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/2023/28
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/56)

Date: -24.08.2023

Name and address of the applicant	:	M/s. Eimco Elecon India Limited Anand Sojitra Road, Vallabh Vidyanagar, Anand Gujarat – 388 120
GSTIN of the applicant	:	24AAACE4645C1Z5
Date of application	:	21.11.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)(e)
Date of Personal Hearing	:	23.3.2023 & 8.5.2023
Present for the applicant	:	Ms. Khushboo Kundalia, Shri Ashok Rathod and Shri Nrupesh Machchhar

Brief facts:

M/s. Eimco Elecon (India) Limited (for short - 'Applicant'), Anand Sojitra Road, Vallabh Vidyanagar, Gujarat – 388 120 is registered with the department and their registration number is 24AAACE4645C1Z5.

2. The Applicant, is engaged in the manufacture & supply of mining and construction equipment. They have set up their factory & business operations at various places across India. The applicant has employed more than 250 employees including contract workers in their factory and is also registered under the Factories Act, 1948.

3. The applicant further states that in terms of Section 46 of the Factories Act, 1948, they are statutorily mandated to provide canteen facility for their employees, including contract workers, at their factory premises. For this purpose, the Applicant has appointed a third-party canteen service provider [for short – '**CSP**'] on contract basis, to provide canteen services at their factory. In terms of the agreement between the Applicant and the CSP, the Applicant provides required space, utensils and other infrastructural facilities to the CSP to enable them to provide the required canteen services. CSP raises tax invoice for providing the

canteen service as per the agreed billing terms i.e., as per the dining strength which is ascertained based on the coupon collected from each employee and contract workers for tea/snacks and punching records for lunch and dinner, by charging GST at the rate of 5%.

4. The Applicant pays full invoice value to the CSP and accounts such expenses in its statement of profit and loss account. Presently, as per the applicant they are not availing the input tax credit [ITC] of the GST charged by the CSP in view of the condition provided in Sl. No 7(ii) of the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017.

5. The applicant further states that in terms of their Human Resource Policy, they provide the canteen facility to both their employees and contract workers at a subsidized rate. As far as employees are concerned, the applicant bears 50% of cost component of canteen services and recovers/collects the balance 50% from the employee's salary. Presently, the Applicant raises monthly tax invoice on open market value i.e. the value charged by the CSP and charges GST at the rate of 5% in terms of Sl. No. 7(ii) of the notification No. 11/2017-Central Tax (Rate) dated 28.6.2017. However, as far as contract workers are concerned, the applicant raises monthly invoice to recover/collect the individual cost component of the workers from the contractor/supplier of such workers, by charging GST at the rate of 5% as per Sl. No. 7(ii) of the notification No. 11/2017-Central Tax (Rate) dated 28.6.2017. In this case also, the remaining balance of the cost component of canteen services is borne by the applicant.

6. The applicant further states that the amount recovered/collected by them from their employees and contractor/supplier of contract workers, is without any commercial objective i.e., without any profit margin; that they do not charge any other amount from their employees and contractor/supplier of contract workers for providing the facility of food at its canteen facilities in factory; that the recovery/collection of the canteen expenses from the employees and the contractor/supplier of the contract workers is directly netted off from the canteen expenses, booked by the Applicant in its P&L account; that the amount recovered/collected by the applicant from the employees & contract workers is not booked as income in the P&L account

