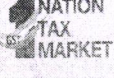


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/41
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/28)

Date: 28/09/22

Name and address of the applicant	:	M/s. SRF Limited, GIDC, Plot No. D-2/1, Phase II, PCPIR, Dahej, Ta Vagra, Bharuch, Gujarat – 392 130
GSTIN/ User Id of the applicant	:	24AAACS0206P1ZJ
Date of application	:	17-05-22
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) and (g)
Date of Personal Hearing	:	08-07-22 and 02-09-22
Present for the applicant	:	Shri Shushanta Dutta, DGM Taxation, Shri Anandi Prasad, Sr. V. P. Taxation

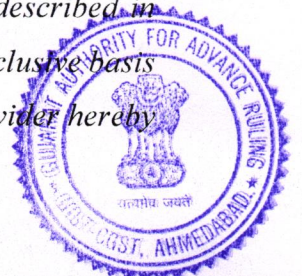
Brief Facts :

M/s SRF Limited, hereinafter referred to as “the applicant” for the sake of brevity, is a multi-business chemicals conglomerate engaged in the manufacturing of industrial and specialty intermediates. The applicant business portfolio covers fluorochemicals, specialty chemicals, packaging films, technical textiles, coated and laminated fabrics.

1.1 The applicant has submitted that it provides canteen facilities to the employees of the company, the applicant has entered into contract with 3rd party service vendor, i.e., M/s Shashi Catering Services Private Limited (*hereinafter referred to as ‘the caterers’*). Relevant extract of the Agreement dated 01 August 2020 between the Applicant and M/s Shashi Catering Services Pvt. Ltd. (“*Agreement dated 01 August 2020*”) is re-produced verbatim as under –

“1. SCOPE OF SERVICE

SRF hereby appoints the Service Provider for providing Industrial catering food & beverage services as mentioned herein and as per the terms and conditions and the Scope of Work (“SOW”) more particularly described in Schedule 1 for the location/s listed in Schedule 2 (“Site”) on an exclusive basis (“Services”) for the Term (as defined below) and the Service Provider hereby



agrees to provide the services as per the minimum service levels, being the minimum acceptable levels of performance of the services by the Service Provider during the Term of Agreement as provided in Schedule 3 ("Minimum service levels/ MSLs") in accordance with the terms of this Agreement. Both the parties agree that as and when services are desired by SRF, the services will be added to the current SOW by way of an additional SOW along with the relevant terms and conditions of such additional services. In the event of a conflict between the terms and conditions of this Agreement and Statement of Work ("SOW"), the provisions of the Agreement shall prevail. The Service Provider willingly undertakes and accepts the service and assures SRF that they will perform the services at all stages in according to the agreed MSLs.

.....

4. SERVICES FEES

In consideration of the services to be provided by the Service Provider, SRF will pay the Service Provider a fee as detailed under Schedule 4 ("Service Fees") and the reimbursement of the bills pertaining to rendering of the services. All payments made to the Service Provider shall be inclusive of all applicable taxes. SRF shall pay the undisputed Service Fees within 60 days from date of receipt of invoice from the Service Provider. All direct or indirect taxes, duties, levies, royalties, etc. with regard to this Agreement shall be paid by Service Provider. In the vent of any dispute, the same shall be communicated to the Service Provider within seven (7) working days from the date of receipt of invoice by SRF. SRF will ensure the payment of bills to be made/ reimbursed in the same month; in case of any delay in payment, the Service provider is not authorized to charge any amount in form of interest, fee or supplementary charges.

.....

Schedule 1

Scope of Work

Service Provider's Obligation

Note: - These rates are fixed for 2 years and 3rd year rates to be revised as per Food Article inflation index and manpower MWDA rise mutually.

Go Live Date: 01 Sept 2020

Contract term: 01 Sept 2020 to 31st Aug 2023 (3 years)

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Scope of Services

1. The Service Provider shall provide service at site address and the service will include meals at agreed rate mentioned. The service will be provided to employees, visitors, etc. at site address.
2. In addition to routine services, the service provider shall be responsible



for provision of certain catering services for specific events as per mutually agreed rates per event.

3. The Service Provider shall strictly adhere to laid down meals timings in schedule while providing the services.

Schedule 2

Sites

Sr. No	Location	Address
1.	SRF Limited (FCB & SCB)	PLOT No. D-2/1, GIDC, Phase II PCPIR, Ta: Vagra, Dahej Bharuch- 392130 Gujarat

Schedule 4

COMMERCIAL AGREED

Menu/ Item	UOM	Fixing Rate	Proposed Rate- 1 st & 2 nd Year	Rates in Rs from 01 Sept 2020 till 31 Aug 2022	Rates from 01 Sept 2022 till 31 Aug 2023
Tea- 100 ml	1	6.00	5% increase on existing rate	6.30	3 rd year rates to be revised as per Food article inflation index and manpower MWDA rise mutually
Tea/ Coffee/Tray (With dip-dip tea bag) Nescafe, Sugar cubes Tray of one cup		10.15	5% increase on existing rate	10.20	
Tray of two cup		18.00	5% increase on existing rate	18.90	
Coffee- 100 ml	1	6.50	5% increase on existing rate	6.83	
Milk- 100 ml	1	6.50	5% increase on existing rate	6.83	
Wet Snacks- 70-100gms Bhajia/ Batata Vada/Samosa/cutlet/Idli/Khaman/Upma etc	1	12.00	5% increase on existing rate	12.60	
Dry Snacks- 70 gms Chevda/Ghatia/ Ratlami/ Sev/Tikki Sev/ Shakkar para/ Mixture/ Dal Moth etc	1	12.00	5% increase on existing rate	12.60	
Biscuits/ Cold Drink/ Mineral water/ Namkeen/ wafers		On MRP	On MRP	On MRP	
Meals (Lunch/ Dinner) 1. Roti/Puri/Paratha 125 gm 2. Rice/ Khichdi/ Pulao 125 gm 3. Kathol 100 gm 4. Seasonal Vegetable 100 gm 5. Dal/Kadhi 100 gm 6. Salad/ Pickle 15/5 gm 7. Curd/ Buttermil 50/150 ml 8. Papad/ Fryums (small) 1nos.	1	45.00	5% increase on existing rate	47.25	



