GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	NATION TAX MARKET

ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2022/23
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/18)

Date :22.12.2022

Name and address of the appellant	:	M/s Tata Motors Limited, Plot No. A-1, Tata Motors, Village North Kotpura, Sanand, Ahmedabad, Gujarat – 382 170
GSTIN of the appellant	:	24AAACT2727Q1Z2
Advance Ruling No. and Date	:	GUJ/GAAR/R/39/2021 dated 30.07.2021
Date of appeal	:	01.09.2021
Date of Personal Hearing	:	08.09.2022
Present for the appellant	:	Shri Rajesh Shukla, Head-Indirect Taxation

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s Tata Motors Limited (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/39/2021 dated 30.07.2021.

3. The appellant has sought Advance Ruling on the following question

"1. Whether input tax credit (ITC) available to applicant on GST charged by service provider on canteen facility provided to employees working in factory?

2. Whether GST is applicable on nominal amount recovered by Applicant from employees for usage of canteen facility?

3. If ITC is available as per question no. (1) above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?"

4. The appellant has submitted that they are maintaining canteen facility for their employees at their factory premises to comply with the mandatory requirement of

maintaining the canteen as per the Factories Act, 1948 and as per proviso to Section 17(5)(b) of CGST Act, 2017, ITC of GST paid on goods or services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. The appellant is recovering nominal amount from employees and expenditure incurred towards canteen facility borne by appellant is part and parcel cost to company.

5. The appellant submitted that in press release dated 10.07.2017, it was clarified that supply by employer to employee in terms of contractual agreement of employment (part of salary/CTC) is not subjected to GST and once employee ceases to be in employment with appellant, he/she is not authorized to use the canteen facility; in other words, employer-employee relationship is must to avail this facility. The appellant further submitted that they are not in the business of providing canteen service and hence recovery of nominal amount will not fall in definition of supply and relied upon ruling of Maharashtra AAR in case of Jotun India P Ltd [2019 TIOL 312 AAR GST].

6. The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUJ/GAAR/R/39/2021 dated 30.07.2021, *inter-alia* observed that colons and semicolons are two types of punctuation; colons are used in sentences to show that something is following like quotation, example or list and semicolons are used to join two independent clauses/sub clauses that could stand alone as complete sentences. The GAAR held that Section 17(5)(b)(i) sub-clause [for blocking of ITC on food and beverages, outdoor catering, beauty treatment, health services, cosmetic or plastic surgery etc] ending with a colon and followed by a proviso which ends with semicolon is to be read as independent sub-clause, independent of sub clause 17(5)(b)(iii) [for blocking of ITC on travel benefits provided to employees] and its proviso (of sub-clause iii) [stating that ITC in respect of such goods and/or services shall be available where it is obligatory for en employer to provide the same to its employees under any law for the time being in force] and therefore, proviso to section 17(5)(b)(iii) is not connected to the sub-clause of section 17(5)(b)(i). To above, the GAAR relied upon Supreme Court's judgment in case of Shri Jayant Verma Vs UOI dated 16.02.2018, Kerala High Court judgment in case of Mr Vincent Mathew Vs LIC of India dated 15.01.2013 and Patna High Court judgment in case of Shapoorji Paloonji & Company Ltd Vs CCE, Patna reported in 2016 (42) STR 681 (Pat.).

6.1 In view of the foregoing, the GAAR ruled as follows:-

> *"1. Whether input tax credit (ITC) available to applicant on GST charged by service provider on canteen facility provided to employees working in factory?*
> *Ans: ITC on GST paid on canteen facility is blocked credit under Section 17(5)(b)(i) of CGST Act and inadmissible to applicant.*
>
> *2. Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of canteen facility?*
> *Ans: GST, at the hands on the applicant, is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider"*

7. Aggrieved by the aforesaid advance ruling in respect to question no. 1 and question no. 3 (in view of answer to question 1, not answered in specific), the appellant has filed the present appeal.

