

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.	AD2711210059957
GSTIN Number, if any/ User-id	27AAACK5918J1ZC
Legal Name of Applicant	M/s KSB Limited
Registered Address/Address provided while obtaining user id	Office No. 601, Runwal R-Square, LBS Marg, Mulund (West) Mumbai
Details of application	GST-ARA, Application No. 48 Dated 22.11.2021
Concerned officer	PUNE-I, DIVISION-II, PIMPARI, RANGE-II
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	KSB Limited ('the Applicant' or 'the Company') is engaged in the business of manufacturing and selling of liquid handling pumps for various applications.
Issue/s on which advance ruling required	<ul style="list-style-type: none">➤ 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.



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 KSB Limited**, the applicant, seeking an advance ruling in respect of the following questions.

- 1. Whether GST would be applicable on canteen facility provided by a KSB Limited to its employees using a third-party canteen services provider?**
- 2. In case GST is applicable on Canteen services provided by KSB to its employees, whether GST would be applicable if KSB Limited does not recover any amount from employee for providing canteen facility?**

3. In case GST is applicable on Canteen services provided by KSB to its employees, whether GST would be applicable if KSB Limited recovers from employee's part or whole of the cost charged by the canteen service provider to KSB?

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, 2017 and MGST Act, 2017.

1. FACTS AND CONTENTION - AS PER THE APPLICANT

1.1 KSB Limited ('the Applicant' or 'the Company') is engaged in the business of manufacturing and selling of liquid handling pumps for various applications.

1.2 The Applicant's Registered office is located at Office No. 601, Runwal R-Square, LBS Marg, Mulund (West) Mumbai - 400 080 and manufacturing facility is located at 5 different locations in Maharashtra.

1.3 Applicant is registered under Central Goods and Services Tax Act, 2017, Maharashtra Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax, 2017 holding GSTIN 27AAACK5918J1ZC.

1.4 The Applicant operates its business *inter-alia* from below mentioned locations in the State of Maharashtra and has manufacturing facilities (factories) at these locations: - Pimpri, Chinchwad, Shirwal, Vambhori, Nasik

1.5 In terms of Section 46 of Factories Act, 1948, it is mandatory for factories having more than 250 workers, to provide canteen facility to its employees. Therefore, the Applicant has provided canteen facility to its employees.

1.6 In respect of certain locations viz. Shirwal, Vambhori and Nasik, the Applicant has appointed a canteen service provider (hereinafter referred as 'vendor') for managing the canteen facility. Vendor is *inter alia* responsible for arranging and providing below mentioned services:

- Providing Breakfast, Tea, Snacks, Lunch, Dinner
- Provide all related cleaning and hygiene services like
 - Cleaning Utensils, Kitchen Area, Dining Area etc.
 - Pest Control at regular intervals
 - Similar other services

For providing these catering and related services, vendor charges at fixed rate per meal per employee. Sample contract copy with the vendor is attached with submission.

1.7 In respect of certain locations viz. Pimpri and Chinchwad, the Applicant was earlier managing canteen facility on its own i.e., the Applicant employed staff



who runs such canteen facility. Canteen staff used to purchase groceries, other kitchen supplies (utensils etc.) and provide food to employees of the Company.

1.8 However, from September 2021, the Applicant has appointed third party vendor even in respect of these locations. Now, canteen facilities at all the locations are managed by third party vendors. The applicant incurs the expenditure for canteen of approximately INR 2200 to INR 2500 per month per employee.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW


A. Canteen facility is not provided in the course or furtherance of business: -

2.1 The Applicant submits that the providing canteen facility to its employees does not amount to supply of services as per the applicable provisions of Central Goods and Services Tax Act, 2017 (CGST Act') and Maharashtra Goods and Services Act, 2017 ('MGST Act').

2.2 At the outset, the Applicant would like to submit 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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the 'CGST Act'.