9. Sweet (once a week only) 10. 50/100gm					
Monthly fixed Cost-Paid (Holidays, Pickle, Saunf etc), Food transport vehicle etc (Detailed breakup as per below) a) Transportation Charges- 24000.00 b) Cleaning Charges- 12000.00 c) Pickle & Mukvas- actual d) NH/W.OFF/FH & OT Actual (As per wage register)		1.88 lac to 2.44 lac	No change- as per existing practice in actual	1 No change- as per existing practice in actual	
Fuel charges	1	Actual	No change- as per existing practice in actual		
Manpower Supply (Guest House)	1	15000	No change- as per existing practice in actual		
Special Lunch (Customer Visit)	1	150	No change- as per existing practice in actual		
Monthly cost towards CAPEX of Equipment's- As per Annexure A (for 3 years agreement)		Nil	Rs 1,65,275/- per month upto 36 months	Machinery/ Equipment to be added as per annexure A - it would be maximum mechanization	Rs 1,65,275/- per month GST as applicable on actual basis, will be paid extra

- Service billing shall be strictly per meal/ plate basis and payment thereof will be reimbursed on submission of monthly bill. SRF has requisite arrangement for recording of number of meals.
- The above stated price is an all-inclusive price plus tax as applicable. The Service Provider shall abide by the same. It is the sole responsibility of the Service Provider to ensure that all the payments whatsoever is required to be made to his personnel deployed at the site address is made, without any fail. All regulatory documents related to payments to its personnel will be maintained by the Service Provider and will produced whenever asked by SRF or Government officials.
- The Service Provider shall raise monthly bills duly certified by the authorized representative of SRF, for payment of the service by the Service Provider, subject to any deductions as per MSL.
- The food itinerary cost is the basic cost, any taxes, which will be levied by the Government, will be over and above the Basic cost and proof of payment can be checked by payment during processing of Payment of invoice. And onus of the payment is under vendor scope if claimed from the



company (i.e., GST/IGST etc.).”

2. The applicant has submitted that for providing the canteen services to the employees of the Applicant, 3rd party canteen service provider shall raise an invoice upon the Applicant. In exchange, the Applicant Company recovers a subsidized amount from its employees as per Canteen Policy No. FCB & SCB (D)/JET/PP/14.2 dated 01 April 2016, relevant extract of which is re-produced as under for ready reference –

POLICY	<i>Providing Canteen facility to employees at FCB & SCB Dahej</i>						
PURPOSE	<i>To provide wholesome meal, tea and snacks to employees on duty</i>						
ELIGIBILITY	<i>All employees at FCB & SCB Dahej</i>						
RULES	<div><p>➤ Tea and Snacks will be served at main canteen and all the snacks' points located at various locations at plant. The current timings are mentioned below.</p><p>➤ The company provides 70% subsidy on items prepared in the canteen and 30% of the cost will be borne by employee. This recovery will be done from monthly salary based upon actual number of Meals/Snacks consumed by employee.</p><p>➤ Current rate of subsidy cost is as below</p><table><tr><td>Meal Type</td><td>Recovery Amount in Rs</td></tr><tr><td>Lunch/Dinner</td><td>13.5/-</td></tr><tr><td>Breakfast/Evening or Night Snacks</td><td>3.6/-</td></tr></table><p>➤ Also, there is facility of Tuck-shop in main canteen where employee can purchase packaged food and beverages on MRP basis. There will be no subsidy on these items and payment towards purchasing of these items needs to be made directly to the vendor.</p><p>Canteen Details</p><p>➤ Weekly menu would be displayed on the Canteen notice board. It would be decided by the canteen committee members from time to time.</p><p>.....</p></div>	Meal Type	Recovery Amount in Rs	Lunch/Dinner	13.5/-	Breakfast/Evening or Night Snacks	3.6/-
Meal Type	Recovery Amount in Rs						
Lunch/Dinner	13.5/-						
Breakfast/Evening or Night Snacks	3.6/-						

RECOVERY OF THE SUBSIDIZED AMOUNT

ITEM		MODE OF RECOVERY
Lunch/Dinner	1	As per Attendance recorded in swipe machine installed in canteen
Tea	2	Fixed Recovery (For 2 Teas in a day) On Coupons



Snacks	1	
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Only the above stated items would be available at subsidized rates”

3. The applicant has submitted in the below mentioned tabulated is the total amount charged by the canteen service provider and bifurcation of the same incurred by Applicant and the employee (by way of recovery by the Applicant) –

S. No.	Meals	Charges (excluding taxes, if any)		
		By Canteen Vendor from the Applicant (Rs.)	By Applicant from its employee (Rs.)	Remaining borne by the Applicant
(A)	(B)	(C)	(D)	(E)
1	Lunch Facility	47.25	13.50	33.75
2	Snacks Facility	12.60	3.60	9.00
3	Tea Facility	6.30	NIL	6.30

Bus Transportation Facility:

4. The applicant submits for the ease & comfort of its employees, has arranged transportation facility for its employees to ensure that the employees reach the factory premise and back home safely and maintain the schedule of their arrival & departure as per shift timings. For this purpose, an internal policy document bearing no. FCB & SCB(D)/JET/PP/25.2 dated 01 April 2016 has been issued within the company for all the employees working at FCB & SCB (Dahej) wherein it is mentioned under the ‘Rules’ that **the transport is available at subsidized rates.**

