



HARYANA AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)



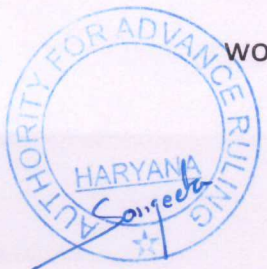
ADVANCE RULING NO.HAR/HAAR/R/2019-20/18  
(In Application No.: 18/2019-20, dated 22.11.2019)

Name & Address of the Applicant	:	M/s Musashi Auto Parts Pvt. Ltd., Plot No. 33-35 and 46-60, Sector-7, Near Bawal Rewari Road, Industrial Growth Centre, Bawal, Rewari, Haryana.
GSTIN of the Applicant	:	06AADCM1239R1Z5
Date of Application	:	22.11.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(d)- admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	28.01.2020
Present for the Applicant	:	Sh. Sachin Sharma (Advocate)

Memo No.: 1058/APR  
Dated: 28/8/2020

1. **Brief facts:**

- 1.1 The applicant is a company incorporated under the provisions of the Companies Act, 1956/2013 and is engaged in the business of manufacturing and supply of Auto Parts. The Applicant is a registered person with GSTIN 06AABCE4079P1Z7 and discharges the tax liability as per the provisions of Haryana Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017 (hereinafter referred to as the '**CGST Act**') (hereinafter collectively referred to as '**Act**') with registration number 06AADCM1239R1Z5.
- 1.2 The Applicant has its unit at Bawal, Rewari ('**Factory**') where the employees of the applicant are engaged in manufacturing of Products. Further, there are various managerial service employees also who carry out their day to day affairs from the said Factories.
- 1.3 The applicant company is a manufacturing unit of product as mentioned above having around 2400 of full time working employees as well as contract based employees. As per Section 46 of the Factories Act, 1948, it is mandatory for every Employer to provide canteen/food facilities for employees, if the number of employees are more than 250. So, company is under mandate by law to provide Canteen/food facilities to employees working there in.



*[Handwritten signature]*



- 1.4 The Applicant company incurs lots of expenses on maintenance of Canteen facility including deployment of its own employees for supervision & management of canteen operations, providing utilities, supply of utensils, equipment's etc. The Applicant company recovers a nominal amount from the employees as a reimbursement of expenses under Employment relationship without any commercial objective but to maintain discipline and prevent wastage of food and resources.
- 1.5 A nominal amount is recovered by the company by way of Coupon Sale or by way of a card punch per meal from employees towards management costs of Canteen.
- 1.6 Further, the applicant company also purchases edible items like Sweets, Dry fruits, and gifts like electronics, gold & silver coins/articles for the purpose of Business Promotion.

**2. Applicant's submission and interpretation of Law:**

**A. Applicant is eligible to claim Input Tax Credit on canteen services:**

The Applicant is entitled to take credit of GST charged by the Canteen Contractor as the same service is mandatory to be provided under Factories Act, 1948 by the applicant company.

For the purpose of supply of the final products, the Applicant has employed various employees who work in various shifts at the said Factories and in order to provide canteen/food facilities to employees, the applicant has made arrangements for the same which is a mandate by law on him to provide the same. Thus, the Applicant is eligible to take credit of GST paid to the said Contractors from whom the canteen services are being provided to the company.

- A 1. The eligibility and conditions for taking input tax credit are specified in Section 16 of the Act, which are as under:
- a. *The person availing the credit should be a 'registered person';*
  - b. *The credit should be of input tax charged on any supply of goods or services or both to the registered person;*





- c. *The said supply of goods or services or both are used or intended to be used in the course or furtherance of the registered person's business;*

On fulfilment of the aforementioned conditions, the amount of input tax credit shall be credited to the electronic ledger of such person.

A 3. In the present case, the GST paid by the Applicant to the Contractor on supply of canteen services is an eligible credit and the Applicant is entitled to claim the credit in its electronic ledger inasmuch as, the afore-stated conditions are clearly fulfilled in the present case.

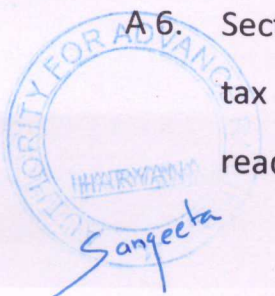
A 4. Under the scheme of Chapter V of the Act dealing with input tax credit, certain categories of input tax credit have specifically been made non available to the registered person as specified in Section 17(5) of the Act.

A 5. Section 46(1) of Factories Act, 1948 specifies that 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 therefor;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen; 1[(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).

