

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



ADVANCE RULING NO. GUJ/GAAR/R/2025/07
(IN APPLICATION NO. Advance Ruling/SGST& CGST/2024/AR/21)
Date: 24 .03.2025

Name and address of the applicant	: M/s. Amneal Pharmaceuticals Pvt. Limited, 882/1-871, Nr. Hotel Karnavati, Sarkhej Bavla Highway, Vill Rajoda, Bavla, Ahmedabad, Gujarat-382220 <u>Correspondence Address</u> M/s. Amneal Pharmaceuticals Pvt. Limited, 9 th Floor, Iscon Elegance, Beside Shapath-V, S.G.Highway, Ahmedabad, Gujarat-380015
GSTIN of the applicant	: 24AAGCA0781K1ZP
Jurisdiction Office	: Center Commissionerate – Ahmedabad North Division – V- Dholka Range - V
Date of application	: 27.08.2024
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	: (d)
Date of Personal Hearing	: 23.01.2025
Present for the applicant	: Shri Karan Rajvir

Brief facts:

M/s. Amneal Pharmaceuticals Private Limited, 9th Floor, Iscon Elegance, Beside Shapath- V, S.G. Highway, Ahmedabad-380015 [for short – ‘applicant’] is registered under GST and their GSTIN is 24AAGCA0781K1ZP.

2. The applicant is engaged in manufacturing and export of pharmaceuticals goods and services. The applicant has employed more than 250 employees and is also registered under the Factories Act, 1948.

3. The applicant provides canteen facility to its employees at their Bavla factory. The primary reasoning for provision of the aforementioned facility is that in terms of section 46 of the Factories Act, 1948, read with rule 72 of Gujarat factories rule, 1963, they are mandated to provide and maintain canteen for their employees.



4. The applicant has entered into an agreement with a canteen service providers [for short - **CSP**] for provision of canteen facilities for their employees. As per the agreement, the CSP prepares the food for the employees at the factory and serves the same. The CSP raises invoices along with applicable GST (if registered) for its canteen services. The invoices are based on the consumption of dishes served to the employees, availing the canteen facility. The employees bear proportionate canteen charges while the remaining charges are borne by the applicant. Further, the applicant claims that the amount collected from the employees is without any commercial objective/without profit margin and is remitted to CSP.

5. The applicant, relying on the CBIC's Circular no. 172/4/2022-GST has further contended:

- that the proviso at the end of clause (b) of sub section 5 of section 17 of the CGST Act, 2017, is applicable to the entire clause (b);
- that on a conjoint reading of provisions of Factories Act, 1948, proviso to section 17(5)(b) of CGST Act, 2017 and circular 172 issued thereunder, they are eligible for ITC pertaining to invoice raised by canteen service provider to the extent of expenses borne by them;
- that they wish to rely on the below mentioned case law/rulings viz
 - M/s. AIA Engineering Limited¹
 - M/s. Dormer Tools India Private Ltd²

6. In view of the aforementioned facts, the applicant has asked following question in their application for advance ruling viz

Whether the Company is eligible to take the input tax credit for the GST charged by the canteen service provider for the canteen services (on the portion which is borne by the company) for its employees where the canteen facility is mandatory in terms of section 46 of the Factories Act, 1948 read with rule 72 of Gujarat Factories rules, 1963.

7. Personal hearing was granted on 23.01.2025 wherein Shri Karan Rajvir appeared on behalf of the applicant and reiterated the facts as stated in the application. Consequent to the personal hearing, the applicant vide email dated 03.02.2025, submitted a copy of the canteen policy and agreement with CSP.

Discussion and findings

¹ GUJ/GAAR/R/2023/12 dtd 31.3.2023

² GUJ/GAAR/R/2024/12 dtd 30.5.2024



8. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 provisions under the GGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

10. Before adverting to the submissions made by the applicant, we would like to reproduce the relevant provisions/circular for ease of reference:

• **Section 7. Scope of supply.-**

(1) For the purposes of this Act, the expression –

"supply" includes-

(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;

¹[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-*For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]*

(b) import of services for a consideration whether or not in the course or furtherance of business; ²[and]

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[****]*

*(d) ⁴[****].*

⁵[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of⁶ [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

• **Section 17. Apportionment of credit and blocked credits.- [relevant extracts]**

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:-

²(a);

(aa).....;

(ab);

(b) ³[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.]

• **Circular No. 172/04/2022-GST**

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 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."

		<p>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 subsection (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."</p> <p>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.</p>
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11. The facts having been enumerated *supra* we do not intent to repeat the same for the sake of brevity.

12. The issue to be decided is whether Input Tax Credit of GST charged by the CSP for the canteen services for its employees where the canteen facility is mandatory in terms of Section 46 of the Factories Act, 1948 read with Gujarat Factories Rules, 1963 can be availed by the applicant. In this connection, before proceeding further, certain factual aspects deserve to be mentioned, though at the cost of repetition are *viz*

- that the employees of the applicant, working in its factory premises exceed 250;
- that section 17(5)(b) *ibid*, was amended on 1.2.2019, and is reproduced *supra*;
- that the applicant is mandated vide section 46 of the Factories Act, 1948 read with Gujarat Factories Rules, 1963 to provide canteen facility to its employees within the factory premises
- that circular No. 172/4/2022-GST clarifies that post substitution, effective from 1.2.2019, based on the recommendation of the GST council in its 28th meeting, the proviso after sub clause (iii) of clause (b) of Section 17(5) of the CGST Act, 2017 is applicable to the whole of clause 17(5)(b), *ibid*.




13. In view of the foregoing, we hold that Input Tax Credit will be available to the applicant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 as far as provision of canteen service for employees working at the factory is concerned. It is further held that the ITC on GST charged by the canteen service provider will be restricted to the extent of cost borne by the applicant only. Our view is substantiated by the Ruling of the Gujarat Appellate Authority for Advance Ruling order No. GUJ/GAAAR/Appeal/2022/23 dated 22.12.2022 in the case of M/s. Tata Motors Ltd, Ahmedabad.


14. In the light of the foregoing, we rule as under:

RULING

Input Tax Credit (ITC) will be available to the applicant 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 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.


(Kamal Shukla)
Member (SGST)




(P.B. Meena)
Member (CGST)

Place: Ahmedabad
Date: 21.03.2025