provide **exempt supplies**. Since the transportation service provided to employees is exempt under Sr. No. 15(b) of Notification No. 12/2017, the applicant is not eligible to claim ITC on the inputs or services procured for providing this exempt transportation facility.

b) **Extent of Cost Borne by Employer (Applicant):** The applicant bears a portion of the cost of providing the transportation facility, while a **nominal amount** is recovered from the employees. However, the portion of the cost borne by the applicant or employees does not affect the ITC eligibility. As the entire service provided is an **exempt supply**, ITC is **not available** even if the cost is partially borne by the employer.

3.3.5 The applicant may incur expenses for hiring buses, fuel, maintenance, or other services related to employee transportation. Since these services are

used to provide **exempt transportation**, ITC on such inputs or services is **disallowed in full** under Section 17(2). The portion of the cost borne by the employees, even though nominal, does not change the exempt nature of the supply or the ITC disallowance.

3.3.6 The applicant's query about whether ITC can be restricted to the extent of the cost borne by the employer (and not the employees) becomes redundant since the entire supply of transportation services is exempt, and **no ITC is available** on exempt supplies, regardless of how the cost is shared.

Since the transportation service provided by the applicant to its employees is **exempt** under Sr. No. 15(b) of Notification No. 12/2017, the applicant is not eligible to claim ITC on the goods or services used for providing this transportation facility. ITC cannot be restricted or apportioned to the cost borne by the employer, as **no ITC** is available on exempt supplies as per Section 17(2) of the CGST Act, 2017.

Conclusion:

The applicant cannot claim any ITC on expenses incurred for the transportation service provided to employees, even if a nominal charge is recovered from the employees.

3.4. Whether canteen facility provided by employer to its employees is a supply under GST, when only nominal amount is recovered from employees?

3.4.1 Section 7(1)(a) defines "supply" to include all forms of **sale, transfer, barter, exchange, license, rental, lease, or disposal** made or agreed to be made for a consideration in the course or furtherance of business. As per the definition, any provision of goods or services for **consideration** would generally fall under the ambit of **supply** and be liable to GST.

3.4.2 **Schedule I of the CGST Act, 2017 - Deemed Supply Without Consideration:** Certain transactions, even if made **without consideration**, are deemed to be supplies under GST. For example, supplies made between **related persons** during the course of business are considered a supply even without consideration. **Employer and employee** are treated as **related persons** under GST law. Therefore, if goods or services are provided by an employer to an employee, it may be deemed as a supply even if no consideration is charged or only nominal consideration is recovered.

3.4.3 **Schedule III of the CGST Act, 2017 - Services Not Considered as Supply**: Clause 1 of **Schedule III** lists activities or transactions that are neither a supply of goods nor a supply of services. One of these includes: "Services by an employee to the employer in the course of or in relation to his employment.". However, the reverse (i.e., services provided by an **employer to an employee**)

is not mentioned here, implying that services provided by an employer (such as the canteen facility) to employees **for consideration** may be treated as a supply, especially when the service is not provided purely in the course of employment.

3.4.4 **Valuation of Supply (Section 15 of the CGST Act, 2017):** If a supply is made between **related persons** (in this case, employer and employee), the valuation may not necessarily be based on the nominal charge but rather on the **open market value** of the supply, if the transaction is not at arm's length.

3.4.5 The applicant is providing canteen facilities to its employees. Catering services provided by a third-party service provider to the employer are **taxable under GST.** The employer, in turn, makes these services available to the employees at a **nominal charge.** Since a nominal amount is recovered from the employees, there is an element of **consideration** involved. As a result, this may be construed as a **supply of services** under Section 7 of the CGST Act, 2017.

3.4.6 Services provided by an employee to the employer in the course of employment are excluded from the definition of supply as per **Schedule III**. However, the **reverse relationship** (i.e., services provided by the employer to the employee) is not covered under Schedule III. Since the employer is recovering an amount (even nominal) from the employees, the transaction does not fall purely under the **employer-employee relationship** defined in Schedule III. Therefore, it does not qualify as a service provided **in the course of employment** and may be treated as a taxable supply under GST.

3.4.7 Although the applicant is only recovering a nominal amount from the employees, the transaction is still for **consideration** and therefore falls within the ambit of a taxable supply under GST law. As the employer is recovering some amount, the transaction is considered a **supply for consideration** and not a free service, which strengthens the case for this being a supply subject to GST.