2.3 In terms of Section 9 of CGST Act, GST is levied on 'Supply'.

2.4 Section 7(1) of the CGST Act provides an inclusive definition of the term 'Supply' as below:

- 
- a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person **in the course or furtherance of business**,
 - b) import of services for a consideration whether or not in the course or furtherance of business, and,
 - c) the activities specified in Schedule I, made or agreed to be made without a consideration;

2.5 On the basis of above, for an activity to qualify as supply, it is *inter alia* required to be made in the course or furtherance of business.

2.6 The expression '**in the course or furtherance of business**' has not been defined in the GST law. However, in the common parlance, "**in the course of business**" would mean "while conducting the business or the business activity".

2.7 "In furtherance of business" would refer to all activities that would support the business being run by the Applicant, i.e. every activity that will take forward the business of manufacturing and selling pumps. It is therefore necessary to examine if providing canteen facility is an activity which is integrally connected to the business of the Applicant.

2.08 The term 'Business' has been defined under section 2(17) of the CGST Act.

2.09 The Applicant submits that only sub-clause (a) and sub-clause (b) of the above definition would be required to be analyzed in the present case. However, the other clauses of the definition would not be applicable in the present case.

2.10 Clause (a) provides that any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit shall be included in the definition of business.

2.11 The Applicant submits that they are engaged in the business of selling pumps for various uses and applications. Thus, in Applicant's view, 'Business' as envisaged in the definition provided under section 2(17), includes primary business activity of manufacturing and selling pumps.

2.12 Further, Object clause of Memorandum of Association of the Applicant clearly states the Company is set up for the purpose of manufacturing and selling of pumps.

2.13 The Company is not set up with an intension to provide canteen facility. Providing canteen facility is not a business activity of the Applicant. It is merely employee welfare activity. Since the employee spends 8 hours or more at the factory / premises of the Applicant, the Applicant provides him/her with food including snacks and meals besides beverages like tea/ coffee.

2.14 Further, it is submitted that the Applicant is incurring approximately an expenditure of INR 2200/ to INR 2500/- per employee per month in respect of canteen facility. Therefore, the activity of providing canteen facility is not a profit-making business activity but in fact is an expense item for the Applicant. Had it been a business activity, the Applicant, prudently, would have recovered amount to cover all its expenses and would have in fact earned profits. However, in the instant case, the Applicant is bearing all such canteen expenses itself. Therefore, it is amply clear that it is not a business activity of the Applicant.

2.15 The Applicant submits that since it is not engaged in the business of canteen services, facilitation of canteen services between employees and vendor cannot be regarded as 'business' or 'supply of services in the course or furtherance of business'.

2.16 The above view is also supported by the Advance Ruling pronounced by the Maharashtra Authority for Advance Ruling (AAR¹) in case of M/s. Posco India Pune Processing Center Private Limited (2019-TIOL-25-AAR-GST). In this case the issue was whether premium amounts recovered from employees for the group insurance provided to employees and their parents was liable to GST.

2.17 It was observed by the AAR that, *"They (M/s Posco) have already submitted that they are primarily engaged in the distribution of steel coils and also perform low value-added processing function in respect of some of the traded goods based on customer's requirement. The Applicant has brought nothing on records to show that they are an insurance company and registered with such authorities."*

2.18 It was also observed that, *"the applicant is paying premium towards mediclaim taken for their employees and the parents of such employees. There is no way that the proportionate amount recovered from the employees can be treated as amount received for services rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents. Applicant is not rendering any service of health insurance to their employees. Hence, recovery of parents' health insurance expenses from employee does not amount to supply of service' under Section 7 of the CGST Act, 2017."*

2.19 In view of the above, the Applicant submits that the canteen facility provided to employees cannot be regarded as supply of services made in the course or furtherance of business. Hence, no GST should be levied on canteen facility provided by the Company to employees.

2.20 Further, sub-clause (b) of the definition includes any transaction in connection with or incidental or ancillary to the sub-clause (a).

2.21 The terms incidental or ancillary have not been defined in the CGST Act. In the absence of a definition, recourse may be taken to general understanding of the terms. Incidental and ancillary refers to something that is connected to the main but is little lesser in importance but none the less is an important part that cannot be severed from the main part.

