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.		**AD270222007028L**
GSTIN Number, if any/ User-id		**27AABCP1225G1ZT**
Legal Name of Applicant		**M/s. PIAGGIO VEHICLES PVT LTD**
Registered Address/Address provided while obtaining user id		E-2, M.I.D.C, Katphal Road, Airport Road, Baramati, Pune, 413 133 Maharashtra.
Details of application		GST-ARA, Application No. 64 Dated 21.02.2022
Concerned officer		**PUN-VAT-E-624 Pune LTU -02**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Factory/Manufacturing, Office/Sale Office, Service Recipient, Service Provision.**
B	Description (in brief)	Applicant has entered into a contract with a third-party catering contractor to provide the cooked food to its employees in the canteen premises situated in factory premises as per the provisions of the factories act. The canteen contractor raises the invoice in the name of the applicant towards the food services provided to the employees in a particular month or period as the case may be. The applicant is making the recoveries at the subsidized rates from the employee's salary for the facility availed by the individual employee on the basis of the facility availed.
Issue/s on which advance ruling required		➢ Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. PIAGGIO VEHICLES PVT LTD,** the applicant, seeking an advance ruling in respect of the following questions.

1. **Whether GST will be payable on the recoveries made from the employees' salary towards providing the canteen facility at subsidized rates in the factory?**
2. **Whether GST would be payable on the notice pay recoveries for not fulfilling the entire notice period?**

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 Canteen Facility:

1.1.1 M/s Piaggio Vehicles Pvt Ltd, the applicant is in the business activity of manufacturing of three wheeled, two wheeled, four wheeled vehicles, its parts components, having its registered office at Plot no E-2, Baramati Industrial Estate Baramati 413133, provides canteen facility to its employees as a part and parcel of its employment arrangement vide its employment agreement executed with the employees, as per the terms and conditions of its HR Policy.

1.1.2 The applicant makes the recoveries at subsidized rates for availing the canteen facility to its employees from the employee's salary. The applicant has entered into a contract with third party service provider to provide the said facility as per the terms of the employment. The service provider raises the invoice in the name of the appliance with levy of GST at appropriate rates. The applicant in turn recovers certain portion of the valuable consideration paid to the service provider from the salary of the employee.

1.2 Recover of Notice Pay:

1.2.1 There are various instances, where the employee resigns or leaves the employment without serving the mandated notice period as per the terms of the employment contract or agreement either in full or in partial. In such cases or circumstances the applicant is entitled for the monetary consideration as per the terms, the said amount is recovered by applicant at the time of its full and final settlement for the non-compliance of the agreement or breach of the contract terms.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.1. Recovery of Canteen

2.1.1 The recoveries for providing canteen facility is not covered under the ambit of "supply" under Clause (a) of Section 7 (1) of the CGST Act.

2.1.2 Applicant is engaged only in the business of motor vehicle products and is maintaining canteen as per the provisions of the Factories Act, 1948. Even if the said canteen facility were not provided, the motor vehicle business of the

Applicant would still be continuing. Thus, providing canteen facilities to its employees is not the business of the Applicant & the same cannot qualify as supply.

2.1.3 As per clause (b) of Section 2 (17), business also includes any activity which is in connection with or incidental or ancillary to the activities covered under clause (a) of Section 2 (17) of the CGST Act. In this regard, activities which are having direct nexus with the main business can be said to be ancillary or incidental. However, canteen facility is not related to or connected with the principle business of supply of Automobile goods. Hence, the same is not incidental or ancillary to the main business of the Applicant. Thus, said canteen facility cannot be taxed under GST.

2.1.4 Without prejudice to the above, the canteen facility provided by Applicant is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.

2.1.5 The canteen facility provided by the Applicant is specifically excluded from the coverage of 'supply' under GST as per Clause (a) of Section 7 (2) of the CGST Act which begins with a non-obstante clause and overrides Section 7 (1) of the CGST Act. Entry (1) of Schedule-III covers services provided by employee to its employer in the course of employment or in relation to employment. Any activity or transaction, in this case, canteen services, which is undertaken in the course of employment or in connection with employment has been specifically excluded from the ambit of supply. By virtue of Section 7 (2) read with Entry (1) of Schedule III, the canteen facility does not amount to supply. Also, as per the Press release issued by the Ministry of Finance dated 10 July 2017 any services provided by the employer to the employees in terms of the contractual agreement entered into between the employer and employee will not be subjected to the GST.

2.1.6 Without prejudice to the above, it is settled position under GST regime that employee recoveries do not amount to 'supply'.

2.1.7 The applicant has relied on following judgments and advance rulings, which are discussed in discussion part of this order.

1. State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966)
2. Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd. [1967 (20) STC 287 Mad].
3. Panacea Biotech Limited vs. Commissioner of Trade and Taxes [(2013) 59 VST 524 (Del.)]