3.4.8 The consideration being charged (nominal amount) might be significantly lower than the actual cost of providing the service. However, when supplies are made between **related parties** (in this case, employer and employee), the value of supply could be the **open market value** of the service, as per the valuation rules under GST (Section 15 of the CGST Act). The nominal amount recovered may be subjected to GST based on the **actual amount charged** if the open market value is difficult to determine.

3.4.9 The canteen facility provided by the employer to its employees, for which a **nominal amount** is recovered, qualifies as a **supply under GST**. GST will be applicable on the amount recovered from employees. The applicant will need to determine the value of the supply, which could either be the **nominal amount** or the **open market value**, depending on the specific facts of the case.

Conclusion: Yes, the canteen facility provided by employer to its employees is a supply under GST, even when only nominal amount is recovered from employees.

3.5 Further jurisdictional officer has made additional submission dated 15.10.2025 as follow,

---- As per Section 7(1)(a) of the CGST Act, 2017, "supply" includes all forms of supply of goods or services made for consideration in the course of furtherance of business.

If the employer recovers the nominal amount from the employees for transport. It constitutes a consideration, and thus, could qualify as a service under GST.

---- Further, Circular No. 172/04/2022-GST, dated 6 July 2022 says-

"Perquisites provided by employer to the employees as per contractual agreement.

Q. 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?

Ans.

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 a 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 provides 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 same are in terms of contract between the employer and employee."

In view of the above it appears that the passenger transport facility by an employer to employees, when no amount is recovered by the employer will be treated as perquisite and no GST will apply.

Further, as per Notification No. 12/2017- Central Tax (Rate) dated 28.06.207, Entry 15(b) Heading 9964

Transport of passenger, with or without accompanied belongings, by-

(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire,

Is exempted from GST. As given in the case the service provider is a permit holder of contract carriage under Motor Vehicle Act, 1988, so he may be exempted from paying GST.

---- Since, the supply is exempted so no ITC availment.

---- In case of Canteen services provided to the employees by recovering nominal amount from them will be treated as supply as the nominal amount is the consideration for the services given.

---- ITC is allowed only to the extent of cost borne by the company (i.e. excluding the recovered portion).

3.6 The applicant relied upon following advance rulings and judgments which are discussed in the discussion part of the order.

(1) Maharashtra AAR in M/s. Emcure Pharmaceuticals Ltd (Order No. GST-ARA-119/2019-20/B-03 dated 04.01.2022)

(2) Maharashtra AAR in M/s. Tata Motors Ltd ((Order No. GST-ARA-23/2019-20/B-46 dated 25.08.2020)

(3) Madhya Pradesh AAR in M/s. Bhavika Bhatia (Order No. 18/2019 dated 25.09.2019)

(4) M/s. Panacea Bitotech Limited vs Commissioner Trade and taxes [(2013) 59VST 524(Del)

(5) State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966)

(6) CCE Nagpur vs Ultratech Cements Ltd as reported in 2010 (260) ELT 369 (BOM)

(7) M/s. Foods, Fats & Fertilizers Ltd. vs Commissioner of C.Ex. Guntur, 2009 (247) E.L.T. 209(Tri-Bang)

4. HEARING

Preliminary hearing in the matter was held on 15.10.2024. The authorized representative, Mr. Yogesh Ingle and Jurisdictional Officer, Mr. Avadhoot Khadilkar Assistant Commissioner of CGST was attended in the hearing.

The application was admitted and called for final hearing on 06.11.2025. The authorized representative, Mr. Yogesh Ingle and Jurisdictional Officer Mr. F I Shaikh, Assistant Commissioner of CGST was attended in the hearing. We heard both the sides.

5. OBSERVATIONS AND FINDINGS:

5.1 Taxation of recovery of canteen services and transportation services made from employees.

5.1.1 We have carefully considered all the material on record 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 & transportation services to its employees is taxable under the GST laws.

(1) M/s. Wika Instrument India Pvt. Ltd. (hereinafter referred to as 'Applicant') is a company having its registered office at Gat 94 100, Plot No 40 47 52, Hi Cliff Industrial Estate, Village Kesnand, Pune-412207, Maharashtra.

(2) We observe that, in order to comply with the obligation under Factories Act 1948, Applicant provides canteen facility to all the workers through a third-party Canteen Service Provider.

(3) 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.

(4) Applicant has contended that the recovery of amounts from employees for canteen services or transportation services to employees do not fall under 'supply' as per section 7 of CGST Act, as supply of these services are not in the course or furtherance of 'business'.

Various grounds raised by the Applicant to contend that the recovery of amounts from the employees for providing canteen and transportation services are discussed as below.

5.1.2 Whether supply of canteen and transportation services provided to employees is in the course or furtherance of business.