2.22 Madhya Pradesh High Court in the case of Keshaoodeo Shivprasad vs. Union of India (1992 (61) E.L.T. 404) (M.P.) (enclosed as Annexure C) explained the



meaning of term 'Incidental or ancillary process' in the context of the term manufacture under Central Excise Act as - "*Incidental or ancillary process must be an integral and inextricable part of produce or manufacture resulting in presenting a 'finished' or 'manufactured product bearing a distinct name.'*"

2.23 In the case of State of Tamil Nadu vs Binny Ltd AIR 1980 SC 2038, the Supreme Court held that "*a thing is incidental to another if it merely appertains to something else as primary*".

2.24 Ancillary on the other hand refers to aiding or subordinate; that which aids or promotes the proceeding as the principal (Concise Law Dictionary by P. Ramanatha Aiyar, sixth Edition)

2.25 In view of the above, it can be inferred that an incidental or ancillary transaction can be one which is integral to the main business of the company, though little bit lesser in importance to the primary. Selling a plastic pipe with the pump or providing installation services of the pump could fall in the nature of activities incidental or ancillary. The Applicant submits that, on the other hand the canteen facility for the employees cannot be categorized as an incidental or ancillary activity to the business of selling pumps as it is not at all integral to the main business of the Company i.e. selling pumps.

2.26 Therefore, in terms of the definition of business u/s 2(17) of the CGST Act, canteen facility provided is definitely not an activity done in the course of or in furtherance of business as it is not the business in to provide canteen services nor it is incidental or ancillary to the activity of manufacturing and selling pumps as explained in the previous para. Therefore, it cannot be treated as Supply and no GST can be charged on it.

2.27 Further, Central Board of Indirect Taxes and Customs, in Press Release dated 13 July 2017, had clarified that an activity that cannot be said to be in the course or furtherance of business does not qualify to be a supply per se.

2.28 Reliance is also placed on ruling by Gujarat Appellate Authority for Advance Ruling in case of **Anneal Pharmaceuticals Private Limited (GUJ/GAAR/APPEAL/2021/07 dated 08 March 2021)**. In this case, it was held that it is a canteen service provider who has been providing these services. The Company is not carrying out the said activity for any consideration (i.e., collecting employee's portion of the amount and handing over it to the canteen service provider). Such transactions are without involving any supply from the Applicant to its employees, and therefore, GST is not leviable thereon.



2.29 Further, reliance is also placed on Advance Ruling in case of **Tata Motors Limited, (GUJIGAAR/R/39/2021 dated 30 July 2021)**. In this case, the applicant was collecting nominal charges from employees. Such charges are paid to canteen vendor and the applicant was not retaining any margin. The activity carried out by applicant was without any consideration. The applicant was not engaged in the business of providing canteen facility. In this case, it was held that GST should not be applicable on such recovery of nominal amount from employees for using canteen facility.

2.30 In view of the above, even in case the Company recovers nominal or full amount from employees on account of canteen facility and pays the same to vendor after adding its contribution then the same should be treated as supply and GST should not be levied on the same.

2.31 Further, in case the Company does not recover any amount from employee on account of canteen facility and bears the entire canteen expenses then the same should not be treated as supply as it is not business activity of the Company.

2.32 Therefore, the applicant believes that irrespective of whether any amount (nominal or full) is recovered from the employee or where no amount is recovered, providing canteen services to employees should not be subject to GST in the hands of KSB.

2.33 In terms of explanation inserted u/s section 15 of the CGST Act, employer and employee are related persons. Further, Schedule I to CGST Act prescribes certain activities which are treated as supply even if made without consideration.

Clause 2 of Schedule I covers the following entry:

"Supply of goods or services between related persons, when made in the course or furtherance of business"

As already explained above, activity of providing canteen facility to employees is not in the course or furtherance of business. Hence, the activity will not fall under the above clause.