7.1 The appellant in the ground of appeal has submitted that the GAAR erred in holding that due to semicolon after the proviso to Section 17(5)(b)(i), the proviso to Section 17(5)(b)(iii) is not connected to the sub-clause 17(5)(b)(i) and cannot be read into it as if such interpretation of GAAR is accepted then it will make the proviso to Section 17(5)(b)(iii) redundant for aspects which has been incorporated under 17(5)(b)(i). Section 17(5)(b)(iii) restricts ITC on "travel benefits extended to employees on vacation such as leave or home travel concession" and if proviso below Section 17(5)(b)(iii) is interpreted to be applicable only to sub-clause (iii) of Section 17(5)(b), it will become otiose for following reasons:

(i) Proviso deals with admissibility of ITC on both goods and services with Section 17(5)(b)(ii) and 17(5)(b)(iii) deals with only services.

(ii) The legislation never intend to waste any word and hence usage of word 'goods' in second proviso which otherwise can be made applicable only to Section 17(5)(b)(i) is apparent on record. Hence, it will be applicable to entire section 17(5) of the Act and not only to 17(5)(b)(iii).

(iii) Proviso is applicable only where it is obligatory for an employer to provide the goods or services to its employees under any law for the time being in force, however, travel benefits, dealt in sub-clause (iii), is not obligatory on employer under any law for time being in force.

(iv) Canteen and insurance facility are amongst those which are mandatory or obligatory on the part of employer and both exists in Section 17(5)(b)(i) alone and therefore, for no reason to discard this provision for allowing ITC and extending the benefit of second proviso to 17(5)(b)(iii) alone.

7.2 The appellant relied upon following judgments for interpretation of legislation:

(i) Kerala High Court in case of M/s Hotel Asoka Vs The Commercial Tax Officer-1, Dept of Commercial Taxes
(ii) Delhi High Court in case of Aakansha Monga Vs The Hon'ble High Court of Delhi and Ors.
(iii) Delhi High Court in case of Rodhee Vs Govt of Delhi & Others
(iv) Hon'ble Supreme Court in case of Aswini Kumar Ghosh Vs Arabinda Bose
(v) Bhatt Industries and Others Vs The Division Forest Officer [1999 (3) AWC 2291]
(vi) KT Ravindranath Trustee Vs State of Kerala [WP(C) No. 4010 of 209]

7.3 The appellant submitted that Law Review Committee in 28th meeting of GST Council proposed the amendment to Section 17(5)(b) to allow ITC in respect of supply of goods or services which are obligatory for an employer to provide to its employee under any law, which was previously not available and the same was highlighted in Volume 1 of the Agenda for 28th GST Council Meeting. The appellant further submitted that Proxy

Note issued on the recommendations made during 28th meeting of the GST Council held on 21st July, 2018 regarding amendments to the CGST Act read as:

> *9. Scope of input tax credit is being widened, and it would now be made available in respect of the following:*
> *a....*
> ...
> *e. Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.*

7.4 The appellant submitted that the rationale prescribed in Agenda of 28th GST Council Meeting and Press Note issued on Council's recommendations clearly shows that it was the intent of the legislature to widen the scope of ITC and to make ITC available on the supply of goods and services which are obligatory for an employer to provide to its employees, under any law for the time being in force. In accordance with above recommendations, the CGST Act was amended to widen the scope of ITC and to allow the claim of ITC on the abovementioned goods or services.

7.5 The appellant submitted that they are a manufacturing unit and employing more than 250 workers and in accordance with Section 46 of Factories Act, 1948, it is obligatory on them to provide canteen facilities within the factory premises and failure to comply with the provisions of Section 46 attracts prosecution and penalty under Section 92 of Factories Act, 1948. In view of statutory requirement to provide canteen facility, payment made to the canteen service providers clearly gets covered under the second proviso to Section 17(5)(b) of the CGST Act.