(1) We observe that the Applicant has argued that he is engaged in the field of design, manufacture, supply, installation and commissioning of a wide range of Steam and Power Generation Plants for various industrial applications. The Applicant has taken view that supply of 'canteen services' or 'transportation services' cannot be regarded as 'in the course or furtherance of business'. CGST Act, 2017 defines the expression 'business'

under section 2(17) of the CGST Act, 2017. The definition of 'business' as given in Section 2(17) of the CGST Act, 2017 is as under: -

"(17) "business" includes -

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

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

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

.....

.....

This 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.

(2) 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 design, manufacture, supply, installation and commissioning of a wide range of Steam and Power Generation Plants for various industrial applications, 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 wide range of steam and power generation plants.

(3) 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".

(4) Thus, as discussed above, the activity of supply of canteen services and transportation services provided to the employees falls under the definition of 'business' as these activities are in connection with or incidental or ancillary to the principal activity of the taxpayer as explained above.

5.1.3 Whether there is supply of canteen services and transportation services from the Applicant to the employees

(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 (herein after 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 (employer); and

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

(4) In respect of the first transaction, the respective service providers have been supplying these services to the Applicant (employer) 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 (employer) 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 Appellant (employer) 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.

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

(1) Whether 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	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

	employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	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.

(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) ----------

……..

……..″

(3) 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.

5.1.5 If incidental of 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 5.1.2 and 5.1.3, Applicant's activity of supply of canteen and transportation services falls u/s 7(1) of CGST Act, 2017. As discussed in Para 5.1.4, 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.

5.2 Whether the Applicant would be exempted under the Sl. No. 15 of Notification No. 12/2017 – Central Tax (Rate)

5.2.1 The Applicant has submitted that they have agreement with M/s. Sainath Travels for providing non-air-conditioned buses along with the drivers.

M/s. Sainath Travels has raised tax invoices to the Applicant charging 18% GST to the Applicant under SAC 9964. Applicant has further used these buses for providing transport services to its employees.

5.2.2 The applicant submits that the services of transportation of employees to and from factory by non-air-conditioned buses will be covered under "transportation of passengers by non-air-conditioned contract carriage" which is exempted from payment of tax as per SI. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017.

5.2.3 The SI. No. 15 of Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017 reads as under:

15	Heading 9964	Transport of passengers, with or without accompanied belongings, by- (a) air, embarking from or terminating in an airport located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air-conditioned stage carriage.	Nil	Nil

5.2.4 We observe that, as per clause (b) of above SI. No. 15 of Notification No. 12/2017-Central Tax (Rate), dated 28.6.2017, the services of transportation of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire is exempt from GST.

In Para 2(t) of Notification No. 12/2017-Central Tax (Rate), dated 28.6.2017, the term Contract Carriage has been defined as under:

(t) "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);

In clause (7) of Section 2 of the Motor Vehicles Act, 1988. the contract carriage has been defined as under:

"(7) 'contract carriage' means a motor vehicle which carries a 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;"

As per the above definition, Regional Transport Authority imposes certain conditions on the contract carriage permit holder for carrying contract carriage. Section 74 of the Motor Vehicles Act, 1988 which is relevant the contract carriage is produced as below.

74. Grant of contract carriage permit. –

(1) Subject to the provisions of sub-section (3), a Regional Transport Authority may, on an application made to it under section 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely: –

(i) that the vehicles shall be used only in a specified area or on a specified route or routes;

(ii) that except in accordance with specified conditions, no contract of hiring, other than anextension or modification of a subsisting contract, may be entered into outside the specified area;

(iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicles, either generally or on specified occasions or at specified times and seasons;

(iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;

(v) that, in the case of motor cabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;

(vi) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceeding specified maximum shall be charged;

(vii) that, in the case of motor cabs, a special weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;

(viii) that, in the case of motor cabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;

(ix) that the Regional Transport Authority may, after giving notice of not less than one month, –

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;

(xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused;

(xiii) any other conditions which may be prescribed.

It is to be noted that the contract carriage permit holder is responsible for the operation of vehicles as per the conditions imposed in section 74 of the Motor Vehicles Act, 1988. In this case, the applicant is not the contract carriage permit holder and thus not bound by the conditions mentioned in the section 74 of the Motor Vehicles Act, 1988.