2.34 Further, proviso to the above clause states that:

"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"

The applicant believes, without admitting, that even if for the sake of argument, it is accepted that providing food/ tea etc. is in the nature of a goodwill

gesture/gift, and therefore liable to GST as supply being a specified activity without consideration. The Company would like to submit that value of canteen facility provided by the Company does not exceed INR 50,000 per employee in a financial year (the cost is less than Rs 2500 per month or Rs 30,000 per annum). Therefore, even if providing canteen facility is treated as gift, no GST would be applicable as amount does not exceed prescribed limit i.e. INR 50,000/- per employee. Basis above, provision of canteen facility to employees should not be taxable.

2.35 It is imperative to note that in terms of Section 46 of Factories Act, 1948 providing canteen facility is mandatory for factories employing more than 250 workers. In this regard, it is submitted that in case of the Applicant, more than 250 workers are employed in factories. Therefore, it is a statutory obligation for the Applicant to provide such canteen facility in factories. Relevant extract of provision is mentioned below:



"Section 46 - The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers."

2.36 Having said that canteen service cannot be treated as activity relating to a business or ancillary to business. Even if canteen facility is not provided, business of manufacturing of pumps will not be hampered. It is merely employee welfare activity.

2.37 In this regard, reliance is placed in case of Commissioner of Central Excise, Nasik v/s Mahindra Sona Limited 2008 TMI 4012 CESTAT, Mumbai. In this case it was held that Catering services cannot be treated as an activity relation to business and even if it obligatory on the part of the assessee as per requirement of Factories Act, 1948 it is in the nature of welfare activity and not an activity relating to business.

2.38 It is submitted that GST is consumption-based taxation law. Presently, the impact of GST to the Applicant with respect to canteen facility is as below:

Present scenario

➤ Input side

✓ Canteen vendor charges GST at the rate of 5 percent;

✓ The above GST is not available as input credit to the Applicant in terms of Notification

20/2019 - Central Tax (Rate) dated 30 September 2019

- ✓ Hence, the tax cost to the applicant is 5 percent
- Output side (i.e., hypothetically assuming that GST is applicable)
 - ✓ If the applicant becomes liable to discharge GST on the canteen facilities provided to employees, then the rate of GST applicable is 5 percent;
 - ✓ Further, employees being end consumers of this services will not be able to claim input credit of same;
 - ✓ Hence, the tax cost is 5 percent in the supply chain

Both the above put together, the tax cost suffered in the above supply chain would be 10 percent (5 percent on input to the Applicant plus 5 percent on the output) which definitely is not the intention of the Government when it put such food related services under lower rate of tax.

Scenario when employee directly procures the canteen services

In case the exact same services are directly procured by employees from the canteen vendor then the GST cost would be 5 percent i.e., the GST charged by the vendor to employee

2.39 It is noteworthy that same transaction having different GST tax cost is not the intention of law.

The Applicant is not provider of service rather it is receiving services.

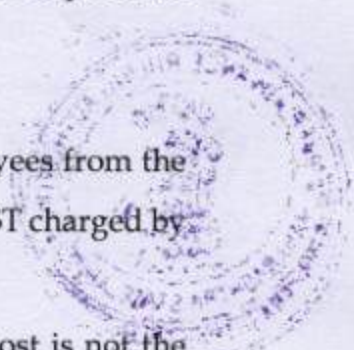
2.40 Canteen services are not actually provided by the applicant. In this case, service provider is a vendor. Therefore, there is no supply of canteen services from the applicant to its employees. GST should not be applicable on the same.

2.41 It is submitted that Applicant is not provider of canteen services rather it is receiver of canteen services provided by vendor. Employees are user of such services.

2.42 In this regard, reliance is placed in case of Advance Ruling in case of **Tata Motors Limited GST ARA- 23/2019-20/B-46 (Annexure H)**. Issue in this case was to decide on applicability of GST on recovery for transport charges made from employees. In this case it was held that while facilitating bus transportation services, the Company does not act as service provider. Rather it is a service recipient and employees are users of such services. Therefore, no GST shall be levied on nominal transportation charges recovered from employees.

Conclusion

In view of the above, the Applicant contends that.



2.43 GST should not be charged on provision of canteen facility to employees as canteen facility is not provided in the course or furtherance of business. It is also neither ancillary nor incidental to the main business activity. Various Advance Rulings support this view.