8. On merits, the appellant has further contended as follows:

No GST on canteen facility

- that it is only facilitating the supply of food to the employees and contract workers at its canteen facility in the factory which is a statutory requirement u/s 46 of the Factories Act, 1948, and is recovering only subsidized share from its employees and contract workers towards actual expenditure incurred in connection with the canteen services which is provided by CSP, without making any profit;
- the said recovery or collection of employee's and contract worker's share cannot be treated as consideration against supply of canteen services by the applicant to the employees and contract workers.
- that GST should not be applicable on the amount representing employee's portion of canteen charges collected / recovered by the applicant from its employees
- thus, in order to constitute a 'supply', the following elements are required to be satisfied:
  (i) there should be supply of 'goods' and / or 'services'
  (ii) supply is for a 'consideration'
  (iii) supply is made 'in the course or furtherance of business'
  (iv) the activity under consideration shall not fall within the scope of section 7(2) of the CGST Act.
- that any activity which comes under purview of Section 7(2) of the CGST Act, the same falls outside the scope of supply under the GST law;
- as per press release dated 10.7.2017, supply by employer to employee, in terms of contractual agreement entered into between the employer and employee, is not subjected to GST;
- as per circular No. 172/04/2022-GST dated 6.7.2022, any perquisites provided by the employer to employee, in terms of the contractual agreement entered between them are in lieu of the services provided by employee to employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between them, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee; that any benefit or facility provided by the employer to the employee, in terms of contractual agreement entered into between the employer and employee or based on the employment policy of the employer, in lieu of the services provided by employee to employer in relation to his employment is not subjected to GST
- that in the present case, there is only one supply *i.e.* the supply is from the CSP to the employees and not from the CSP to the applicant as the foods gets consumed by the employees;
- though the supplier is the CSP and invoice is raised on the applicant, the ultimate recipient of such canteen facility is the employee; that the applicant merely allows the CSP to use its demarcated area i.e., canteen area for preparing and serving food to the employees and makes payment to the CSP on behalf of the employees for administrative convenience;
- applicant is merely collecting the employees' portion of amount towards canteen charges and pays the consolidated total amount, which includes the applicant's share of the amount, to the CSP toward the food provided to the employees of applicant by the CSP; Therefore, there is no supply from the applicant to its employees.
- that they wish to rely on the orders of M/s Amneal Pharmaceuticals Pvt Ltd dated 8.3.2021 [Appeal No. GUJ/GAAAR/APPEAL/2021/07]; M/s Tata Motors Ltd dated 30.7.2021 [Advance Ruling No. GUJ/GAAR/R/39/2021]; M/s Emcure Pharmaceuticals Limited dated 4.1.2022 [Advance Ruling No GST-ARA-119/2019-20/B-03]; M/s Musashi Auto Parts India Private Limited dated 31.3.2022 [Appeal No HAAAR/2020-21/06]; M/s Cadila Healthcare Limited order dated 12.4.2022 [Advance ruling No GUJ/GAAR/R/2022/19]; M/s Astral Limited dated 7.3.2022 [Advance ruling number GUJ/GAAR/R/2022/01]; M/s Intas Pharmaceutical Ltd dated 7.3.2022 [Advance ruling number GUJ/GAAR/R/2022/03]
- there is no independent contract, which exists between the applicant and the employees for setting up of the canteen facility;

- the canteen facility at the factory premise is being provided on account of the legal obligation cast in terms of section 46 of the Factories Act, 1948; that the canteen facility is accessible to the employees due to the existing employer-employee relationship; that an employee is not allowed to use the canteen facility once the 'employer-employee' relationship ceases i.e., when the employment is terminated.

Contract worker's portion of canteen charges

- the contractual worker in the factory is employed for carrying out the activity which is either directly or indirectly related to manufacturing activity. The contractual worker in the instant case, is under scope of definition of "*worker*" as per section 2(*l*) of Factories Act, 1948.
- that it is mandatory for the applicant to provide canteen facility to contract workers, who are employed to carry out activities directly or indirectly in relation to manufacturing activity;
- that they provide canteen facility at subsidized rate to its contract workers and the remaining portion of the cost component of the total amount of food/canteen charges is borne by the applicant;
- that in the case of contract workers, the amount recovered/collected by the applicant from its contract workers is paid to the CSP on behalf of the contract workers;
- that an employee and contract worker in respect of the Factories Act, 1948 is treated at par and no differential treatment is given with regards to casting an obligation on the applicant for providing canteen facility to contract workers;
- the services are consumed by the employees and contract workers directly as is provided by the CSP and the applicant is merely facilitating the same and providing subsidy thereon;
- applicant is not the service provider for the services rendered to the contract workers and is merely receiving a part of sum to be paid to the CSP which is paid as it is without retaining any portion thereof or charging any markup therein; that in absence of applicant being service provider, no GST liability must arise on the part recovery made by the applicant from the contract workers towards canteen charges;
- the applicant is not engaged in the business of providing canteen or outdoor catering services;
- that in the present case, there is only one supply i.e., supply from the CSP to contract workers and not from the CSP to the applicant as the foods gets consumed directly and only by the contract workers;
- that for a transaction to qualify as supply in terms of section 7 of the CGST Act, it should essentially be made in the course or furtherance of business; that in the present case, the applicant is merely collecting the contract workers portion of amount in the canteen charges and pays the consolidated total amount, which includes the applicant's share of the amount also to the CSP towards the canteen services provided to contract workers. The Applicant neither keeps any margin in this activity of collecting contract workers' portion of amount nor makes any separate supply to the contract workers. Therefore, there is no supply of canteen services from the Applicant to contract workers.
- that recovery of subsidized share of canteen charges from the contract workers against supply of canteen services by CSP, cannot be treated as consideration against supply of services by Applicant to contract workers;
- that consideration must flow from the service recipient or any other person to the service provider in response to or for the inducement of supply and should accrue to the benefit of the service provider;
- that there should be contractual reciprocity and there must be direct and immediate link / nexus between supply made and consideration received. Thus, any amount charged which has no nexus with the supply cannot be construed as consideration under GST for the purpose of levy of GST;
- that they wish to rely on the case of M/s Bhayana Builders, [2018 (2) TMI 1325] & Intercontinental Consultants and Technocrats, [2018 (10) GSTL 401 (SC)];
- that there is no contractual agreement between the applicant and contract workers to provide canteen services against consideration; that as the recovery/collection of payment is not premised on the enforcement of reciprocal obligations between the Applicant and