Relevant extract of the policy document has been verbatim reproduced as under –

POLICY	To provide transport facility to the employees of FCB & SCB (Dahej)						
PURPOSE	To ensure that employees reach the factory safely and with ease. To maintain the schedule of their arrival and departure as per shift timings						
ELIGIBILITY	All employees working at FCB and SCB at Dahej						
ENTITLEMENT	Travel by company transport						
RULES	<p>➤ Transport is provided to & from Dahej and Baruch as per the fixed route</p> <p>➤ The employee must notify the Admin about the pick-up point on his joining. Admin to accordingly ensure planning of vehicles.</p> <p>➤ Transport is available at subsidized rates. The current rate of monthly recovery is as under</p> <table> <tr> <th>Cadre</th><th>Amount (Rs.)</th></tr> <tr> <td>JE/Technician/Workmen</td><td>26/-</td></tr> <tr> <td>Officer</td><td>260/-</td></tr> </table>	Cadre	Amount (Rs.)	JE/Technician/Workmen	26/-	Officer	260/-
Cadre	Amount (Rs.)						
JE/Technician/Workmen	26/-						
Officer	260/-						



	<ul style="list-style-type: none"> ➤ <i>This amount is fixed irrespective of number of days employee have availed the facility.</i> ➤ <i>Employee needs to notify HR and Admin team in case employee do not use this facility and commute for work on his/her own, in that case monthly recovery will be stopped from next payroll cycle.</i> ➤ <i>Any change of address in his/her tenure with FCB and SCB, to be informed to Admin. Based on the same a new pick-up point, if applicable, will be communicated by Admin.</i>
ANNEXURE	➤ <i>Declaration form for change in address</i>

4.1 In order to provide this facility to the employees of the company, the applicant has entered into contract with 3rd party service vendors, namely, M/s Divya Travels (Agreement dated 01 April 2019), M/s Morlidhar Travels (Agreement dated 01 April 2019) and M/s Theme Logistics and Management Pvt. Ltd. (Agreement dated 01 January 2020), (*hereinafter referred to as 'the transporters'*).

5. The applicant has submitted that the service of bus transportation is being provided to the employees of the company and not by the applicant to its employees; as a part of its HR policy, merely arranging for bus transportation facility at a subsidized nominal rate for the comfort and ease of its employees; bus transporters are raising monthly invoices along with GST thereon (as per rates fixed in advance in accordance with the agreement) to the Applicant and a small portion of such charges are being recovered by the Applicant from its employees as per internal HR policy.

Canteen Facility:

6. The applicant has submitted the following with respect to the taxability of recovery of nominal & subsidized amount from the employees towards facilitation of canteen services by the 3rd party canteen service provider : –

- a. The applicant is maintaining canteen facility for its employees in factory premises because it is a mandatory requirement as per Section 46 of Factories Act, 1948 which reads as –

“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*



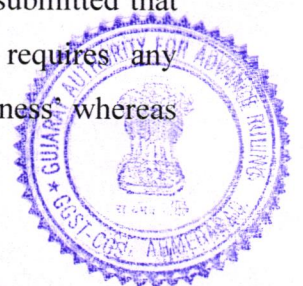
- representation of the workers in the management of the canteen;*
- (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;*
- (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c). ”*

- b. **Services have been provided by the 3rd party canteen service provider and not by the Applicant** – It is submitted that such canteen services to the employees have been provided by the 3rd party canteen service provider and not by the applicant for which an invoice has been issued upon the applicant along with GST thereon. The services have been consumed by the employees and directly provided by the 3rd party service vendor and merely facilitating the same and providing subsidy thereon, Applicant received the invoice thereof along with GST from 3rd party canteen service provider and reimbursed the same. In exchange thereof, Applicant charged a nominal sum from its employees.

Thus, Applicant is not the service provider for the services rendered to the Applicant's employees and merely receiving a part of sum to be paid to 3rd party canteen service provider which is paid *as it is* without retaining any portion thereof or charging any mark-up therein. Accordingly, in absence of Applicant being service provider, no GST liability must arise on the part recovery made by the Applicant from its employees towards canteen charges.

Furthermore, it is submitted that such services have already been charged to GST as 3rd party canteen service provider raised the invoice for its services alongwith GST and thus, such canteen services provided to the employee have already been subjected to GST for which only a part is being recovered by the Applicant from its employees now.

- c. **Business of the Applicant is not that of providing canteen or outdoor catering services** – It is further submitted that applicant company is a multi-business chemicals conglomerate engaged in the manufacturing of industrial and specialty intermediates. The company's business portfolio covers fluorochemicals, specialty chemicals, packaging films, technical textiles, coated and laminated fabrics. Therefore, Applicant is not engaged in the field of provisioning of catering services. Basis this, it is of the view of the Applicant company that there is no nexus between the principal supply of the Applicant company with the impugned facility provided the Applicant company to its employees. The activity of providing canteen facility is neither be treated as incidental nor ancillary to the principal business activity of the company and ergo, the element of 'business' is absent in the aforementioned transaction.
- d. **No service rendered in the 'course or furtherance of business'** – It is submitted that definition of 'supply' as provided under Section 7 of CGST Act requires any transaction/activity, etc. to be incurred in the 'course or furtherance of business' whereas



impugned transaction cannot be said to be incurred in the course or furtherance of business of the Applicant as Applicant's business is not that of providing canteen facility or outdoor catering services as discussed in para (b) *supra*. Applicant merely facilitated the provision of canteen facility in its premises as a part of welfare measure (as HR policy) for its employees.