Alternate arguments:

2.44 Assuming without admitting that it is a supply of canteen services to employees, in case where there is no recovery from employees there should be no GST especially when it is a statutory obligation under Factories Act to provide canteen service to the employees. Even if it is treated as transaction between related parties in the nature of a gift, in terms of Schedule 1 of CGST Act, such transaction cannot be taxed as amount of expenses for canteen is less than INR 50000 per employee per year.

2.45 Even where there the Applicant decides to recover any amount from the employee and pay it to the catering services provider, it is merely acting as a link between the employee and the caterer and not providing any service to the employees. Services are provided by the caterer and used by the employee and caterer has already discharged GST on full consideration received from KSB for such services.

2.46 It is a welfare activity and not a business activity. Therefore, it cannot be treated as supply. In terms of Factories Act, 1948, it is mandatory for the Applicant to provide such canteen facility and CESTAT rulings support that such activity cannot be considered to be in relation to business.

2.47 The Applicant is not provider of canteen services. Rather it is a recipient of service and employee is user of such service.

3. CONTENTION - AS PER THE CONCERNED OFFICER:

3.1 M/s. KSB Pumps Ltd., Pimpri, Pune 411018 (the applicant; hereinafter referred to as "applicant"), falls under the Jurisdiction of Range - II, Division - II (Pimpri), Central GST, Pune-I Commissionerate are engaged in the business of manufacturing and selling of liquid handling pumps. They have four manufacturing units at different locations and different cities. As per Section 46 of the Factories Act, 1948 it is mandatory on them to provide canteen facilities to their employees Therefore, they are providing canteen facilities to their employees. As per their submission that to give canteen facility to their employee they have given canteen contract to third person who runs the canteen and give facility to their employee. That third person is charging them sum amount per employee and the applicant is bearing the expenditure. In short, the applicant is not running the canteen through appointed persons. Earlier, their some units were running the canteen at their own. They had appointed regular employee and



purchasing of grocery etc required to run the canteen were done by their employees. Now they have given contract to other outside person (contractor) and the said outside contractor on behalf of them giving canteen facility to their employees. For providing this facility, the said outside contractor is charging applicant sum charges per person as per agreement and the applicant is paying the same and it is expenditure for their company. They have also submitted that they are not recovering any amount from their employees. This is the admitted fact mentioned by the applicant in their application. The applicant is not in a position in which category their services falls and therefore they have raised questions in Advance Ruling Authority which are mentioned in ARA-01 application.

3.2 It is seen from the above that the applicant has given canteen contract to third person (Canteen Contractor) and the said canteen contractor is charging applicant sum amount per employee as per the contract made between third party and applicant. As per Factory Act, the applicant is required to provide canteen facility to their employees and therefore, they have made arrangement and given contract to independent caterer. Thus, the independent caterer (third party) is providing catering services to applicant for which they are charging some amount to the applicant. This fact is mentioned by the applicant in their application. In this situation the applicant had made arrangement to provide canteen facility to their employee. Applicant is paying catering charges per employee to the independent third-party caterer and the transaction between applicant and third-party caterer is principal to principal. The third-party caterer on behalf of the applicant is providing service to the employees of the applicant for which he is not recovering any amount from the employees but the amount per employee is being recovered from the applicant. In this situation outside caterer is service provider to the applicant as the consideration is received from the applicant. Applicant has not given any service to the employees but provided canteen facility to their employee by making an arrangement without any cost and hence in this situation the applicant cannot be held as service provider. Further, no consideration is received by the applicant from their employee therefore, no GST payable by them. The third-party caterer is giving service to the applicant and therefore he is liable to pay GST.

3.3 In respect of reply to question no. 3. "In case GST is applicable if applicant recovers from employees, whether GST would be applicable if applicant recovers from employees part or whole of the cost charged by the canteen service provider to applicant?

The Term 'Outward supply', has been defined in Section 2(83) of the CGST Act, 2017 as below;



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

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

- a. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit
- b. any activity or transaction in connection with or incidents or ancillary to clause (a):

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

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

supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration."