the contract workers, the same cannot be linked to a supply for the purpose of levying GST.

ITC of the GST paid by the applicant to CSP

- that they wish to rely on the case of M/s. Bharat Oman Refineries Ltd. dated 8.11.2021 (Ruling No. MP/AAAR/07/2021);
- that as per the proviso to circular No. 172/04/2022-GST dated 6.7.2022, wherein at the end of clause (b) of sub-section (5) of section 17 of the CGST Act clearly states that it is applicable to entire clause (b) of the sub-section (5) of section 17 of the CGST Act;
- input tax credit (ITC) of GST paid to canteen service provider is eligible in terms of proviso under Section 17(5)(b), where it is obligatory for an employer to provide the same to its employees under any law;
- the ITC on facility of canteen made available to the contractual workers is also eligible in terms of followings:
    - where the contractor fails/does not provide canteen facility to the contract workers, the principal employer has to provide and maintain the canteen facilities;
    - responsibility of providing the canteen facility is cast on the principal employer & it is not solely cast upon the contractor;
    - in the present case, the contractor/supplier of the contract workers does not provide canteen facility to the contract workers employed at applicant's factory & hence, the applicant makes available the canteen facility to the contract workers;
    - that even though there is no employment agreement between the applicant and the contract workers, it is obligatory for the applicant to provide and maintain canteen facilities for both employees and contract workers;
    - that since the applicant has an obligation to provide canteen facility to employees and contract workers, ITC of the GST paid on the canteen services provided by the CSP is available to the applicant in terms of section 17(5)(b) of the CGST Act.

9. The applicant vide the aforesaid application, has sought advance ruling against the following questions *viz*

1. Whether GST is applicable on the amount recovered/collected by the applicant from the employees and contract workers towards canteen services provided by third party CSP at the canteen facility, which is obligatory for the applicant to provide and maintain under section 46 of the Factories Act, 1948.

2. Whether the applicant is eligible to avail ITC of the GST charged by the CSP for providing the canteen services, which is mandatory for the Applicant to provide and maintain under section 46 of the Factories Act, 1948.

10. Personal hearing was held on 23.3.2023 wherein Ms. Khushboo Kundalia, Shri Ashok Rathod and Shri Nrupesh Machchhar appeared and reiterated the facts as stated in the application. They further informed that the copy of the contract would be submitted and that the contract workers contribution is recovered from the contractor. A further hearing was held on 8.5.2023 wherein

they relied upon the additional submission dated 4.4.2023. They further argued that as per the factory act '*worker*' includes contract workers also; that even under the Contract Labour Act, there is a provision for providing canteen service to contract workers by principal if contractor fails to provide such facility.

11. Additional Commissioner, CGST, Vadodara I, vide letter no. IV/16-06/Tech/Advance Ruling/Eimco/2022-23 dated 6.1.2023, has submitted the following comments *viz*

- the activity/service is an ongoing activity as clarified in paras G & H of Annexure-A. The same has also been clarified by the authorised person of the applicant;
- on the issue of applicability of GST, on the amount recovered/collected by the applicant from the employees and contract workers towards canteen services provided by CSP, it appears that GST is applicable on the portion of amount collected by the applicant from the employees in light of sub-section 1A of Section 7 CGST Act, 2017 read with entry No. 6(b) of Schedule 2;
- on the issue of eligibility to avail ITC of the GST charged by the CSP, it appears that the applicant is not eligible to avail ITC in light of Section 17(5)(b)(i), *ibid.*

Discussion and findings

12. 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.