It is important to highlight the definition of 'business' as envisaged under Section 2(17) of the Act and the relevant extract of the same has been verbatim reproduced as under—

"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;*

..... "

(Emphasis Supplied)

Analyzing the above definition of business, Applicant is of the view that the impugned facility cannot be said to be provided by way of any –

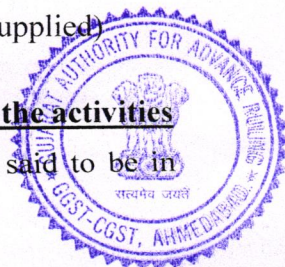
- (a) **Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity** - The impugned facility cannot even fall within the phrase of 'any other similar activity' due to the reason that the said phrase will also cover the similar activity which is in the nature of trade, commerce etc. as per the Principle of Ejusdem Generis.

"CONSTRUCTION EJUSDEM GENERIS

According to the Black's Law Dictionary (8th edition, 2004) the principle of Ejusdem Generis is where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated."

(Emphasis Supplied)

- (b) **Any activity which is in connection with or incidental or ancillary to the activities prescribed under clause (a)** – The impugned facility can neither be said to be in



connection with trade, commerce etc, nor incidental or ancillary to the principal business activity of the company.

(c) Any activity or transaction which is in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction –

Since, the clause (a) is not attracted, the question of applicability of clause (c) does not arise at all.

7. The applicant has placed reliance on the following rulings of various Advance Ruling Authorities under GST regime itself (including this Hon'ble Advance Ruling Authority & Appellate Authority, Gujarat) on this very issue (recovery of canteen charges from employees) wherein various Hon'ble AAR & AAAR have taken the same view as mentioned in para *supra* –

(i) Emcure Pharmaceuticals Ltd., cited in [2022] 134 taxmann.com 74 (AAR – MAHARASHTRA) –

"1. The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Emcure Pharmaceuticals Limited., the applicant, seeking an advance ruling in respect of the following questions.

- (a) Whether the GST would be payable on recoveries made from the employees towards providing canteen facility at subsidized rates in the factory and office?*
- (b) Whether the GST would be payable on the recoveries made from the employees towards providing bus transportation facility? If yes, whether the Applicant is exempted under Notification No. 12/2017 Central Tax (Rate)?*
- (c)*

2. FACTS AND CONTENTION - AS PER THE APPLICANT :

2.1 M/s Emcure Pharmaceuticals Limited, the Applicant, a pharmaceutical company with registered office at Emcure House, T-184, M.I.D.C. Bhosari, Pune 411026, Maharashtra, engaged in developing, manufacturing and marketing of pharmaceutical products, provides canteen and bus transportation facility to its employees as a part and parcel of the employment arrangement vide letter of employment ("Employment Agreement") to employees, which contains the terms & conditions of employment as per its HR Policy.

Canteen & Bus Transportation



2.2 The Applicant makes recoveries at subsidized rates for providing canteen and bus transportation facility to its employees and has engaged third party service providers to provide the said facilities and the service providers raise invoices with applicable GST. The Applicant recovers a certain portion of the consideration paid to such third-party service providers from its employees.

.....

5. OBSERVATIONS AND FINDINGS :

5.1 We have perused the documents on record and considered the oral and written submissions made by the applicant and jurisdictional officer.

5.2The applicant has raised three questions which are discussed and held as under:

5.3 Question No. 1 : Whether the GST would be payable on recoveries made from the employees towards providing canteen facility at subsidized rates in the factory and office?

5.3.1

5.3.2

5.3.3 In terms of section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act), for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business. We find that, the applicant is engaged in the business of developing, manufacturing and marketing a broad range of pharmaceutical products from its various manufacturing units, Research and Development Centres and branch offices. The employees are vital resources to carry out the day-to-day affairs of the Applicant Company. Accordingly, in order to carry out its business of output supply mentioned above, the Applicant is providing canteen facility to its employees. The provision of canteen facility to the employees is a welfare measure, also mandated by the Factories Act and is not at all connected to the functioning of their business of developing, manufacturing and marketing pharmaceutical products. Further, the said activity is not a factor which will take the applicant's business activity forward.

5.3.4 We also find that the applicant is not supplying any canteen service to its employees in the instant case. Further, the said canteen facility services are also not the output service of the applicant since it is not in the business of providing canteen service. Rather, we find that, this canteen facility is provided to employees by the third party vendors and not by the applicant. Therefore, in



the subject case, the applicant is not providing any canteen facility to its employees, in fact the applicant is a receiver of such services.

5.3.5 We observe that the GST is discharged on the gross value of bills raised on the applicant by the third party vendors, providing canteen facility. We also observe that the partial amounts recovered by the applicant from its employees in respect of use of such canteen facility are a part of the amount paid to the third party vendors which has already suffered GST.

5.3.6 Since the provision of canteen facility by the applicant to its employees is not a transaction made in the course or furtherance of business, and since in terms of section 7 of the CGST Act, 2017, for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business, we find that the canteen services provided by the applicant to its employees cannot be considered as a "supply" under the relevant provisions of the CGST Act, 2017 and therefore the applicant is not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates.

5.4 Question No. 2 : Whether the GST would be payable on the recoveries made from the employees towards providing bus transportation facility? If yes, whether the Applicant is exempted under Notification No. 12/2017 Central Tax (Rate)?

5.4.1 The applicant has submitted that,

5.4.2 In terms of section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act), for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business. We find that, the applicant is engaged in developing, manufacturing and marketing of pharmaceutical products. The provision of bus transportation facility to the employees is a welfare, security and safety measure and is not at all connected to the functioning of their business. Further, the said activity is not a factor which will take the applicant's business activity forward.

5.4.3 We also find that the applicant is not supplying any bus transportation service to its employees in the instant case. Further, Bus transportation service is also not the output service of the applicant since they are not in the business of providing transport service. Rather, this bus transportation facility is provided to employees by the third party vendors and not by the applicant. Therefore, in the subject case, the applicant is not providing bus transportation facility to its employees, in fact the applicant is a receiver of such services.

