

<b>GUJARAT AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/22  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/10)

Date: 12.04.2022

Name and address of the applicant	:	M/s. Emcure Pharmaceuticals Limited, SM-14, SM-15 and SM-16/1, G.I.D.C. Sanand-II Industrial Estate, Taluka Bol and Charal Sanand, Ahmedabad, Gujarat- 382110
GSTIN/ User Id of the applicant	:	24AAACE4574C1Z1
Date of application	:	25/02/22
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) and (e)
Date of Personal Hearing	:	22/03/22
Present for the applicant	:	Shri Santosh Tapade, DGM, Indirect Taxation and Shri Narendra Adwadkar, Authorised person of Company.

Brief facts :

M/s. Emcure Pharmaceuticals Limited, hereinafter referred to as M/s. Emcure for the sake of brevity, submits that it provides canteen and bus transportation facility to its employees and that the canteen and bus transportation facility are part and parcel of the employment arrangement with the employees. M/s. Emcure submits that it provides the canteen and bus transportation facility to its employees based on the Human Resource (HR) Policy. Based on the agreed terms of the HR Policy, M/s. Emcure is entitled to make recoveries at subsidized rates for facility provided by them at its factory. The relevant clauses of the HR Policy are as follows:

Policy on Employee Benefits - Transportation

Transportation policy benefits are as follows:

- Ahmedabad has skilled pharmaceuticals talent which is required to run the business operations smoothly. The plant is about 35 kms away from Ahmadabad and most of our employees are travelling to various part of Ahmedabad.
- All company employees shall be eligible to avail the transportation facility.
- The transportation benefits will be provided with no cost to employees/travellers.
- All cost related to this benefit shall be borne by the company.

Canteen Facility and Deduction

Canteen Facility details are as follows:

Nutritious food is provided in the canteen at a subsidised rate. These subsidized rates are subject to revision at the discretion of Management. The rates so fixed are for the month irrespective of number of days on which the canteen facilities are availed. Canteen facilities are not available in third shift. Snacks are catered for the employees working in the Third shift.

2. M/s. Emcure submitted that in order to provide the said canteen and bus transportation facility, it engaged third party service providers who are in turn providing the said canteen and bus transportation facilities to the employee. Since, the said services are provided by the third-party service providers, the service providers are raising their invoices with applicable GST to M/s. Emcure. They recover certain portion (i.e. subsidized amount - fixed amount deducted from Salary on monthly basis) from the employees towards the self-consumption of food provided in the canteen area.

3. M/s. Emcure submitted that Bus transportation service is provided on free of cost to its employees and they do not make any recoveries. The buses provided by the Bus Contractor for transportation of the employees are Non-Air-conditioned (Non-AC) buses having the seating capacity of more than 13 seats. Both the facilities i.e. canteen and bus transportation facilities are provided to the employees without any profit motive. In fact, the said facilities are provided at subsidized rate / amount and also as a part and parcel of the HR policy.

4. M/s. Emcure submitted that the employee recoveries for providing canteen facility is not covered under the ambit of supply under Clause (a) of Section 7 (1) of the CGST Act. Reference is made to Section 7 (1) of the CGST Act, which defines the term 'supply' as under:

*7. (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;*  
*(b) import of services for a consideration whether or not in the course or furtherance of business;*  
*(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*  
*(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

4.1 Section 7 (1) (a) of CGST Act defines the term supply widely to include all forms of supply of goods or services or both such as sale, transfer, disposal, etc. made or agreed to be made for a consideration in the course or furtherance of business. Therefore, in order to constitute supply under Section 7 (1) (a) of the CGST Act, the following key elements are required to be satisfied:

- (a) Supply of goods or/and services;
- (b) Consideration;

(c) Course of furtherance of business.

4.2 M/s. Emcure submitted that in order to constitute supply under Section 7, the supply should be in the course of business or furtherance of business. The term in the '*course of business*' or '*furtherance of business*' is not defined under the CGST Act. However, the term Business has been defined under Section 2 (17) of the CGST Act and reads as -

Section 2 (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;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

4.3 A bare reading of the above clause (a), (b) and (c) provides that business includes any activity in the nature of trade, commerce, manufacture, etc. and business means any activity in the nature of trade, commerce, manufacture, etc. M/s. Emcure submitted that it is engaged in the business of sales, distribution and promotion of pharmaceutical products only.