4. Maharashtra AAR, in M/s Jotun India Pvt Ltd (Order No. GST-ARA-19/2019-20/B-108 dated 4.10.2019)

5. Maharashtra AAR in a ruling in RE: Posco India Pune Processing Centre Pvt Ltd (Order dated 07.09.2018)

2.2 Notice Pay Recovery.

2.2.1 Applicant's Interpretation with respect to the notice pay recoveries made from the employees for not serving the notice period, are provided in the below grounds which are without prejudice to each other.

2.2.2 Without prejudice to the above, the notice pay recovery by Applicant is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.

2.2.3 The Applicant also submits that the notice pay recovery is specifically excluded from the coverage of 'supply' under GST as per Clause (a) of Section 7 (2) of the CGST Act.

2.2.4 Entry (1) of Schedule-III covers services provided by employee to its employer in the course of employment or in relation to employment. Thus, any activity/transaction undertaken in course of employment or in connection with it has been specifically excluded from the ambit of supply.

2.2.5 As per the "Employment Agreement", notice pay recovery is merely a recovery of the salary paid by the Applicant to its employees. Therefore, the same is an integral part of the salary benefits and deduction which is provided in the course of employment services. Hence, GST will not be payable on such recovery made by the Applicant.

2.2.6 In the case of GE T&D India Limited [2020 (1) TMI 1096], the Hon'ble Madras High Court held that the notice pay recovery will not attract service tax as it a part of the employees' salary.

2.2.7 Further, the Hon'ble Tribunal in the case of HCL Learning Ltd. [2019 (12) TMI 558] has also held that notice pay recovery is not liable to service tax.

2.2.8 In the above case laws notice pay recovery has been held as a part of the salary only and not as any separate transaction and should be treated as a deduction in the course of employment services only. Since, services provided by the employee is not liable to GST, therefore, tax cannot be applied on notice pay recovery which is deducted in the course of employment services. Reliance is placed on the Tribunal's decision in the case of Uniparts India Ltd V/s. Commissioner (Appeals), C.Ex. Meerut, [2020 (33) G.S.T.L. 233 (Tri – All.)

2.2.9 The applicant also relies on the decision of the Hon'ble Supreme Court in Sundaram Finance Limited v State of Kerala [AIR 1966 SC 1178], as well in

the case of Ishikawajima-Harima Heavy Industries v CIT in 2007, 288 ITR 408, 440 (SC), wherein the Hon'ble Supreme Court laid the principle for interpreting the contract.

2.2.10 Further, Applicant submits that, by collecting notice pay for defaults of the employees under the Employment Agreement, it cannot be said to have provided the service of 'agreeing to the obligation to tolerate an act'. The Madras High Court in the case of GE T&D (supra) has also held that the notice pay recovery cannot be equated with tolerating an act.

2.2.11 Similarly, reliance can also be placed on Order-in-Original No. 47/ADC/ST/GZB/2015-16 dated 30.03.2016, passed by the Ld. Additional Commissioner, Central Excise & Service Tax, Ghaziabad in the case of Glaxo Smithkline Consumer Healthcare Ltd.

2.2.12 Therefore, based on the above cited cases, the notice pay recovery collected by the Applicant are in the nature of penalty, and there is no obligation on the part of the Applicant to tolerate the act of non-compliance by the employees. Hence, the notice pay recovery does not amount to tolerate an act to qualify as supply of service and hence, GST cannot be levied.

2.2.13 The notice pay recovery made by Applicant does not come qualify as "consideration" and hence, does not come under the ambit of "supply" under Clause (a) of Section 7 (1) of the CGST Act.

2.2.14 As per Section 7 (1) (a) of CGST Act, any activity of supply of goods/services which is done without any consideration would not qualify as supply under Section 7 (1) (a). Only amounts received towards the supply of goods/ services can be treated as consideration. Notice pay recovery is not a consideration which is being received by the Applicant towards the activity carried out by the Applicant. Notice pay recovery should be treated as a penalty for mere non-compliance of the terms of the agreement only.

2.2.15 Also, in the service tax regime, it was settled position that any amount charged towards any default should not be treated at par with consideration under service tax regulations. The said analogy would equally be applicable in respect of the definition of consideration provided in the CGST Act.

2.2.16 In the present case, the notice pay is not recovered by the Applicant in lieu of or in return for any activity performed and therefore, cannot be treated as a consideration for performance of any activity. Since, there is no consideration involved in the notice pay recoveries, the said transaction will not amount to supply as per Section 7 (1) (a) of the CGST Act and hence, no GST would be payable by the Applicant on this transaction.

2.3 Notice pay collected by the Applicant from its employees are in the nature of compensation for damages for breach of contract.