5.4.4 We observe that the GST is discharged on the gross value of bills raised on the applicant by the third party vendors. We also observe that the partial



amounts recovered by the applicant from its employees in respect of use of such bus transportation facility are a part of the amount paid to the third party vendors which has already suffered GST.

5.4.5 In the case of an application filed by Tata Motors Ltd., In re [2020] 119 taxmann.com 106/82 GST 685 (AAR - Maharashtra) a similar question was raised as to whether GST was applicable on nominal amounts recovered by Applicants from employees for usage of employee bus transportation facility. This authority vide has held that, GST is not applicable on such nominal amounts recovered from its employees.

5.4.6 Further reference is also made to the decision of the Uttar Pradesh Advance Ruling Authority in respect of the advance ruling application filed by M/s North Shore Technologies Private Limited. In the said matter a similar question was raised by the applicant as to whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be construed as "Supply of service" by the company to its employees. The said authority has observed that, the applicant was in the business of software development and staff augmentation services and not in the business of providing transport service. The facility provided to their employees was not integrally connected to the functioning of their business and therefore, providing transport facility to its employees cannot said to be in further of business.

5.4.7 We also refer to a recent ruling passed by this authority in an advance ruling application filed by Integrated Decisions and Systems India (P.) Ltd., In re [GST-ARA-116/2019-20/B-113, dated 16-12-2021] wherein the facts in respect of provision of transport facility are similar to the facts in the subject case and it has been held that, part recovery of amounts from employees in respect of the transport facility provided to them would not be treated as 'supply' as per provisions of GST Laws and therefore GST would not be leviable on the same.

5.4.8 Accordingly, we are of view that for the applicant, arranging bus transportation facility for their employees is definitely not an activity which is incidental or ancillary to the activity of developing, manufacturing and marketing of pharmaceutical products, nor can it be called an activity done in the course of or in furtherance of developing, manufacturing and marketing of pharmaceutical products as it is not integrally connected to the business in such a way that without this, the business will not function. Hence, it is held that, GST would not be payable on the recoveries made from the employees towards providing bus transportation facility. ”

(Emphasis Supplied)



“FINDINGS :-

5. We have considered the submissions made by the appellant in the appeal filed by them as well as at the time of personal hearing, Ruling given by the GAAR and other evidences available on record.

6. In the present case, as submitted by the appellant, it has provided / arranged a canteen for its employees, which is run by a third party i.e. Canteen Service Provider. The Canteen Service Provider supplies foodstuffs to the employees of the appellant against consideration and pays applicable Goods and Services Tax thereon. However, in respect of the consideration being paid to the Canteen Service Provider, as per the agreed arrangements between the appellant and its employees, part of that consideration / amount is borne by the appellant whereas the remaining part is borne by its employees. The employees' portion of consideration / amount to be paid to the Canteen Service Provider is collected by the appellant and the consolidated amount of consideration (employees' portion as well as appellant's portion) is paid to the Canteen Service Provider by the appellant. The query raised in the present case is limited to the question of applicability of Goods and Services Tax on collection of employees' portion of consideration by the appellant.

7. **It is evident from the aforesaid nature of transaction that the appellant does not supply any goods or services to its employees against the amount collected from the employees. The appellant collects employees' portion of amount and pays the consolidated total amount, which includes appellant's share of amount also, to the Canteen Service Provider towards the foodstuffs provided to employees by the Canteen Service Provider. The appellant neither keeps any margin in this activity of collecting employees' portion of amount nor makes any separate supply to the employees. Furthermore, it is not the appellant who is supplying the foodstuff or canteen service to its employees, but it is a third party who is supplying the foodstuff or canteen service to the employees of the appellant. In our view, as the appellant is not carrying out the said activity of collecting employees' portion of amount to be paid to the Canteen Service Provider, for any consideration, such transactions are without involving any 'supply' from the appellant to its employees and is therefore not leviable to Goods and Services Tax.**

8. We observe that the GAAR has ruled that the Goods and Services Tax is applicable on the amount recovered from employees, mainly on the premises that 'the appellant is supplying food to its employees', which would be covered



under the definition of the term 'business' under Section 2(17) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017. However, the appellant has asserted before us that it is collecting the portion of employees' share and paying to Canteen Service Provider, a third party, which is nothing but the facility provided to employees, without making any profit and working as mediator between employees and the contractor / Canteen Service Provider. Under these circumstances, we hold that the Goods and Services Tax is not applicable on the activity of collection of employees' portion of amount by the appellant, without making any supply of goods or service by the appellant to its employees.

9. We, therefore, allow the appeal filed by the appellant M/s. Amneal Pharmaceuticals Private Limited and modify the Advance Ruling No. GUJ/GAAR/R/50/2020 dated 30.07.2020 issued by the GAAR, by holding that the Goods and Services Tax is not applicable on the collection, by the appellant, of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider."

(Emphasis Supplied)

**(iii) In Dishman Carbogen Amcis Ltd., cited in [2021] 132 taxmann.com 13
(AAR – GUJARAT) –**

"FINDINGS:

3. We have carefully considered all the submissions made by the applicant. We find that the applicant has arranged a canteen for its employees, which is run by a third party Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by the applicant whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by the applicant and paid to the Canteen Service Provider. The applicant submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. This activity carried out by applicant is without consideration. Thus, we pass the Ruling:

RULING

GST, at the hands on the applicant, is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider."

(iv) In re: Bharat Oman Refineries Limited, bearing no. MP/AAAR/07/2021 dated 08 November 2021 (AAAR – MADHYA PRADESH) –

"9. DISCUSSION AND FINDINGS

.....