3.6 Ever though, there is no profit on the supply of food to its employees, there is a "supply". as provided in Section 7(1)(a) of the CGST Act, 2017. Hence, the applicant would definitely come under the definition of "Supplier", as provided in sub-section (105) of Section 2 of the CGST Act, 2017.

The Term 'consideration' is defined in Section 2(31) of the CGST Act, 2017, which is extracted below:

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

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

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

Since the application recovers the cost of food from its employees, there is 'consideration', as defined in Section 2(31) of the CGST Act, 2017 and therefore, taxable as a supply under GST. The same has been held by the Authority of Advance Ruling, Ahmedabad in case of M/s. Amneal Pharmaceuticals Pvt. Ltd (2021-IOL-28-AAR-GST)."

The Assistant Commissioner, Central Tax, Division-II (Pimpri), Pune-I Commissionerate has made additional submission vide letter dated 27.10.2025, as follows,

3.7 As per their agreement between the applicant M/s. KSB and its vendor, it is mentioned that M/s. KSB as Company is engaged in the business of providing catering services. It is observed that as per GSTIN registration, the applicant has declared themselves as manufacturer of goods of HSN CTH 73 & 84 and not as service provider of Catering services.

3.8 Further, at Para 6 of the said agreement it is mentioned that_

"For the Services rendered by the Service Provider, the company agrees to pay the service provider at the monthly rates stipulated in the "Annexure B (Actual found in Annexure C) for the said services. Service Tax, if applicable will be paid extra"

As per from Point No. 07 to 14 of Agreement, all liability will be of service provider for Catering Services.

3.10 Further, as per the sample invoice issued by vendor, the HSN/SAC is declared as 996331 which is applicable for Restaurant/cafes and not canteen services. The correct HSN Code for Canteen services is 996333.

4. HEARING

Preliminary hearing in the matter was held on 15.02.2022. Mr. Mohammad Poonawala CA, Smt. Ankita Shah CA, & Mr. Madhur Haralkar CA had attended while Jurisdictional Officer was not available.

The application was admitted and called for final hearing on 17.09.2025. Shri Mohammad Poonawala (CA), Shubham Modani (CA) authorized representative, appeared and made oral and written submissions. Jurisdictional Officer Shri Harishchandra Yadav, Assistant Commissioner of CGST appeared. We heard both the sides.

5. OBSERVATIONS AND FINDINGS:

5.1 Taxation of canteen services provided to 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 on following questions.

- i) Whether GST would be applicable on canteen facility provided by KSB Limited to its employees using third party canteen services provider?
- ii) In case GST is applicable on canteen services provided by applicant to its employees, whether GST would be applicable if applicant does not recover any amount from employee for providing canteen facility?
- iii) In case GST is applicable on Canteen services provided by applicant to its employees, whether GST would be applicable if applicant recovers from employees' part or whole of the cost charged by the canteen service provider to applicant?

5.1.2 KSB Limited, (hereinafter referred to as 'Applicant') is a company having its registered office located at office No. 601, Runwal R-Square, LBS Mar, Mulund (West), Mumbai-400040. The applicant is engaged in the business of manufacturing and selling of liquid handling pumps for various applications. The applicant is registered under the GST Act and holding GSTIN 27AAACK5918J1ZC.

5.1.3 The applicant has submitted 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 services provider. On going through the Factories Act, 1948, we find that as per Section 46 of the said Act, a canteen or canteens shall be provided and maintained for the use of the workers. Further, as per Rule 85 of the Maharashtra Factories Rules, 1963, it has been mandated that the food, drink and other items served in the canteen shall be sold on non-profit basis and in computing the charges to be made for such food, drink or other items the following items shall not be taken into consideration i.e.

- a) the rent for the land and building;
- b) the depreciation and maintenance charges of the building and equipment provided for the canteen;
- c) the cost of purchase, repairs and replacement of equipment including furniture, crockery, cutlery and utensils;
- d) the water charges and other charges incurred for lighting and ventilation and
- e) the interest on the amounts spent on the provision and maintenance of furniture and equipment provided for the canteen.