2.3.1 The Applicant submits that upon breach of contract, the aggrieved party is entitled to claim compensation for the breach of contract. Such compensation is a legal and statutory right provided under Section 73 and 74 of the Indian Contract Act, 1872, and even without any specific clause in the contract for the damages or compensation payable upon the breach of contract, the party suffering such breach has the statutory right to claim damages or compensation from the party who has broken the contract.

2.3.2 Notice pay recovered by the Applicant can at best be treated as compensation towards the loss of the Applicant for the breach of the contract by the employee. In the present case, the penalty imposed by the employer on its employee is a part of the contract which is a legal document and is binding on both the parties. The nature of notice pay recovery is the compensation for the loss incurred by the employer due to breach of the terms of the agreement, which cannot be equated with consideration under the GST Regulations. Hence, there cannot be a supply to attract GST.

2.4 Without prejudice to the above, the notice pay recovery does not amount to "supply" under Section 7 (1) (c) read with Schedule I to the CGST Act.

2.4.1 The Applicant submits that the transaction of notice period recovery does not amount to 'supply' and hence, GST is not applicable.

2.4.2 In view of the provisions of Section 7 (1) (c) and Schedule I of the CGST Act, a supply between related person even without consideration would tantamount to supply and GST would be applicable. However, such supply should be in course or furtherance of business. It is submitted that the notice pay recovery does not amount to 'business' of the Applicant, as the Applicant is an Automobile company involved in the business of developing, manufacturing and marketing a broad range of two and three wheeled motor vehicles and parts thereof.

2.4.3 The definition of service under GST Laws is very wide. In order to qualify as service, the presence of activity is required, and the meaning of 'activity' is mentioned in the CBEC Education Guide.

2.4.4 Therefore, in order to qualify as service, there has to be certain activity which is being carried out or any work which is being performed. In absence of such an act or deed, there cannot be any activity. Accordingly, in case of lack of activity involved in any transaction, as in the subject case, the said transaction

does not amount to service. The said analogy would equally be applicable in respect of the definition of service provided in the CGST Act.

2.4.5 Hence, notice pay recovery cannot be treated as 'supply' even under Section 7 (1) (c) read with Schedule I to the CGST Act.

3. CONTENTION – AS PER THE CONCERNED OFFICER:

3.1 For the question raised above(a) whether the GST will be payable on the recoveries made from the employee's salary towards canteen facilities- M/s. Piaggio Vehicles Pvt. Ltd. is engaged in business activity of manufacturing of Two-Wheeler, Three-Wheeler, parts for the vehicles and situated at the Baramati Industrial estate, Baramati, Dist-Pune. The company provides the canteen facility to its employee as a part and parcel of its employment arrangements while it's employment agreement executed with its employees.

The applicant has entered into a contract with a third party service provider to provide the said facility as the terms of the employment. The service provider raised the invoice in the name of the applicant and levied the GST.The applicant makes recoveries at the subsidized rates for availing the canteen facilities to its employees from the employee's salary. Means applicant recover some part of the canteen services from his employees and bear some cost himself.

Remark: 1. Applicant providing canteen services to his employees under the provision of 'The Factories Act,1948 ' and 'The employment agreement executed with the employees'. Means providing a canteen facility is a 'statutory obligation' to the company. Applicant engaged in the manufacturing of motor vehicles and providing canteen facilities is not incidental or ancillary to the activities covered under section 2(17) of the CSGT ACt,2017. Hence our opinion this is not a "supply" under 7(1) of the CGST Act,2017.

3.2 When the employee resigns or leaves the employment without serving the mandated notice period as per the terms and conditions of employment contract or agreement either in full or in part. In such circumstances the applicant is entitled for the monetary consideration as per the terms, the said amount is recovered by the applicant at the time of full settlement for the non-compliance of the agreement or the breach of the contract.

Remark: Refer Circular No. 178/10/2022 (GST) dated 03/08/2022 para 7.5 is reproduced here.

> *7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in*

disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Hence, we are of the opinion of this transaction is not taxable under the GST Act,2017.

4. HEARING

Preliminary hearing in the matter was held on 12.04.2022. Mr. Rasik Patel, (Tax Consultant), Mr. Suhas Padhye (Tax Consultant) appeared and requested for admission of the application. Jurisdictional Officer Mr. Kirankumar Dhaware, Dy. Commissioner of State Tax (DC-PUNE-VAT-E-624, LTU-2) also appeared.

Virtual final hearing is held on 15.10.2025. The authorised representative of the applicant, Mr. Suhas Padhye (Tax Consultant) attended the hearing and reiterated the written submission made by the applicant. The Jurisdictional Officer was absent. Case is heard.