As per the above definition of contract carriage, the passenger or passengers for hire or reward are to be engaged under a contract with them by a person with a holder of a permit of contract carriage. In this case, holder of a permit does not have any privity of contract with the passengers i.e. employees of the Applicant. Applicant has rented the buses from M/s. Sainath Travels. This transaction is in the nature of rent -a-cab service. M/s. Sainath Travels is charging his services of providing transport buses for carrying the employees @18% (9% SGST and 9% CGST). These invoices are raised to M/s. Wika Instruments India Pvt. Ltd. These services are in the nature of renting of services of transport vehicles with operators. Here, the transport service provider provides buses to M/s. Wika Instruments India Pvt. Ltd. and charges them on monthly basis fixed amount plus 18% GST under SAC 9964.

Let's further analyse the compliance to conditions for a contract carriage as provided in clause (7) of section 2 of Motor Vehicles Act, 1988. We observe that

1. Wika Instruments India Pvt. Ltd. is not a holder of permit for contract carriage,

2. It is not charging passengers i.e. employees on a time basis.

3. It does not provide service to employees from one point to another. It is plying buses through various routes so as to pick up other employees.

Thus, it is difficult to infer that the Applicant is providing contract carriage service to its employees.

Further, the hire or charter services are excluded from the said entry 15(b) of Notification No. 12/2017 CT(R) dated 28.06.2017. In view of aforesaid discussion, the transportation services provided by the Applicant to its employees are not covered by entry 15(b) of the Notification No. 12/2017 CT(R) dated 28.06.2027. The services provided by the applicant squarely fall under transport of passengers under SAC 9964 and taxable at 5% without ITC or 12%(18% w.e.f. 22.09.2025) with ITC (If ITC is not blocked by other provisions) under entry No. 8 (vi) of Not. No. 11/2017 CT(R) dated 28.06.2017 as amended from time to time.

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

5.3.1 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.

5.3.2 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).

5.3.3 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.

5.3.4 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."

5.3.5 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 said judgment is applicable in the current taxation regime and particularly to the current issue contended by the taxpayer.

5.4.6 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.

5.4.7 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.

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

5.4.1 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

5.4.2 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 of CGST Act, 2017.

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

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

Further, Explanation to Section 15 reads as below.

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

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

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

(iii) such persons are employer and employee;

.....

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

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

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

5.5.4 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 5.5.5. 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.

5.5 The applicant relied on following rulings,

(1) Maharashtra AAR in M/s. Emcure Pharmaceuticals Ltd (Order No. GST-ARA-119/2019-20/B-03 dated 04.01.2022)

(2) Maharashtra AAR in M/s. Tata Motors Ltd ((Order No. GST-ARA-23/2019-20/B-46 dated 25.08.2020)

(3) Madhya Pradesh AAR in M/s. Bhavika Bhatia (Order No. 18/2019 dated 25.09.2019)

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

5.6 The applicant further relied on following judgments.

(1) M/s. Panacea Bitotech Limited vs Commissioner Trade and taxes [(2013) 59VST 524(Del).

(2) State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966)

(3) CCE Nagpur vs Ultratech Cements Ltd as reported in 2010 (260) ELT 369 (BOM).

(3) Hon Banglore Tribunal judgment in case of M/s. Foods, Fats & Fertilizers Ltd. vs Commissioner of C.Ex. Guntur, 2009 (247) E.L.T. 209(Tri-Bang)

The facts and the provisions of the law for which the above decisions were pronounced are completely different than the current case and hence not applicable to this case.

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

ORDER

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

For reasons as discussed in the body of the order, the question is answered thus –

Question 1: Whether the passenger transport facility provided by employer to its employee, is a supply under GST, when only nominal amount is recovered form employees?

Answer: - Answered in the affirmative. GST is chargeable on the recovered amount.

Question 2: If answer of question no. 1 is negative, whether exemption under Sr. No. 15 clause (b) of Notification No. 12/2017 - Central Tax (Rate) dated 28th Jun 2017 is applicable to the Applicant??

Answer: - The exemption under Sr. No. 15 clause (b) of Notification No. 12/2017 - Central Tax (Rate) dated 28th June 2017 is not applicable to the Applicant.

Question 3: If answer of question no. 2 is affirmative, wherever ITC is available on such service, whether it will be restricted to the extent of cost borne by the Applicant (employer)?

Answer: - Input Tax Credit on transportation services availed from Transport services provider is not available u/s. 17 (5) (g) of CGST Act, 2017.

Question 4: Whether canteen facility provided by employer to its employees is a supply under GST, when only nominal amount is recovered from employees??

Answer: - Answered in the affirmative & GST is chargeable on the recovered amount and ITC is not applicable.

MEMBER ADVANCE RULING AUTHORITY MAHARASHTRA STATE MUMBAI

DIPAK 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.