A 6. Section 17(5)(b)(i) specifies the situation where certain categories of input tax credit have been stated to be not available to the registered person and reads as follow:





*“Section 17. Apportionment of credit and blocked credits*

*(5) Notwithstanding anything contained in sub-section (1) of Section 17 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

*(b) the following supply of goods or services or both—*

*(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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”*

A 7. It is submitted that Section 17(5) is a ‘notwithstanding’ clause to the enabling provisions of granting input tax credit specified in Section 16(1) of the Act. The entire rationale for granting input tax credit is to avoid cascading effect of taxes on supply of goods or services or both. Thus, reading of ‘notwithstanding’ clause in Section 17 discloses that an exception has been made to beneficial provisions of granting of input tax credit by specifying situations where such credit shall not be available to the registered person. In this regard, it is a settled principle of law that provisions which carve out an exception to a beneficial provision ought to be read strictly and anything which gives benefit out of the exceptional provisions shall be strictly interpreted in order to provide best benefits as much as it could be.

A 8. It is submitted further that the newly inserted Central Goods and Services Tax (Amendment) Act, 2018, with effect from date yet to be notified but published in Gazette also made following clarification with regard to Section 17(5) by making amendment through insertion of common proviso to Section 17(5)(b) i.e. **“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force”**. The proviso gives the most clear understanding that, through this amendment, the government too is of the view that something which is mandatory to be done in the course or furtherance of business shall be allowed for Input Tax credit in order to eradicate the



*[Handwritten signature]*



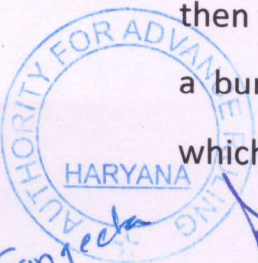
cascading effect of tax which was major intent behind the implementation of Goods and Services Tax.

A 9. Keeping in view the aforementioned facts, Input Tax Credit on inward supply of Canteen Services shall be allowed under Section 16 of the CGST Act, 2017

**B. Distribution of Coupons Among Employees on nominal amount for Canteen Service Arrangement:**

B 1. The applicant company recovers a nominal amount from the employees as a reimbursement of expenses under employment relationship against facility provided to them in order to maintain some discipline in canteen operations. So, in order to reimburse the same amount, company distributes coupons to interested employees for tea, snacks & lunch so as to avoid any kind of wastage and maintain discipline. Keeping in view, the nature of transaction, the tax shall not be levied following the contention as mentioned under:

- a. The company is recovering the nominal charges in order to maintain discipline and not for the purpose of supply of such service. Also it is well pertinent that the charges what they are recovering is less than what is actually the landing cost to the company. So, in this case, there is no value addition and the principle of GST is to tax value addition.
- b. Further, the amount recovered is under Employer-Employee relationship and anything which is done under such relationship is exempt from being taxed under **Schedule-III(1)** of the CGST Act, 2017
- c. Moreover there is no defined Service Accounting Code for such supply of coupons or recovery of small amount by way of a card punch per meal and also the open/fair market value is not defined under the Act so in such case taxability shall not be arisen on coupon distribution.
- d. If the applicant charges tax from the employees on the subsidized price then the question of open market value shall arise. The liability then will arise on the open market value and this will impact either as a burden on employees or an additional burden on the company which will ultimately impact the cost of the final product.





C. **Applicant's claim regarding Input Tax Credit with respect to purchases of Sweets, Dry fruits, Coins/Ginni or Silver items:**

- C1. The applicant company purchases sweets, dry fruits, coins etc for the purpose of business promotion. Being a manufacturing business, the company has to give some benefits to its customer and employees by way of presents in order to promote its business and if the applicant company would be denied taking credit on expenses related to business promotion, then the same shall lead to a cascading effect of tax and may result into a step back option for company from the business activity. There by the company shall be allowed to tax credit of tax paid in the course or furtherance of its business activity as per Section 16 of the CGST Act, 2017.
- C2. The Input tax credit related to business promotion expense is not even denied under Section 17(5) of the CGST Act, 2017 which is the only exception to Section 16 of the CGST Act, 2017. The business promotion expense is purely an expense done for the furtherance of business activity.

3. **Questions on which Advance Ruling is being Sought:**

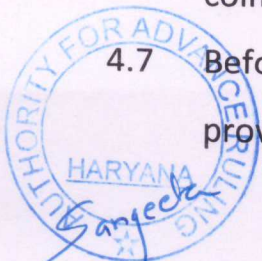
- 3.1 Applicant receives Inward Supply of Canteen Services for employees working in Manufacturing Unit and against the same distribute coupons to employees on subsidized price to avail canteen services. Question arise as under:
- Whether company is eligible to take Input Tax Credit on GST charged by vendor for Canteen Service availed by it for its employees?
  - Whether distribution of Coupons among employees attracts GST Liability? If Yes, then under which SAC tax shall be deducted?
  - Is it correct to determine the Fair market value of coupons based on the rate charged to employees?
- 3.2 Company purchases edible items like Sweets, Dry fruits and gifts like electronics, gold & silver coins/articles etc. for the purpose of Business Promotion. Question arises as under:
- Whether Company is eligible to take Input Tax Credit on such business promotion expenses or not?





