



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Sri. K.Ravi Sankar, Commissioner of State Tax (Member)
2. Sri.RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No.09/AP/GST/2023 dated: 29.05.2023

1	Name and address of the applicant	M/s. KSH Automotive Pvt Ltd
2	GSTIN	37AAGCK8900L1Z5
3	Date of filing of Form GST ARA-01	11.01.2023
4	Personal Hearing	29.03.2023
5	Represented by	Shripada Hegde, CA
6	Jurisdictional Authority - Central	Hindupur-2 Range, Anantapur Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	d) Admissibility of input tax credit of tax paid or deemed to have been paid

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and APGST Act, 2017 are in parimateria 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 would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. KSH Automotive Pvt Ltd(hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

- 3.1 M/s KSH Automotive Pvt Ltd (hereinafter referred to as applicant) is engaged in the business of manufacture of auto parts and components and supplier to KIA motors. Applicant is having GST Registration number 37AAGCK8900L1Z5. The applicant provides canteen facilities to employees, through a registered person, who issued tax invoices and levies applicable GST.

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:

1. Whether input tax credit is available on the canteen services

On Verification of basic information of the applicant, it is observed that the applicant is under Central jurisdiction i.e, Hindupur-2 Range, Anantapur Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the Central jurisdictional officer concerned stating that no proceedings lying pending with the issue, for which the advance ruling was sought by the applicant.

5. Applicant's Interpretation of Law:

- 5.1 The applicant submits that, the eligibility and conditions for taking input tax credit are specified in Section 16 of the Act, which are summarized as under:

- The person availing the credit should be a 'registered person';
- The credit should be of input tax charged on any supply of goods or services or both to the registered person;
- The said supply of goods or services or both are used or intended to be used in the course or furtherance of the registered person's business;

The applicant further states that, on fulfillment of the aforementioned conditions, the amount of input tax credit shall be credited to the electronic ledger of such person. In the present case the GST paid by the applicant to the contractor on supply of canteen services is eligible credit and applicant is eligible to claim the credit.

- 5.2 The applicant states that, under the scheme of Chapter V of the Act dealing with input tax credit, certain categories of input tax credit have specifically been made non available to the registered person as specified in Section 17 (5) of the Act. The relevant Section 17(5) (b) of CGST Act, 2017 reads as follows:-

“(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.”

The applicant states that, canteen facility is being maintained at its factory premises to its employees to comply with the mandatory requirement of maintaining the canteen as per the factories act,1948. The relevant section 46 of the factories act states as under:

Section 46 Canteens

(1) *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) **Without prejudice to the keneralitv of the fore] oinz power, such rules maE provide fOr-**

- (a) *the date by which such canteen shall be provided;*
- (b) *the standards in respect of construction, accommodation, furniture and other equipment of the canteen;*
- (c) *the foodstuffs to be served therein and the charges which may be made therefor;*
- (d) *the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen; (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost offoodstuffs and which shall be borne by the employer;*
- (e) *the delegation to the Chief Inspector, subject to such conditions as may be*

prescribed, of the power to make rules under clause (c)"

From the above it may please be seen that State Government is empowered to prescribe that the factories employees more than 250 workers should provide canteen facility and food facility. The Government of Andhra Pradesh has enacted Andhra Pradesh Factory Rules, 1950 ("Factory Rules") to bring into effect the provisions of Factories Act, 1948. Rule 65(2) of the Factory Rules reads as under

"(2) The occupier of every factory notified by the State Government, and wherein more than two hundred and fifty workers are ordinarily employed shall provide in or near the factory an adequate canteen according to the standards prescribed in these rules.

" Further, Rule 68(1) reads as under "(1) Food, drinks and other items served in the canteen shall be served on a non-profit basis and the prices charged shall be subject to the approval of the Canteen Managing Committee. "

The applicant states that, that there is not only a legal compulsion on the applicant to provide canteen and food to workers but also a compulsion to provide those food at a non-profit basis. To meet with this legal compulsion, applicant had made arrangements with the vendors for providing food to workers. Sample copies of invoices issued in this regard by the vendors are attached as Annexure-2. It may please be seen that the vendors are charging GST in the invoices. The food provided in the canteen to workers are provided free of cost (applicant doesn't recover any money from the workers).