13. 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.

14. 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 of [6][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.]

- **CBIC's press release dated 10.7.2017**

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 centre [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).

- **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."* *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."* *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.*
5	*Whether various*	*1. Schedule III to the CGST Act provides*

	perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	*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.* *2. Any perquisites 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 there from that perquisites 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.*

Factory

15. The facts having been enumerated *supra* we do not intent to repeat the same for the sake of brevity.

16. The first issue to be decided is whether the subsidized deduction made by the applicant from its employees, who are availing food in the factory would be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017. Now, in terms of Section 7 of the CGST Act, 2017, supply means all forms of 'supply' of goods/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. The exception being Schedule I, which includes the activities made or agreed to be made without a consideration and Schedule III, which includes activities which shall be treated neither as a supply of goods or services. The applicant's case is that they employ more than 250 employees including contract workers in their factory and that they have been provided with canteen facility in terms of section 46 of the Factories Act, 1948. We find that the applicant is paying GST @ 5% in terms of the invoices raised by the CSP. The applicant's primary role is that he provides a demarcated space and that the amount is paid by him to the CSP [a part of which is collected from the employees] on behalf of the employees. As is already mentioned, the applicant's contribution is treated as expenses in his books of accounts.

17. Now in terms of circular No. 172/04/2022-GST, it is clarified that perquisites 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. We find that factually there is no dispute as far as [a] the canteen facility is provided by the applicant as mandated in Section 46 of the Factories Act, 1948 is concerned; and [b] the applicant has provided an extract of HR policy on canteen facility to employees, wherein it is stated as under:

2.0 CAFETERIA COUPONS & ITEM RATES

2.1 The Company will make available canteen facility as per Factories Act, 1948 and rules made thereunder including other laws, as applicable. Such canteen facility will be available at a subsidized rate, the details of which is tabulated below in clause 2.3. The canteen service provider will provide Lunch/Dinner and Tea/Coffee/Snacks directly to you. Company issued QR Codes is necessary to avail the said facilities. The cost of the Lunch/Dinner/Tea/Coffee/Snacks as tabulated in Clause 2.3, will be borne by you and collected by the Company for making payment to the canteen service provider on your behalf and the remaining amount of the cost will be borne by the Company.

2.2 Based on daily consumed quantities, Canteen Service Provider/Agency, Varsha M Purohitwill raise Company/unit-wise bills for the full amount, which will be paid by the respective Companies by adding up the subsidy rates and individual's consumption value, which shall be collected from your personal account i.e. salary account in case of employees and through other manner in case of contract workers.

2.3 The food items are issued to the employees at subsidized rates as below.

(a) **For Company Workers & Staff**

i.	Tea	: Rs.03.00 Per Cup
ii.	Snacks	: Rs.06.00 Per Plate
iii.	Lunch / Dinner	: Rs.19.00 per Dish

2.5 Separate Color shades in the coupon books are maintained for Contract Workers, Company Workers & Staff for better accountability and easy identification.

In view of the foregoing, we hold that the subsidized deduction made by the applicant from the **employees** who are availing food in the factory would not be considered as a '*supply*' under the provisions of section 7 of the CGST Act, 2017. However, the aforementioned finding is only in respect of employees i.e. permanent employees.

Contract worker's portion of canteen charges

18. The applicant has submitted that there are more than 250 employees including contract workers in their factory; that they are providing food at subsidized rate to their contractual workers i.e. the total amount of food is being borne by them and residual 50% amount is recovered from Contractual worker. The contractual workers are not employees of the applicant but they are working in the company through a contract. These contractual workers do not form part of the 'employee' as they are not on the pay roll of the company. The term 'contract labour' under Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA") means a person who is hired in or in connection with the work of an establishment by or through a contractor. It is important to note that the word, 'hire', as used in the Act, has a significant connotation and it is not equivalent to an employer-employee relationship. A person, is deemed to have been employed as contract labour when he is hired in or in connection with a particular work of the principal employer. Where a person is 'hired' specifically for the work of an establishment, his scope of work does not extend beyond the work of that establishment and he is considered to be a contract labour.