8. During the course of personal hearing held on 08.09.2022, the authorized representative for the appellant reiterated the submissions made in the appeal dated 01.09.2021. He further submitted that the CBIC vide its Circular No. 172/04/2022-GST dated 06.07.2022 while giving clarifications on various issues pertaining to GST had at Sl.No.3 of Para 2clarified the following:

S.No.	Issue	Clarification
	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: *"Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."*

		2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified that *"scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."* 3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

He submitted that the above has clarified that the proviso after Section 17(5)(b)(iii) is applicable to the whole of Section 17(5)(b). He further submitted that in view of the above clarification the appellant is eligible to take ITC on the GST charged by the service provider on the canteen facility provided to its employees working in their factory. He also submitted that they will not take input tax credit to the extent applicable on the amount of canteen charges recovered from their employees and will surrender the credit to that extent.

The appellant further made additional submission vide their dated 12.09.2022 wherein they reiterated submissions made during the course of personal hearing. Further submitted that they have been discharging GST on the canteen charges recovered from contract employees. They prayed that in view of the above legal provisions and clarification issued by the CBIC, the ITC on GST charged by the service provider on canteen facility provided to employees working the factory be held admissible to the extent of cost suffered by the appellant.

8.1 The appellant further vide their email dated 28.09.2022 submitted copy of consolidated annual return for the year ended 31.12.2021 filed with the Deputy Labour Commissioner, Ahmedabad. In the said return they had declared total 2299 direct workers employed at their factory. Further they had also declared 3 canteen facilities provided at their factory premises.

8.2 The appellant also submitted a declaration dated 09.10.2022 wherein they stated as under:

"In terms of provisions of Section 46 of the Factories Act, 1948 , we have canteens in our Sanand Plant for our employees. In these canteens, the meal is served to employees in specified timings according to the shifts in which employees are working.

Apart from general rules about the timings, to maintain discipline and not to waste the food etc. there are no specific exclusive rules for employees for using these canteens."

FINDINGS :-

9. We have carefully gone through and considered the appeal and written submissions filed by the appellant, the submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

10. The issue to be decided here is, whether input tax credit (ITC) is available to the appellant on GST charged by the service provider on the canteen facility provided to employees working in the factory and also whether it will be restricted to the extent of cost borne by the appellant.

11. Before examining the question raised in present appeal, we refer to the Section 17(5)(b) of CGST Act, 2017 which pertains to blocking of ITC:

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

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

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

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

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

(iii)travel benefits extended to employees on vacation such as leave or home travel concession:

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

12. Above Section 17(5)(b) was amended on 01.02.2019. The same was resultant of the 28th meeting of GST Council held on 21st July, 2018. The Press Note issued on the recommendations made during above meeting stated that scope of input tax credit is being widened and it would now be available in respect of goods or services which are obligatory for an employer to provide to its employees under any law for the time being in force. The appellant submitted that they are a manufacturing unit and employing more than 250 workers and in accordance with Section 46 of Factories Act, 1948, it is obligatory on them to provide canteen facilities within the factory premises. The appellant submitted copy of consolidated annual return for the year ended 31st December 2021 filed with the office of the Deputy Labour Commissioner, Ahmedabad wherein they had declared total of 2299 direct workers employed in their factory and total of 3 canteen facilities provided to their employees. They have also submitted a declaration stating that they have canteens at their plant for their employees in terms of provisions of Section 46 of the Factories Act, 1948.

13. On the basis of placement of punctuation viz. colon(:) and semicolon (;) in above referred section, the GAAR in its ruling observed and held that Section 17(5)(b)(i) sub-clause ending with colon and followed by a proviso which ends with semicolon is to be read as independent sub-clause, independent of sub-clause 17(5)(b)(iii) and its proviso and therefore, proviso to Section 17(5)(b)(iii) is not connected to Section 17(5)(b)(i) and cannot be read into it.