4.4 M/s. Emcure submitted that in order to comply, the provision of Section 46 of the Factories Act, 1948, they provide canteen facility to its employees. It is not engaged in the business of providing food in the canteen facility to its employees as business activity. The canteen facility is provided by a third-party service provider for which the third party is raising an invoice to M/s. Emcure and charging applicable GST on the same. Therefore, the canteen services are being provided by the third-party service provider only. M/s. Emcure is merely acting as a conduit to provide the canteen facility. M/s. Emcure submits that providing/ non-providing such canteen facility will not affect its business in any way. Hence, the canteen facility cannot be said to be a business activity of M/s. Emcure and hence, the provision of canteen facility to the employees cannot qualify as supply.

4.5 In this regard M/s. Emcure has placed reliance in the case of State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966).

4.6 M/s. Emcure submitted that as per clause (b) of Section 2 (17), business also includes any activity which is in connection with or incidental or ancillary to the activities covered under clause (a) of Section 2 (17) of the CGST Act. The activities which are having direct nexus with the main business can be said to be ancillary or incidental. However, canteen facility is not related to or connected with the principle business of supply of pharmaceutical goods in that manner. Hence, the same cannot be construed as incidental or ancillary to the main business of M/s. Emcure.

4.7 In this regard M/s. Emcure cited the following cases :

- (i) Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd. [1967 (20) STC 287 Mad].
- (ii) In the case of Panacea Biotech Limited vs. Commissioner of Trade and Taxes [(2013) 59 VST 524 (Del.)]

5. M/s. Emcure submitted that without prejudice to the above, the canteen facility provided by it is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act. Clause (a) of Section 7 (2) of the CGST Act which reads as below:

*“Section 7 (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”*

*“SCHEDULE III*

*[See section 7]*

*ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A  
SUPPLY OF GOODS NOR A SUPPLY OF SERVICES*

*1. Services by an employee to the employer in the course of or in relation  
to his employment.”*

5.1 It is submitted that Section 7 (2) begins with a non-obstante clause and overrides Section 7 (1) of the CGST Act. A plain reading of above section provides that even in case where any activity may be treated as ‘supply’ in terms of Section 7 (1), certain activities/ transactions would still be excluded from the scope of ‘supply’.

5.2 M/s. Emcure submits that it is providing these facilities to the employees due to their agreed terms. It recovers the subsidized amount of canteen facility to the employee in terms of the HR Policy. Therefore canteen facility is directly in connection with the employment of the employees.

5.3 M/s. Emcure submits that the Press release issued by the Ministry of Finance dated 10<sup>th</sup> July 2017, reads as follows:

*“Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply 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. Further, the Input Tax Credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness center [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C)”.*

5.4 M/s. Emcure has submitted that as per press release, it is clear that any services provided by the employer to the employees in terms of the contractual agreement entered into between the employer and employee will not be subjected to the GST. As mentioned above, in the present case M/s. Emcure is providing canteen facility to its employees as per the HR Policy. Further, the amount charged from the employee is fully paid to the third-party contractor and no profit or pecuniary benefit is involved in this activity. Hence, M/s. Emcure is of the view that the provision of canteen facility is excluded from the purview of supply.

5.5 M/s. Emcure submitted that without prejudice to the above, it is settled position under GST regime that an employee recovery does not amount to ‘supply’. In this regard they have relied upon the following rulings of the Hon’ble Advance Ruling Authorities, wherein it is held that no GST is to be included on the recoveries made by a company on canteen facility provided through a third party to their employees:

- In Re: M/s Amneal Pharmaceuticals Pvt Ltd., 2021 (9) TMI 1293 – Appellate Authority for Advance Ruling, Gujarat;
- In Re: M/s Dishman Carbogen Amics Ltd., 2021 (8) TMI 836 – Authority for Advance Ruling, Gujarat;
- In re: M/s Bharat Oman Refineries Limited 2021-VIL-73-AAAR The Madhya Pradesh Appellate Authority For Advance Ruling
- M/s Jotun India Private Limited, [2019-TIOL-312-AAR-GST]. Maharashtra Authority for Advance Ruling.

- Advance Ruling in the case of M/s POSCO India Pune Processing Centre Private Limited [2019 (2) TMI 63].

6. M/s. Emcure submitted that the employee recoveries for providing bus transportation facility is not covered under the ambit of “supply” under Clause (a) of Section 7 (1) of the CGST Act.

6.1 M/s. Emcure procures bus transportation services from a third-party bus transportation service provider for transportation of its employees in Non-AC buses. Accordingly, the said service provider issues tax invoice with applicable GST. The said bus transportation facility is used for transportation of its employees from place of work to home and back. The said facility is provided free of cost to the employees and no amount is recovered for the said transportation facility from its employees.