19. The applicant is providing canteen service to their employees since there are more than 250 employees including contract workers. However, Section 46 of the Factories Act, 1948 stipulates the workers who are employed in the company's pay roll and not contractual workers. Section 46 of the Factories Act, 1948 is reproduced 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 generality of the foregoing power, such rules may 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 therefore;*
> *(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 of foodstuffs 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).

20. The term '**worker**' is defined under Section 2(*l*) of Factories Act 1948 which is reproduced as under :

"worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union

21. The contractual worker in the factory is primarily engaged for carrying out the activity which is either directly or indirectly related to manufacturing activity. The contractual worker in the instant case, is under scope of definition of 'Worker" stipulated under Section 2(*l*) to be read with Section 46 of the Factories Act, 1948.

22. The term 'employed' is not defined under the GST, therefore, we refer to the dictionary meaning. The Law Lexicon says that the word 'employed' means engaged or occupied in the performance of work or hired to perform labour. Contractor pays the salary to the contractual worker. Theses contractual workers are supplied by the contractor to the applicant for carrying out activity in the factory premises. CBIC vide its Circular No. 172/04/2022-GST dated 6.7.2022 has clarified, that perquisites 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. In the present case contractual agreement is between contractor and contract workers being employer and employee respectively. Further, the test for establishing an employer-employee relationship as laid down by the Apex Court in Balwant Rai Saluja vs. Air India Ltd. is complete administrative control, which is decided by several factors, including, among others

who appoints the workers;
who pays the salary/remuneration;
who has the authority to dismiss;
who can take disciplinary action;
whether there is continuity of service; and
extent of control and supervision i.e. whether there exists complete control and supervision.

23. The applicant has entered into agreement with Contractor to provide them workers in lieu of consideration. The applicant has paid the agreed amount to the contractor and the contractor pays the salary/wages to such contract workers. Therefore, it evident that the instant case does not pass the test of employer-employee relationship as far as the contract workers and the applicant is concerned and therefore does not fall within the ambit of entry I of Schedule III of CGST Act, 2017.

24. We find that the term, 'outward supply', is defined in section 2(83) of the CGST Act, 2017, as under:

> *(83) "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;*

25. The term "business" is defined in section 2(17) of the CGST Act, 2017 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;*
> *(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) [5][activities of a race club including by way of totalisator or a license to book maker or activities of a licensed 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;*

From the plain reading of the definition of "business", it can be safely concluded that the supply of food by the applicant to its contractual worker would definitely come under clause (D) of Section 2(17) as a transaction incidental or ancillary to the main business as the contractual worker are working for the company to run the business activity of the applicant.

26. Schedule II to the CGST Act, 2017, describes the activity 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:

> *6. Composite supply*
> *The following composite supplies shall be treated as a supply of services, namely:-*
> *(a) works contract as defined in clause (119) of section 2; and*
> *(b) 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.*

27. Thus even though, there is no profit as claimed by the applicant on the supply of food to its contractual workers, there is indeed a "supply", as provided in Section 7(l)(a) of the CGST Act, 2017. The applicant would definitely come under the definition of "supplier", as per sub-section (105) of Section 2 of the CGST Act, 2017.

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

> *(31) "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 applicant recovers the cost of food from their contractual worker, there is 'consideration', as defined in Section 2(31), *ibid*. To summarize, the applicant has established canteen facilities as mandated under section 46 of the Factories Act, 1948 and supplies food at a subsidized cost through CSP. The supply of food by the applicant is 'supply of service' by the applicant to their contractual worker/s. The cost, which is recovered from the salary of contractual worker, as deferred payment is 'consideration' for the supply and GST is liable to be paid.

29. The applicant, we find has further relying on section 16 of the Contract Labour (Regulation and Abolition) Act, 1970, referred to the definition of

appropriate government, ***contractor***, ***principal employer*** and ***establishment*** as provided u/s 2 of the said Act & Rule 42 of the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972, which deals with canteen facilities for contract workers to put forth a submission that in case where the contractor fails or does not provide canteen facility to the labourers, the principal employer has to provide and maintain the canteen facilities to the contract workers. Therefore, the principal employer is also cast the responsibility of providing the canteen facility to the contract labourer and that such responsibility is not solely cast upon the contractor; that the applicant in this case only undertakes to provide & maintain canteen facilities to the contact workers. We have gone through the concerned sections and the rules as pointed out supra. We find that the relevant portion of Rule 42 states as follows *viz*