Point No.3 - 1. *Whether GST is applicable on recovery of nominal amount for availing the facility of canteen at the Bina refinery? On this question, the Ld AAR has pronounced that facility of canteen services was liable to GST and valuation of canteen facility provided by the applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by the applicant from its employees.*

2. The appellant has a manufacturing setup and maintains/manages industrial canteen for providing food and refreshments to its employees as they cannot leave the premises due to the nature of their work and the refinery is mandated to work round the clock. The appellant is required by law to maintain canteen facilities for its employees under Section 46 of the Factories Act, 1948. For this facility the appellant recovers Rs. 700/- per month from the salary of the employees as a standard deduction, irrespective of the fact whether the employees are availing canteen facility or not. The canteen facility has been outsourced and run by a canteen contractor. As the appellant has arranged to provide the food to its employees at subsidized rate (and not free of cost), the appellant collects some portion of the total amount of food price to be paid to the 'Canteen Service Provider' from the employees, by deducting it from the salary of the employees. The appellant has submitted that it is only facilitating the supply of food to the employees, which is a statutory requirement under the Factories Act, 1948, and is recovering only employee's share towards actual expenditure incurred in connection with the food supply, without making any profit.

4. The appellant has referred to para 1 of Schedule III and states that it is part and parcel of employment contract between the employer and the employee. As such, it is services by an employee to the employer in the course of or in relation to his employment in accordance with clause 1 of Schedule-III of .CGST Act which is neither a supply of goods nor a supply of services. As per section 7(2) of CGST Act, Schedule III supersedes Schedule I and Schedule II, which means even if it is supply u/s 7(1), no tax will be payable in view of provisions contained in clause 1 of Schedule III.

5. We have considered the submissions made by the appellant in the appeal filed by them as well as at the time of personal hearing, Ruling given by the MPAAR and other evidences available on record.

6. In the present case, as submitted by the appellant, it has provided / arranged a canteen for its employees, which is run by a third party i.e. Canteen Service Provider. The Canteen Service Provider supplies foodstuffs to the employees of the appellant against consideration and pays applicable Goods and Services Tax thereon. However, in respect of the consideration being paid to the Canteen Service Provider, as per the agreed arrangements between the appellant and its employees, part of that consideration / amount is borne by



the appellant whereas the remaining part is borne by its employees. The employees' portion of consideration / amount to be paid to the Canteen Service Provider is collected by the appellant and the consolidated amount of consideration (employees' portion as well as appellant's portion) is paid to the Canteen Service Provider by the appellant.

The query raised in the present case is limited to the question of applicability of Goods and Services Tax on collection of employees' portion of consideration by the appellant.

7. It is evident from the aforesaid nature of transaction that the appellant does not supply any goods or services to its employees against the amount collected from the employees. The appellant collects employees' portion of amount and pays the consolidated total amount, which includes appellant's share of amount also, to the Canteen Service Provider towards the foodstuffs provided to employees by the Canteen Service Provider. The appellant neither keeps any margin in this activity of collecting employees' portion of amount nor makes any separate supply to the employees. **Furthermore, it is not the appellant who is supplying the foodstuff or canteen service to its employees, but it is a third party who is supplying the foodstuff or canteen service to the employees of the appellant. In our view, as the appellant is not carrying out the said activity of collecting employees' portion of amount to be paid to the Canteen Service Provider, for any consideration, such transactions are without involving any 'supply' from the appellant to its employees and is therefore not leviable to Goods and Services Tax.** We observe that the MPAAR has ruled that the Goods and Services Tax is applicable on the amount recovered from employees, mainly on the premises that 'the appellant is supplying food to its employees', which would be covered under the definition of the term 'business' under Section 2(17) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017. However, the appellant has asserted before us that it is collecting the portion of employees' share and paying to Canteen Service Provider, a third party, which is nothing but the facility provided to employees, without making any profit and working as mediator between employees and the contractor / Canteen Service Provider. **Under these circumstances, we hold that the Goods and Services Tax is not applicable on the activity of collection of employees' portion of amount by the appellant, without making any supply of goods or service by the appellant to its employees.**

8. We, therefore, allow the appeal filed by the appellant by holding that the Goods and Services Tax is not applicable on the collection, by the appellant,



of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider."

(Emphasis Supplied)

(v) **Tata Motors Ltd.**, cited in [2021] 129 taxmann.com 277 (AAR – GUJARAT)

"7.7 We pronounce the Ruling:

RULING

... 2. GST, at the hands on the applicant, is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the canteen service provider."

(vi) **In re: Cadila Healthcare Limited**, cited in 2022 [4] TMI 1339 taxmanagementindia.com (AAR – GUJARAT)

Findings:

8.. We find that M/s Cadila 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 Cadila whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by M/s Cadila and paid to the canteen service provider. M/s Cadila submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. We are not inclined to accord this canteen service facility provided by M/s Cadila to its employees to be an activity made in the course or furtherance of business to deem it a supply by Ms Cadila to its employees.

We pass the Rulings :

RULING

GST, at the hand of the M/s Cadila, is not leviable on the amount representing the employees portion of canteen charges, which is collected by M/s Cadila and paid to the canteen service provider."

(vii) **In re: Cadmach Machinery Pvt. Ltd.**, cited in 2022 [4] TMI 1337 taxmanagementindia.com (AAR – GUJARAT)

"6.....

Question on which Advance Ruling sought :

2. *Whether recovery of amount from employee on account of third party canteen service provided by assessee, which is obligatory under section 46 of Factories Act, 1948, would come under definition of, 'Outward Supply' and, therefore taxable as 'Supply' under GST*
3.
4.