Thus, we find that the said Act and Rules do not mandate supply of free food by the factory to the employees. All that is mandated is provision of canteen



facility and a restriction on the amount that can be recovered from the employees i.e. the food should be sold on non-profit basis.

5.1.4 It is seen from the copy of invoice submitted, the applicant has engaged third party service provider M/s. FF Services Private Limited, who are providing the said canteen facilities to the Applicant. Since, the said service is provided by the third-party service provider to the Applicant, the service provider is raising their invoices with applicable GST to the Applicant. The Applicant pays the consideration to the third-party service providers for the said canteen facilities.

5.1.5 Applicant has contended that providing canteen facility to its employees is not in the course or furtherance of business. Providing canteen facility to its employees does not amount to supply of services as per the applicable provisions of Central Goods and Services Tax Act, 2017 (CGST Act) and Maharashtra Goods and Services Act, 2017 ('MGST Act'). According to him, the 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.

5.1.6 (1) 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'. Let us analyze the Clause '(a)', Clause '(b)' and Clause '(c)' of the above definition.

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) We observe that the Applicant is not carrying out supply of canteen services as his principal activity. No doubt his principal activity remains as manufacture and supply of liquid handling pumps for various applications 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

(3) 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 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 sale of liquid handling pumps for various applications.



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

(5) 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.

5.1.7 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. The Applicant pays the total consideration for the supply of these services to the canteen service provider and the Applicant in turn supplies these services to its employees.

(2) 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 canteen services by the canteen service provider to the Applicant and

ii) Supply of canteen services by the Applicant to its employees.

(3) In respect of the impugned 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 on which the Applicant has been paying GST to the service provider.

(4) Similarly, in the said transaction, the Applicant is supplying the canteen services to its employees. The service provider invoices the applicant for services. He charges the consideration along with GST thereon. There is no privity of contract between this third-party service provider and the employees. Therefore, it is the Applicant which is providing the canteen service to the employees.

5.2 Taxability of Supply of Canteen services to the employees.

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



5.2.2 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 prerequisites, 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 prerequisites in terms of a contractual agreement between the employer and employee are not to be subjected to GST.

5.2.3 We observe 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 prerequisite. Though the term 'prerequisite' 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) -----

.....

....."

5.2.4 As per Income Tax Act, 1961, perquisite is defined to be the value of free benefit or facility given by the employer to his employees. The collection from the employees of whatever value, is not covered under 'perquisite'. It could be inferred from the above, that any service rendered free of charge, or any service rendered on a concessional basis shall qualify as a perquisite. But it is to be noted that only the value/portion to the extent of concession offered by the employer is to be treated as a perquisite and not the remaining portion/value that has been charged by the employer. Applying the said analogy to the instant case, in respect of the canteen services provided by the applicant to its employees, it becomes clear that the exemption provided in Entry 1 of Schedule III to the CGST Act, 2017 applies only to the concession part extended to the employees and not on the value charged to the employees.

5.2.5 If incidental or ancillary supply of goods or services such as canteen services by the employer to employee were to not fall under 'business', it would not be necessary to provide respite to 'supplies by employer to employees given as perquisite' from falling under 'supply' by taking recourse to schedule III. That is, if a transaction or activity is not a supply u/s 7(1) of CGST Act, then there would not be necessity to place such a transaction u/s 7(2)(a) for deeming it to be neither supply of goods nor supply of services. Hence, as discussed in Para (5.1.6 & 5.1.7) Applicant's activity of supply of canteen services falls u/s 7(1) of CGST Act, 2017. As discussed in Para 5.2.4, 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.



5.2.6 The Applicant has relied on the following Rulings.

- (1) Gujarat AAAR in Tata Motors Limited (Guj/GAAR/R/39/2021 dated 30th July 2021).
- (2) Gujarat AAAR in M/s. Amneal Pharmaceuticals Pvt. Ltd (Order No. GUJ/GAAAR/APPEAL/2021/07 dated 08.03.2021).
- (3) Maharashtra AAR in Posco India Pune Processing Centre Pvt. Ltd (Order No.GST/ARA-36/218-19/B-110 dated 07.09.2018),
- (4) Maharashtra AAR in Tata Motors Limited (GST-ARA-23/2019-20/B-46 dated 25.08.2020)

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.