6.2 M/s. Emcure submits that without prejudice to the above, the bus transportation facility provided by them is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act. M/s. Emcure submits that its submission made in respect of canteen recovery in Ground-3.2, 3.3 of the application equally applies so far as the bus transportation is concerned and that the bus transportation facility is specifically excluded from the purview of ‘supply’ in terms of Section 7 (2) (a) read with Schedule-III to the CGST Act.

6.3 M/s. Emcure submitted that it is settled position under GST regime that employee recoveries do not amount to ‘supply’.

6.4 M/s. Emcure cited the following case laws/ Rulings :

- In Re: M/s Tata Motors Ltd., 2020 (9) TMI 352 – Authority for Advance Ruling, Maharashtra;
- In Re: M/s North Shore Technologies Pvt. Ltd., 2021 (3) TMI 707 – Authority for Advance Ruling, Uttar Pradesh;
- In Re: Tata Motors Ltd, 2020 (41) G.S.T.L. 35 (A.A.R. - GST – Guj.)
- In Re: Dr Willmar Schwabe (I) Private Limited UP ADRG 79/2021 - Authority for Advance Ruling, Uttar Pradesh
- In Re: Integrated Decisions and Systems India Pvt Ltd, [GST-ARA-116/2019-20 dated 16.12.2021]

6.5 M/s. Emcure submitted that the transportation of employees through usage of Non-AC buses would merit classification under the Tariff 9964 as “Passenger Transportation Services”. It is submitted that the Annexure for Scheme of classification of services appended to Notification 11/2017-Central Tax (Rate) dated 28 June 2017 provides the manner for classification of services. The relevant extract of the same is reproduced below:

Sl. No.	Chapter, Section, or Heading Group	Service Code (Tariff)	Service Description
89	Heading 9964		Passenger Transportation Service
	Group 99641		Local transport and sightseeing transportation services of passengers
		996411	Local land transport services of passengers by railways, metro, monorail, bus, tramway, autos, three wheelers, scooters and other motor vehicles

6.6 It is submitted by M/s. Emcure that the local transportation services of passengers through buses are covered under Tariff 996411. Therefore, the local passenger transportation facility within the city in the given case in hand, if classified as service would merit classification under the Tariff 996411 only. Further, the Explanatory Notes issued by the CBIC also provides that the services provided by bus within city limits would be very well classified under Tariff 996411. The Explanatory Notes also provides that the renter defines the travel routes in case of passenger transportation services. In the given case, the said conditions are satisfied.

6.7 M/s. Emcure submits that even in case where the bus transportation facility provided by them to its employees amount to supply, the said services would be exempted by virtue of E. No. 15 (b) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (hereinafter referred to as Exemption Notification). The relevant entry is reproduced below:

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Percent)	Condition
15	Heading 9964	Transport of passengers, with or without accompanied belongings, by – (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air-conditioned stage carriage.	Nil	Nil

6.8 M/s. Emcure submits that passenger transportation services via non-air conditioned contract carriage, other than radio taxi is used for transportation of passenger is exempted from GST. It submits that the buses in the given case also qualify as contract carriage. The term contract carriage is defined in the Explanation given in the Exemption Notification which reads as under:

*'contract carriage' has the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988.*

6.9 Further, as per clause (7) of Section 2 of Motor Vehicles Act, 1988, the definition of contract carriage reads as under:

*"contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum--*

*(a) on a time, basis, whether or not with reference to any route or distance; or*

*(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes--*

*(i) a maxicab; and*

*(ii) a motor cab notwithstanding that separate fares are charged for its passengers;"*

6.10 M/s. Emcure submits that its employees are transported from one location to another against certain amount. Therefore, the said buses in question used for employee transportation would be covered under the definition of contract carriage. M/s. Emcure submits that as per Sl. No. 15 (b) of the Exemption Notification, the Non-AC buses being a Non-AC contract carriage would be covered under the exemption from GST.

6.11 M/s. Emcure cited that Maharashtra Advance Ruling Authority in the case of M/s. Emcure Pharmaceuticals Limited, [Applicant's own case for the state of Maharashtra] has given the ruling that canteen services and bus services by the Applicant to the employees is not covered under the definition of 'supply' under GST and hence not liable for payment of GST.