Findings:

5. *We find that Cadmach has arranged canteen facility for it's employees, which is run by a canteen service provider. As per their arrangement, part of the canteen charges are borne by Cadmach whereas the remaining part is borne by its employees. The said employees' portion*



is collected by Cadmach and paid to the canteen service provider. Cadmach submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. We are not inclined to accord this canteen service facility provided by Cadmach to its employees to be an activity made in the course or furtherance of business, to deem it a supply by Cadmach to its employees. Thus, we pass the Ruling:

RULINGS

GST, at the hand of the Cadmach, is not leviable on the amount representing the employees portion of canteen charges which is collected by Cadmach and paid to the Canteen service provider.....”

Bus Transportation Facility:

8. It is submitted that since this is neither the business of the Applicant nor Applicant in the impugned case is providing Bus Transportation services (instead, 3rd party vendor is providing), this recovery, as per applicant's interpretation of law, also does not qualify as 'supply' in order to be covered under the ambit of GST law.

9. The applicant has relied upon *supra* (where issue of bus transportation facility was also involved), reliance in this regard is placed on the following rulings :

(i) **North Shore Technologies Pvt. Ltd., cited in [2021] 125 taxmann.com 363 (AAR – UTTAR PRADESH) –**

“3. As per the application for advance ruling filed by the applicant, they provide optional subsidized shared transport facility to their employees for to and fro commutation between office and residence. This facility is provided by third party vendor who issues bill in the name of the applicant and charges GST therein. However, the applicant has not availed any input tax credit on the same. As regard to the payment to the third party vendor, towards transport charges, the applicant deducts subsidized amount from the salaries of employees and bear the balance cost itself.

.....

5. Accordingly, the following questions have been asked by the applicant, in his application dated 22-1-2020, before the Authority:—

- i. Whether the subsidized shared transport facility provided to employees in terms of employment contract through third party vendors, would be construed as "Supply of service" by the company to its employees?*
- ii. If the answer to above question is in affirmative, how the value of subsidized shared transport facility provided to employees under employment contract, will be determined by the applicant?*
- iii. If the answer to question 1 is in affirmative, under which service*



classification, the activity of arranging transport facility for employees, would fall?

- iv. If the answer to question 1 is in affirmative, who would be liable to pay the GST and what rate of GST would be applicable on the value of supply determined under question 2 above?

.....

Discussion and Finding

.....

11. The first question before us to decide is to whether the subsidized shared transport facility provided by the applicant to its employees, in terms of employment contract, is a "Supply of service" by the applicant to its employees.

.....

15. Here, we observe that while defining the term "Supply", emphasis has been made upon the term "in the course or furtherance of business".

Further, the term 'Business' has been defined under section 2(17) of the CGST Act, 2017, as below:

.....

16. From the details/documents provided by the party, we observe that the applicant is transferring the entire amount collected from their employees, to the third party vendor who is providing transport services to their employees. We also observe that the applicant, in his application, has informed that apart from subsidized amount collected from the employees, they are also adding up a considerable amount into it and then paying it to the third party vendor. The applicant is not retaining any amount collected from the employees towards said transportation charges. We further observe that the applicant is in the business of software development and staff augmentation services and not in the business of providing transport service. Rather, this is a facility provided to their employees under the obligation of Law of the Land. Moreover, this activity is not integrally connected to the functioning of their business. Also, the said activity is not a factor which will take their business activity forward. **Accordingly, we are of the opinion that providing transport facility to its employees cannot said to be in furtherance of business.**

17. We also observe that the Maharashtra Authority for Advance Ruling ('AAR'), in case of Posco India Pune Processing Center (P.) Ltd.'s case (supra) has ruled that:

"There is no way that the 50% amount recovered can be treated as amount received for service rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents. Such recovery of 50% premium amounts



by the applicant from their employees cannot be supply of service under the GST laws. ”

Observing this, the Authority has ruled that:

'The recovery of Parents Health Insurance expenses from employee does not amount to "supply of Service" under the GST Law....'

18. We also observe that this authority has previously, in the case of Ion Trading India (P.) Ltd., In re [2020] 113 taxmann.com 609/78 GST 464 (AAR - Uttar Pradesh), ruled that the amount recovered from the employees towards parental insurance premium payable to the insurance company would not be deemed as "Supply of service" by the applicant to its employees. Moreover, we also observe that the CBIC, in its press release dated 10-7-2017, has clarified that "the supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subject to GST. In this regard, we observe that the applicant has submitted the copies of appointment letters wherein the terms and conditions for availing the facility has been specified.

18.1 From the aforesaid discussions, we observe that arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service in the course of furtherance of business. Providing transport facility to employees is no where connected with the business of the applicant.

19. Accordingly, we are in unison with the applicant that arranging the transport facility for the employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

20.1 Further, coming to the subsequent questions, we observe that the subsequent questions in the application apply only when the answer of first question is in affirmative. As we are of the view that arranging transport facility to its employee is not a supply of service, accordingly the remaining questions become redundant and merit no discussion. ”

(Emphasis Supplied)

(ii) **DR Wilmar Schwabe (I) (P.) Ltd., cited in [2021] 133 taxmann.com 434 (AAR – UTTAR PRADESH) –**



"DISCUSSION AND FINDING

.....

9. We observe that the applicant has sought advance ruling on the issue —

(a)

(b) Whether GST is applicable on amount recovered by the Applicant from employees for usage of bus transportation facility.

(c) If ITC is available as per (a), whether it will be restricted to the extent of cost borne by the Applicant (employer).

.....

18. The second question raised by the applicant is whether GST is applicable on nominal amount recovered by Applicants from their employees for usage of employee bus transportation facility in non-air conditioned bus. To answer this question we now refer to Schedule III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services. As per clause 1 of the said Schedule-III, services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.

Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion that GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case."