Further applicant relied on following judgments

- (5) Keshadeo Shivprasad vs Union of India (1992(61) E.L.T. 404) (M.P.) (Misc. Petition No. 1393 of 1985 decided on 20.02.1992)

In this case Hon. High Court observed that, the process of packing cannot be incidental or ancillary to the production or manufacture of tea. The facts of this case are different. In the current case, activity of providing canteen services falls under 'business' as per the provisions of GST Act, as discussed para 5.1.6, 5.1.7.

- (6) Tamil Nadu vs Binny Ltd AIR 1980 SC 2038

We find that the applicant has submitted that, in above case Hon Supreme Court has observed that, "a thing is incidental to another if it merely appertains to something else as primary."

On going through the above judgment, it is seen that Hon. Supreme Court has observed that, the sales which were effected in the Store were to the workmen employed in the factory where textiles were being manufactured and the provision of this facility to the workmen was certainly incidental to the carrying on the business of manufacture of textiles.

In this case Hon Supreme Court has held that,

The activity of selling provision to workmen in the Store was incidental to the business of manufacture of textiles and the sales were, therefore, transactions falling within the definition of 'business' in Clause (ii) of Section 2(d). We must in the circumstances, hold that the assessee carried on business of selling provisions in the store and the sales attracted the liability to tax under the Tamil Nadu General Sales Tax Act, 1959 as it existed.



We find that the above judgment in fact supports our views as discussed in para 5.1.6 and 5.1.7. Further, this authority has placed reliance on Rulings in case of Himachal Pradesh AAAR dated 26.09.2023 in case of M/s Federal-Mogul Anand Bearings India Limited, Tamil Nadu AAR dated 05.05.2023 in case of M/s Kothari Sugars and Chemicals Limited and Tamil Nadu AAR dated 20.12.2023 in case of M/s Faiveley Transport Rail Technologies India Private Limited.

5.3 Value in respect of which canteen services are taxable.

5.3.1 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.

5.3.2 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.

5.3.3 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;

.....

5.3.4 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."

5.3.5 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.

5.3.6 If the applicant does not recover any amount from the employees, then, the entire value of the services for which no amount is charged is the perquisite provided by the employer to the employees. As this perquisite 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. As



the entire value is the perquisite provided by the employer, it is not liable to tax as discussed above.

5.3.7 If the applicant recovers any amount from the employees, then the perquisite in this case is only to the extent of concession given to the employees and any amount recovered would be liable for GST.

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

ORDER

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

NO.GST-ARA- 48/2021-22/B- 627 Mumbai, dt. 28/11/2025

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

Question 1: Whether GST would be applicable on canteen facility provided by M/s. KSB Limited to its employees using a third-party canteen services provider?

Answer: - The supply of canteen services by the applicant to its employees amount to supply of services under the MGST Act, 2017. GST would be payable on the said services.

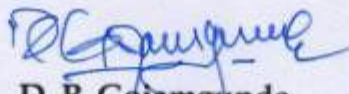
Question 2: In case GST is applicable on Canteen services provided by KSB to its employees, whether GST would be applicable if KSB Limited does not recover any amount from employee for providing canteen facility?

Answer: - GST is not applicable, if no amount is recovered from the employees for the canteen services as the cost of said service would be considered as a perquisite.

Question 3: In case GST is applicable on Canteen services provided by KSB to its employees, whether GST would be applicable if KSB Limited recovers from employee's part or whole of the cost charged by the canteen service provider to KSB?

Answer: - Yes, GST would be applicable on the amount recovered from the employees for the canteen services. The portion of the cost, not recovered, would be considered as a perquisite.




D. P. Gojambunde
(MEMBER)


Himani Dhamija
(MEMBER)

PLACE - Mumbai

DATE - 28/11/2025

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.