7. M/s. Emcure submitted that it is eligible to avail the input tax credit for the GST paid on purchase of canteen services in terms of Section 16 of CGST Act. The relevant provisions of Section 17(5) of CGST Act reads as follows:

*'17. Apportionment of credit and blocked credits —*



*(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:—*

*(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—*

*(A) further supply of such motor vehicles; or*

*(B) transportation of passengers; or*

*(C) imparting training on driving such motor vehicles;*

*(aa) vessels and aircraft except when they are used—*

*(i) for making the following taxable supplies, namely:—*

*(A) further supply of such vessels or aircraft; or*

*(B) transportation of passengers; or*

*(C) imparting training on navigating such vessels; or*

*(D) imparting training on flying such aircraft;*

*(ii) for transportation of goods;*

*(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):*

*Provided that the input tax credit in respect of such services shall be available— (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;*

*(ii) where received by a taxable person engaged—*

*(I) in the manufacture of such motor vehicles, vessels or aircraft; or*

*(II) in the supply of general insurance services in respect of such motor*

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insured by him;*

*(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.'*

7.1 M/s. Emcure submitted that as per Section 46 of the Factories Act, 1948, every factory is mandatorily required to provide and maintain canteen in the factory in which more than 250 workers are employed. Therefore, in order to comply with the said mandatory condition, they are providing and maintaining the canteen at the factory. Therefore, it is submitted that applying the proviso under Section 17(5)(b) 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. As such it is of strong view that the input tax credit on canteen services is not blocked under Section 17(5) of CGST Act and the same is eligible to it.

8. M/s. Emcure submitted that it is eligible to avail the input tax credit for the GST paid on availing bus services in terms of Section 16 of CGST Act. Further, submitted by M/s. Encure, that Section 17(5) had debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment i.e. 01.12.2019. However, with effect from 01.12.2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver).

8.1 M/s. Emcure has submitted that it is using motor vehicles having approved seating capacity of more than thirteen persons (including the driver), hence in terms of the legal provisions as above it shall be eligible for Input Tax Credit for the bus services.

**9. Question on which Advance Ruling sought:**

1. Whether the recoveries made by the Applicant from the employees for providing canteen facility to its employees are taxable under the GST laws?
2. Whether the free of cost bus transport facilities provided by the Applicant to its employees is taxable under the GST laws?
3. Without prejudice, even if GST is applicable in respect of employee recovery towards bus transportation facility, whether the Applicant would be exempted under the Sl. No. 15 of Notification No. 12/2017 – Central Tax (Rate) dated 28 June 2017?
4. Whether input tax credit is admissible to the Applicant for the GST charged/paid to the vendors on procurement of such services in terms of Sec 16 of CGST Act, as the same are used in relation to furtherance of business? If yes, would the same be restricted to the portion of cost borne by the Applicant?

**Personal Hearing:**

10. Virtual hearing granted on 22-3-22 was attended by Shri Santosh Tapade and Shri Narendra Adwadkar,, and they reiterated the submission.

**11. Revenue's Submission:**

Central Revenue vide its Letter dated 17-3-22 issued vide FNo.III/Misc.-Tech/13/2021 by the Assistant Commissioner, Division-III, Ahmedabad-North submitted as follows:

- (i) As per the information available with this office and application filed by the applicant, the activity of collecting subsidized rate from employees for the food consumed in the factory canteen facility and arrangement of transportation facility on free of cost basis provided to the employees in Non Air conditioned buses are ongoing activity.
- (ii) The questions / issues raised in the application at 14 (a) has been decided in respect of the applicant by the Maharashtra Authority for Advance Ruling vide Order No. GST-ARA-119/2019-20/B-03 dated 4-1-22.
- (iii) Further, relevant portion of Section 17(5)(b) is reproduced:  
17. Apportionment of credit and blocked credits-  
(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.]

In light of the above, the issue raised by the applicant should be viewed in light of the various ruling, facts and circumstances submitted by the applicant and may be decided on merits.

#### **FINDINGS:**

12. We find M/s. Emcure has arranged a canteen for its employees, which is run by a Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by M/s. Emcure whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by M/s. Emcure and paid to the Canteen Service Provider. M/s. Emcure submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. Further, We find that M/s. Emcure has arranged free of cost transportation facility to its employees in Non-AC buses, which is provided by third party vendor, as a part of its HR policy and this facility is as per employment arrangement with its employees. We are not inclined to accord these activities provided by M/s Emcure to its employees to be an activities made in the course or furtherance of business to deem it a Supply by M/s. Emcure to its employees.

13. We now detail our findings on admissibility of GST paid on canteen charges to the canteen service provider and the GST amount paid to the Bus transporter.

#### ITC on canteen charges:

Section 17(5)( b) of CGST Act, 2017 reads as follows:-

#### ***Section 17(5)(b)***

*“(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.”*

13.1 We note that sub clause of Section 17(5)(b)(i) ends with colon : and is followed by a proviso and this proviso ends with a semicolon.