> *(2) If the contractor **fails** to provide the canteen facilities within the time laid down the same shall be provided by the principal employer within sixty days of the expiry of the time allowed to the contractor.*
>
> *(3) The canteen shall be maintained by the contractor or principal employer, as the case may be, in an efficient manner.*

In the copy of the contract [submitted as a part of additional submission], the applicant has entered into a contract with the contractor dtd 30.3.2021 [Ms Urmila J Parmar], wherein clause 25 states that the applicant will make available food, snacks tea at subsidized rate to the contact labour deployed by the contactor through a CSP; that the total cost of the goods, snacks and tea provided to the labourers will be collected by the applicant from the contractor for making payment to the CSP. Thus it is clear that this is a contract entered into by the applicant with the contractor and not with the contract workers. Even otherwise, the onus shifts to the principal employer [ie the applicant] only in case of failure of the contractor to provide such facility. Nothing is brought on record to exhibit that the contractor who supplied workers to the applicant, in this case, **failed** to provide the canteen facilities. The averment therefore is not legally tenable.

30. In view of the above. we hold that recovery of amount from contractual worker on account of third party canteen services provided by the applicant would fall within the ambit of the definition of 'outward supply' as per section 2(83) of the CGST Act, 2017 and therefore, is liable to tax as a supply under GST.

Input Tax Credit

31. The next question on which the applicant has sought ruling is whether ITC of GST charged by the CSP would be eligible for availment by the applicant. In this connection, before proceeding further, certain factual aspects which we would like to mention, though at the cost of repetition are *viz*

- that they employ more than 250 employee including contract workers in their factory;
- 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 to provide canteen facility to its employees within the factory premises;
- that circular no. 172/4/2022-GST clearly 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.*

32. In view of the foregoing, we hold that ITC will be available to the appellant 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 full time/direct employees working on permanent basis 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 appellant 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.

ITC on canteen charges on the food supplied to contractual worker

33. In the preceding paragraphs, we have already discussed that contractual worker are not covered under the category of employer-employee relationship, as far as the applicant is concerned. Further, the eligibility of ITC on food supplied to the contractual workers depends on the issue whether applicant is mandated to provide food to contractual worker. In this regard, we refer to the provision of Contract Labour (Regulation and Abolition) Act 1970, the relevant extracts of which are reproduced below viz:

Chapter V WELFARE AND HEALTH OF CONTRACT LABOUR
16. Canteens-

(1) The appropriate Government may make rules requiring that in every establishment-
(a) to which this Act applies,
(b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and
(c) wherein contract labour numbering one hundred or more is ordinary employed by a contractor one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for —

(a) the date by which the canteens shall be provided,
(b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
(c) the foodstuffs which may be served therein and the charges which may be made thereof.

34. The provision of Chapter V of CLRA stipulates that labour contractor shall provide the canteen facility to the labour employed by the contractor. Thus, there is no direct mandate to the applicant company to provide canteen facility to the contractual worker. We find that ITC on food, beverages, outdoor category is not blocked, provided it is obligatory for an employer to provide the same to its employees under any law, for the time being in force under Section 17(5), *ibid*. In the instant case the applicant company and contractual workers, do not fall within the ambit of employer-employee relationship and further as is pointed out *supra*, it is not obligatory on the applicant company to provide canteen facility to the contractual worker as per provisions of CLRA Act. Section 17(5) allows ITC on food, beverages & outdoor catering only in case it is obligatory under any law for the time being in force. Thus applicant is not eligible of ITC on the food supplied by CSP to contractual worker and it is blocked under Section l7(5) (b) of CGST Act, 2017. Thus, we hold that applicant is not eligible to the ITC on food supplied to the contractual worker under Section l7 (5) (b) of CGST Act, 2017.

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

RULING

1. GST, at the hands of 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 CSP.

2. GST, at the hands of the applicant, is leviable on the amount representing the contractual worker portion of canteen charges, which is collected by the applicant and paid to the CSP.

3. Input Tax Credit (ITC) will be available to the applicant on GST charged by the CSP in respect of canteen facility provided to its direct employees working in their factory and the corporate office, 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. 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.

4. ITC on GST paid on canteen facility is not admissible to the applicant under Section 17(5)(b) of CGST Act, 2017, on the food supplied to contractual worker supplied by labour contractor.

(MILIND KAVATKAR)
MEMBER (SGST)

(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 24 /08/2023