13.1 To above observation of GAAR, appellant submitted if such interpretation of GAAR is accepted then it will make the proviso to Section 17(5)(b)(iii) redundant as Section 17(5)(b)(iii) restricts ITC on "travel benefits extended to employees on vacation such as leave or home travel concession" which is only service whereas second proviso to Section 17(5)(b) deals with both goods and services and travel benefits is not obligatory on employer under any law for time being in force and Canteen and insurance facility which exists in Section 17(5)(b)(i), are amongst those which are obligatory on the part of employer.

14. In the meanwhile we notice that Circular No. 172/04/2022-GST dated 06.07.2022 has been issued wherein clarifications on various issue pertaining to GST has been provided. In the above Circular, at Sl. No.3 of Para 2 clarification has been provided on the issue as to whether the proviso at the end of clause (b) of Section 17(5) of CGST Act is applicable to the entire clause (b) or only to sub-clause (iii) of clause (b). It has been clarified by the Board that vide the CGST (Amendment Act), 2018, clause (b) of Section 17(5) was substituted with effect from 01.02.2019 on the recommendation of GST Council's 28th meeting and accordingly, the proviso after sub-clause (iii) of Section 17(5)(b) of CGST Act, is applicable to whole clause (b) of Section 17(5). The relevant portion of above clarification is reproduced below:

S.No.	Issue	Clarification
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said	1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub- clause (iii) of clause (b) of sub-

	proviso is applicable only to sub-clause (iii) of clause (b)?	section (5) of section 17 of the CGST Act provides as under: "*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.*" 2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified that "*scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.*" 3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

15. In view of above legal position clarified by CBIC, as second proviso to Section 17(5)(b) inserted vide CGST Amendment Act, 2018 effective from 1.2.2019, is applicable to the whole of clause (b) of sub-section (5) of Section 17 of the CGST Act, Input Tax Credit will be available to the appellant in respect of food & beverages as canteen facility, is obligatorily to be provided under the Factories Act, 1948, to its employees working in the factory. Input Tax Credit will be available in respect of such services provided by canteen facility to its direct employees but not in respect of other type of employees including contract employees/workers, visitors etc.

16. The appellant also raised the question if ITC is available on GST charged by the service provider on canteen facility provided to its employees working in their factory, whether it will be restricted to the extent of cost borne by the appellant. In this regard we find that the authorized representative of the appellant during the course of personal hearing had submitted that they will not take input tax credit to the extent applicable on the amount of canteen charges recovered from their employees and will reverse the credit to that extent. Further vide their dated 12.09.2022 they submitted that they have been discharging GST on the canteen charges recovered from contract employees and they have requested to allow the ITC on GST charged by the service provider on canteen facility provided to employees working their factory to the extent of cost suffered by the appellant.

16.1 In this regard we rely upon the judgment of Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Nagpu Versus Ultratech Cement Ltd., [2010 (260) E.L.T. 369 (Bom.)] wherein it was held that *"Once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer."* The judgement was in context as to whether manufacturer can avail credit of Service Tax in cases where the cost of the food is borne by the worker. The ratio laid down in the said case is also applicable to the present case where part of cost for providing canteen services is recovered by the appellant from its employees. We find that the ITC on GST charged by the canteen service provider will be available only to the extent of cost borne by the appellant, for providing the canteen services only to its direct employees.

17. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/39/2021 dated 30.07.2021 of the Gujarat Authority for Advance Ruling, to the extent it has been in appeal before this authority, in case of M/s Tata Motors Ltd and hold that –

(i) Input Tax Credit (ITC) will be available to the appellant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory, in view of the provisions of Section 17(5)(b) as amended effective from 01.02.2019 and clarification issued by CBIC vide Circular No. 172/04/2022-GST dated 06.07.2022, read with provisions of Section 46 of the Factories Act, 1948, and read with provisions of the Gujarat Factory Rules, 1963 and clause (ii) below;

(ii) ITC on the above is restricted to the extent of the cost borne by appellant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of food recovered from such employees.

(Milind Torawane)
Member (SGST)

(Vivek Ranjan)
Member (CGST)

Place : Ahmedabad
Date : 22.12.2022.