13.2 Colons and semicolons are two types of punctuation. Colons are used in sentences to show that something is following, like a quotation, example, or list. Semicolons are used to join two independent clauses/ subclauses, or two complete thoughts that could stand alone as complete sentences. That means they're to be used when you're dealing with two complete thoughts that could stand alone as a sentence.

13.3 We find that semicolon creates a wall for conveying mutual exclusivity between the sub-clauses, in present matter. It is obvious that the legislature intended the said sub-clauses to be distinct and separate alternatives, with distinctively different qualifying factors and conditionalities

13.4 Thus, we hold that Section 17(5)(b)(i) sub-clause ending with a colon and followed by a proviso which ends with a semi colon is to be read as independent sub-clause, independent of sub clause Section 17(5)(b)(iii) and its proviso [of subclause iii]. Thereby, the proviso to section 17(5)(b)(iii) is not connected to the sub-clause of Section 17(5)(b)(i) and cannot be read into it.

### **Judicial Discipline**

13.5.

i. We find our view is in compliance to judicial discipline as laid down by the H'ble Supreme Court and H'ble High Courts. **The relevant extract of H'ble Supreme Court's judgment in the case of PIL of Shri Jayant Verma v. Union of India, dated 16-2-2018 related to the expressions separated by semicolon is as follows:** *“Firstly, purely grammatically, a semicolon separates the two expressions showing that they are not inextricably connected. .... Entry 5, List III deals with seven completely different subjects, all banded together under Entry 5 and separated by semicolons, making it clear that each subject matter is separate and distinct from what follows each semicolon.....”*

ii. The relevant portion of judgment of H'ble High Court of Kerala in case of **Mr. Vincent Mathew v. LIC of India dated 15-1-2013** is as follows: *“..... But, what is more relevant and crucial for the purpose of deciding the issue is that each of the earlier clauses viz., (a) to (bbb) ends up with semicolon. It is to be noted that semicolon (;) is a punctuation mark indicating a greater degree of separation than the ‘comma’ and it is being used to separate parts of a sentences....”*

iii. Further, to quote one more case law in consonance with our view is H'ble Tribunal order in the case of M/s DCW LIMITED (2001 (130) E.L.T. 891 (Tri. - Mumbai)) which detailed its finding on semicolon in its para 6.

iv. Our view is in compliance with **Hon'ble Patna High Court in the case of Shapoorji Paloonji & Company Ltd. Vs CCE, Patna reported in 2016 (42) STR 681 (Pat.)**. The Hon'ble Patna High Court in the said case had occasion to decide whether the condition attached to definition of Governmental Authority viz. participation of government by way of 90% or more of equity and control to carry out the functions of municipality under article 243W of the Constitution, is relevant for both the clauses separated by semi colon or not. *In this decision, the High Court is of the opinion that the clause (i) is followed by ";" and the word "or". Therefore, each of the sub-clauses is independent provision and condition of 90% participation would not be applicable to clause (i).*

ITC on hiring of Bus of more than 13 seater

14. The relevant provisions of Section 17(5) CGST Act, 2017 reads as follows:

*'(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:—*

*(a) **motor vehicles for transportation of persons** having approved seating capacity of **not more than thirteen persons** (including the driver), except when they are used for making the following taxable supplies, namely:—*

*(A) further supply of such motor vehicles; or*

*(B) transportation of passengers; or*

*(C) imparting training on driving such motor vehicles;*

*.....*

*.....*

*(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:*

*.....'*

14.1 When enquired during Virtual hearing, Shri Santosh Tapade informed that bus hired for transportation of employees has capacity more than thirteen passengers. We note that ITC on motor vehicle for transportation of persons having approved seating capacity of more than 13 persons is not blocked credit vide Section 17(5) CGST Act. Thereby, hiring of bus of approved seating capacity of more than 13 persons do not falls under blocked credit as provided under Section 17 (5)(b)(i) CGST Act.

15. In conspectus of aforementioned Discussion and Findings, We pass the Ruling:

**RULING**

1. GST, at the hands of M/s Emcure, is not leviable on the amount representing the employees portion of canteen charges, which is collected by M/s Emcure and paid to the Canteen service provider
2. GST, at the hands of M/s Emcure, is not leviable on free bus transportation facility provided to its employees.
3. ITC on GST paid on canteen facility is blocked credit under Section 17 (5)(b)(i) CGST Act and inadmissible to M/s Emcure.
4. ITC on GST paid on hiring of Bus, having approved seating capacity of more than 13 persons used for transportation of passengers, is admissible.

**(ATUL MEHTA)**  
**MEMBER (S)**

**(ARUN RICHARD)**  
**MEMBER (C)**

Place: Ahmedabad

Date: 12.04.2022