5.3 The applicant also quotes a case law to advance his argument. He states that, under the erstwhile Service tax regime, the hon'ble Mumbai High Court in the case of The Commissioner Central Excise Vs M/s . Ultra tech Cement Ltd on 25 October, 2010 in Central Excise Appeal No.7 of 2010 has held that:

As rightly contended by Shri Shridharan, learned counsel for the respondent- assessee, in the present case , the assessee carrying on the business of manufacturing cement by employing more than 250 workers is mandatorily required under the provisions of the factories act, 1948 to provide canteen facilities to the workers. Failure to do so entails penal consequences under the factories act,1948. To comply with the above statutory provision, the assessee had engaged the services of a outdoor caterer . Thus, in the facts of the present case, use of the services of an outdoor caterer has nexus or integral connection with the business of manufacturing the final product namely, cement. Hence, in our opinion, the Tribunal was justified in following the larger bench decision of the tribunal in the case of GTC Industries Ltd. (supra) and holding that the assessee is entitled to the credit of service tax paid on outdoor catering service.

Thus, applicant is of the view that canteen Services to employees in the Factory Premises as mandated by Factory Act,1948 is eligible to claim ITC.

- 5.4 The applicant further states that, Circular No. 172/ 04/ 2022-GST dated 6th July 2022 has inter alia 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.

Circular No. 172/04/2022-GST dated 06.07.2022.

In S.No. 3 of the table contained in Para 2 of the said circular it is explicitly clarified that the above proviso is applicable to the whole of Section 17(5)(b). Said portion of the circular is reproduced here below for ease of reference.

St No.	Issue	Clarification
Clarification on various issues of section 17(5) of the CGST Act		
3	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	1. Vide the Central Goods and 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

		<p>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."</p> <p><u>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.</u></p>
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Hence, when there is a compulsion under Factories Act, 1948 read with factory Rules to provide canteen and food to workers, applicant is of the view that they are eligible to claim ITC on the vendor invoices towards the food supplied to workers in line with second proviso to Section 17(5)(b). Based on the above submissions, applicant is of the view that ITC on the vendor invoices received towards food served in canteen are duly eligible.

6. Personal Hearing:

The proceedings of Personal Hearing were conducted on 29.03.2023, for which the authorized representative, Shripada Hegde, CA attended and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the issues raised in the application in light of the facts and arguments submitted by the applicant. We have considered the submissions made by the applicant in their application for Advance Ruling. We have considered the issues involved from which advance ruling is sought by the applicant and the relevant facts along with arguments made by the applicant and also their submissions made during the time of the personal hearing.

The issue inward in the instant case is to decide

- i) Whether the applicant is eligible to take the ITC on the vendor invoices received towards food served in the canteen?

Before passing the ruling in the applicant's we will like to enlist the following facts

- a) The applicant is in the business of manufacture of automotive parts and registered as per law under the Factories Act.
- b) There are more than 250 workers.
- c) As per the Andhra Pradesh Factory Rules, 1950 every factory with more than 250 workers shall be provide for adequate canteen facility with prescribed standards.
- d) The applicant in pursuant to the above statutory requirements is providing the canteen services. For this purpose, they had made contracts with vendors for providing food to workers who are charging GST. The workers in the factory of the applicant are not being charged any amount for the food given to them.
- e) ITC on food and beverages comes under block credits as per the provisions of Section 17(5)(b)(i).
- f) The second proviso to Section 17(5)(b) states that ITC 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. As this proviso immediately comes after Section 17(5)(b)(iii) there could be an interpretation that the same is applicable to the blocked credit of travel benefits extended to employees on vacation such as leave or home travel concession. However, as per the Board Circular 172/04/2022-GST dated 6th July, 2022, it is clarified that this proviso is applicable to the whole of clause (b) of sub-section (5) of Section 17 of the CGST Act.

In light of the above points, we find that the canteen facility is to be compulsorily made available to the workers of the applicant and the number of the workers is well above 250. As per the licence of the Factories Act order given to the applicant, the man power is amended to 500 to 1000 workers which mandates them as per Factories Act and AP Factories Rules to provide for a canteen. The only question to be answered is that whether they are eligible for taking ITC on the GST charged by the vendors on them. Due to the mandatory nature of maintenance of canteen and the proviso under the sub-section of blocked credit, we hold that ITC will be available to the applicant in respect of GST charged by the vendors of canteens.

We, here by, pass the ruling

RULING

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

Question: Whether the applicant is eligible to take the ITC on the vendor invoices received towards food served in the canteen?

Answer: Affirmative , subject to the condition that the burden of GST have not been passed on to the employees .The applicant is eligible for proportionate ITC on permanent employee, on food supplied by canteen service to employees only and not contractual workers.

Sd/-K.Ravi Sankar
Member

Sd/- RV Pradhamesh Bhanu
Member

// t.c.f.b.o //


Deputy Commissioner (ST)
Registrar
Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijayawada.

To

M/s KSH Automotive Pvt Ltd, Plot No. 11C, Industrial Park, Site-A, Ammavaripalli Village Penukonda Revenue Mandal, Anantapur, A.P., 515164 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, HindupurCircle, AnantapurDivision **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Hindupur-2 Range, AnantapurDivision. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.