5. OBSERVATIONS AND FINDINGS:

5.1 Taxation of recovery of canteen 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 facility to its employees is taxable under the GST laws.

(1) M/s. Piaggio Vehicles Pvt. Ltd. (hereinafter referred to as 'Applicant') is a company having its registered office and works at E-2, & F-1, MIDC Kathpal Road, MIDC Area, Baramati-413133, District Pune, 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) The said 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 service 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 expenses incurred by the Applicant from its employees.

(4) Applicant has contended that the recovery of amounts from employees for canteen 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 services are discussed as below.

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

(1) We observe that the Applicant has argued that he is carrying out the activity of manufacturing of two wheeled, three wheeled and four wheeled motor vehicles and spares thereof. The Applicant has taken view that activities which are having direct nexus with the main business can be said to be ancillary or incidental. According to him canteen facility cannot be said to be ancillary or incidental.

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, wager 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 services as his principal activity. No doubt his principal activity remains as activity of manufacturing of two wheeled, three wheeled and four wheeled motor vehicles and spares thereof, which is covered by clause 'a' of above definition. Let's see whether the activity of supply of canteen services, falls under the definition of business, as extracted above. Clause (b) mentions that any activity or transaction incidental or ancillary to principal activity would also be included in 'business'.

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

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

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

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

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

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

- In addition to something else but not as important.

Cambridge Dictionary: providing support or help.

Dictionary.com - supporting, secondary, subsidiary

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

(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 services, falls within the definition of "business".

(4) Thus, as discussed above, the activity of supply of canteen 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 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 as being supplied by the Applicant to employees for a consideration, although at subsidized rates. The Applicant pays the total consideration for the supply of these services to the canteen service provider and the Applicant in turn supplies this service to their employees.

(2) It is an undisputed fact that the money consideration charged, although at subsidized prices, for the supply of canteen 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 canteen services to the employees of the Applicant. They are: -

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

ii) Supply of this service by the Applicant to their employees.

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

(5) Similarly, in the second transaction, the Applicant is supplying this service to their employees for which the Applicant is receiving consideration, although at the subsidized rate, from their employees. The service provider invoices the applicant for the entire services. He charges the consideration along with GST thereon. There is no privity of contract between the service provider and the employees. It is the Applicant which is providing canteen 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 canteen services by Applicant to the employees. Thus, there is supply of canteen services from the Applicant to the employees, u/s. 7 (1) of CGST Act, 2017.

5.1.4 Taxability of Supply of Canteen 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 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 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.

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 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 to the value charged to the employees. Thus, the recoveries made from the employees for canteen services are liable to levy of tax.

(4) If incidental of ancillary supply of goods or services such as canteen services by the employer to employee were to not fall under 'business', it would not be necessary to provide respite to 'supplies by employer to employees given as perquisite' from falling under 'supply' by taking recourse to schedule III. That is, if a transaction or activity is not a supply u/s 7(1) of CGST Act, then there would not be necessity to place such a transaction u/s 7(2)(a) for deeming it to be neither supply of goods nor supply of services. Hence, as discussed in Para 5.1.2 and 5.1.3, Applicant's activity of supply of canteen 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 provided by the Applicant to the employees.

5.2 Value in respect of which canteen services are taxable.

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

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

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

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

5.2.3 The activity of provision of canteen services to the employees are in the course of business (as detailed in paras above). Consideration is 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 recognized partners in business;
(iii) such persons are employer and employee;

.....

As per Section 15(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 exempt 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.

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

5.2.5 The applicant has contended that, recovery from employee would not qualify as 'supply' under GST Act and not taxable. He placed reliance on following rulings,

(1) Maharashtra AAR, in M/s Jotun India Pvt Ltd (Order No. GST-ARA-19/2019-20/B-108 dated 4.10.2019)

(2) Maharashtra AAR in a ruling in RE: Posco India Pune Processing Centre Pvt Ltd (Order dated 07.09.2018)

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.

5.2.6 The applicant further relied on following judgments.

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

(2) Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd [1967(20) STC 287 Mad].

(3) Panacea Bitotech Limited vs Commissioner Trade and taxes [(2013) 59VST 524(Del).

The facts and the provisions of the law for which the above decisions were pronounced are completely different than the current case.

5.3 Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

5.3.1 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."

5.4 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)

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

Question 1: Whether the GST will be payable on recoveries made from the employees' salary towards providing canteen facility at subsidized rates in the factory?

Answer: - Answered in the affirmative. GST would be payable on the revered amount and no ITC is available.

Question 2: Whether the GST would be payable on the notice pay recoveries for not fulfilling the entire notice period?

Answer: - Answered in the Negative as per Circular No.178/10/2022 GST dated 03.08.2022.

MEMBER ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

DIPAK GOJAMGUNDE
(MEMBER)

Himani Dhamija

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.