(iii) **Integrated Decisions & Systems India Pvt. Ltd., bearing no. GST-ARA-116/2019-20/B-113 dated 16 December 2021**

Conclusion

Thus, in view of above submissions and case laws/rulings cited supra, Applicant is of the view that both the charges recovered by the Applicant from its employees are not covered under the scope of 'supply' defined under Section 7 of CGST Act, 2017, as amended, since Applicant is not rendering these services to its employees and instead, 3rd party service vendors are providing these services to the employees. Accordingly, in Applicant's interpretation of law, no GST liability arises thereupon.

10. Question on which Advance Ruling sought:

1. Whether GST would be payable on nominal & subsidized recoveries made by the Applicant from its employees towards —

(i) Provision of canteen facility by 3rd party service provider to Applicant's employees at Applicant's premises.

(ii) Provision of bus transportation facility by 3rd party service provider to Applicant's employees; and,



2. If the answer to any of the question above is yes, what is the applicable rate of GST thereupon?

Personal Hearing:

11. Personal hearing granted on 08-07-22 and 02-09-22 was attended by Shri Shushanta Dutta and Shri Anandi Prasad and they reiterated the submission. On being specifically asked Shri Shushanta Dutta stated that total numbers of employees on the payroll (permanent employees) are 2500.

DISCUSSION AND FINDINGS:

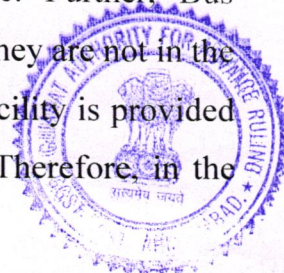
12. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorised signatory, during the personal hearing proceedings on 2-9-22 before this authority. We have also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

13. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in "*parimateria*" and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

14. We find that the applicant has arranged a canteen facility for its employees, which is run by a Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by the applicant whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by the applicant and paid to the Canteen Service Provider. The applicant submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges also do not charge any mark up therein.

14.1 The applicant vide letter dated 2-9-2022 has submitted that total number of employees on the payroll (permanent employee) are 2500 Nos. approximate. All employees are on the payroll of the company to whom subsidized canteen and transportation facilities are provided.

15. We find that the applicant as a part of its HR policy is providing bus transportation facility at subsidized rate to the employees of the company. The applicant is not supplying any bus transportation service to its employees in the instant case. Further, Bus transportation service is also not the output service of the applicant since they are not in the business of providing transport service. Rather, this bus transportation facility is provided to the employees by the third party vendors and not by the applicant. Therefore, in the



subject case, the applicant is not provider of bus transportation facility to its employees, in fact the applicant is a receiver of such services.

15.1 We observe that as per the contract with transporter gross value of `bills raised by the transporter on the applicant. The applicant company as per its HR policy recovered the partial amount from the employees and remaining amount is borne by the applicant. The applicant has issued an internal policy document bearing no. FCB & SCB(D)/JET/PP/25.2 dated 01 April 2016 within the company for all the employees working at FCB & SCB (Dahej) wherein it is mentioned under the 'Rules' that **the transport is available at subsidized rates.**

Relevant extract of the policy document has been verbatim reproduced as under –

POLICY	To provide transport facility to the employees of FCB & SCB (Dahej)						
PURPOSE	To ensure that employees reach the factory safely and with ease. To maintain the schedule of their arrival and departure as per shift timings						
ELIGIBILITY	All employees working at FCB and SCB at Dahej						
ENTITLEMENT	Travel by company transport						
RULES	<div><div>➤ Transport is provided to & from Dahej and Baruch as per the fixed route</div><div>➤ The employee must notify the Admin about the pick-up point on his joining. Admin to accordingly ensure planning of vehicles.</div><div>➤ Transport is available at subsidized rates. The current rate of monthly recovery is as under</div><table><tr><th>Cadre</th><th>Amount (Rs.)</th></tr><tr><td>JE/Technician/Workmen</td><td>26/-</td></tr><tr><td>Officer</td><td>260/-</td></tr></table><div>➤ This amount is fixed irrespective of number of days employee have availed the facility.</div><div>➤ Employee needs to notify HR and Admin team in case employee do not use this facility and commute for work on his/her own, in that case monthly recovery will be stopped from next payroll cycle.</div><div>➤ Any change of address in his/her tenure with FCB and SCB, to be informed to Admin. Based on the same a new pick-up point, if applicable, will be communicated by Admin.</div></div>	Cadre	Amount (Rs.)	JE/Technician/Workmen	26/-	Officer	260/-
Cadre	Amount (Rs.)						
JE/Technician/Workmen	26/-						
Officer	260/-						
ANNEXURE	➤ Declaration form for change in address						



16. We observe that the applicant is providing transport and canteen facility to its permanent employees (on payroll) as per contractual agreement between employer-employee relationships.

16.1 We find that CBIC vide Circular No. 172/04/2022-GST dated 06-07-22 has issued following clarification on the issue whether GST is leviable on the benefit provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee:

Clarification

1. Schedule III to the CGST Act provides 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 therefrom 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.

16.2 The Provision of Services of transports and canteen facility to its employees is as per the contractual agreement between the employee and the employer in relation to the employment. As cited in the above referred provisions of scheduled III and the clarification issued vide Circular No. 172/04/2022-GST dated 06-07-22, the provision of the services of transportation and canteen facility cannot be considered as supply of goods or services and hence cannot be subjected to GST.

17. Hence the Ruling:

RULING

GST is **not leviable** on the amount representing the **employees** portion of canteen and transportation charges, which is collected by the applicant and paid to the Canteen and bus transporter service provider.


(MILIND KAVATKAR)
MEMBER (S)




(AMIT KUMAR MISHRA)
MEMBER (C)

Place: Ahmedabad

Date: 28.09.2022