4. **Discussion:**

- 4.1 Musashi Auto Parts India Private Limited ('Applicant') is a company incorporated under the provisions of the Companies Act, 1956/2013 and is engaged in the business of Manufacturing & supply of Automobile Parts (Two Wheelers and Four Wheelers).
- 4.2 The applicant company is a manufacturing unit having approximately 2400 full time working employees as well as contract based employees. As per Section 46 of the Factories Act, 1948, it is mandatory for every Employer to provide canteen/food facilities for employees, if number of employees are more than 250. So, the company is under mandate by law to provide Canteen/food facilities to employees working therein.
- 4.3 The Applicant company provides Canteen food as a welfare measure to its employees. The Applicant company incurs lots of expenses on maintenance of Canteen facility including deployment of its own employees for supervision & management of canteen operations, providing utilities, supply of utensils, equipments etc. But it recovers a nominal amount from the employees as a reimbursement of expenses under Employer- Employee relationship, without any commercial objective but to maintain discipline and prevent wastage of food and resources.
- 4.4 However, all employees are not availing the facility. So, in order to maintain discipline & prevent food wastage, a nominal amount is recovered by way of Coupon Sale or by way of a card punch per meal from employees towards management costs of Canteen that is incurred by Applicant company.
- 4.5 The applicant company is availing the Input tax credit of Goods and Services Tax amount paid to service provider and is creating tax liability on the amount recovered from sale of coupons to its employees.
- 4.6 Further, in addition to the above, the applicant company purchases edible items like Sweets, Dry fruits, and gifts like electronics, gold & silver coins/articles for the purpose of Business Promotion.
- 4.7 Before proceeding further, it is important to mention here that the provisions of CGST Act, 2017 are almost identical to the HGST Act, 2017 and





unless a special reference is made, a reference to the provisions of CGST Act shall also mean a reference to the HGST Act.

Section 16 (1) of the CGST Act reads as under:

**16. (1)** Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

So, in order to be eligible for the credit of input tax, the following conditions need to be satisfied:

- (i) The person must be a registered person. Registered person, as per Section 2(94) of CGST Act, means a person who is registered under Section 25, except a person having a unique identity number.
- (ii) The registered person has been charged the tax on receipt of goods or services or both.
- (iii) The said goods or services or both are used or are intended to be used by the registered person "in the course or furtherance of business". Although the term "in the course or furtherance of business" has not been defined under the GST Act, but in general sense it means anything done in relation to business or while carrying out any business activity. The term business has been defined under Section 2(17) of the CGST Act which reads: "*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;



A handwritten signature in blue ink, appearing to be 'Sangeeta', written over the stamp.



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

But the claim of the input tax credit is subject to certain conditions and restrictions as contained in Section 17 of the CGST Act. Section 17(5)(b) reads:- *Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

- (b) the following supply of goods or services or both—
  - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

**Provided** that the input tax credit in respect of such goods or services or both shall be available, where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre; and



*[Handwritten signature]*



(iii) *travel benefits extended to employees on vacation such as leave or home travel concession:*

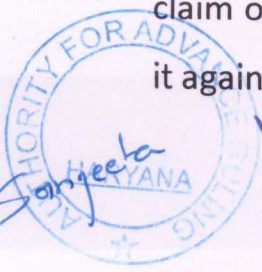
**Provided** that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Now, the conjoint reading of section 16 and 17(5)(b) of CGST Act suggest that the input tax credit with respect to food and beverages and outdoor catering shall be available only 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.

In the instant case, the applicant is a registered taxable person who is paying tax (GST) on the inward supply of goods or services or both, food and catering service in this case. But the applicant is engaged in the business of manufacturing of automobiles and not in the business of provision of food or catering. The mandate of the Factories Act to provide meals to the employees does not mean that such provision is in the course of furtherance of business. Even if the provision of food and catering had been in the course of furtherance of business, the applicant would not have been entitled to the input tax credit in light of the express bar provided under section 17(5)(b)(i) of the CGST Act, 2017. The applicant has relied upon the following proviso for its claim of input tax credit.

***“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.”***

But a careful reading of section 17(5) would suggest that this proviso is with regard to the provision contained in section 17(5)(b)(iii) and not section 17(5)(b)(i). In light of the above provisions, the applicant is not eligible for claim of input tax credit with respect to the goods and services tax paid by it against the receipt of food and catering services supplied by the vendor.

  
Sangeeta



As regards the issue of liability to pay tax on the distribution of coupons, it is important to understand the nature of contract between the applicant company (Musashi Auto Parts Private Limited) and the canteen and catering service provider (caterer). As per the agreement, the applicant undertakes to provide free of cost LPG gas supply, refrigerator, furniture, hot plates, wet grinder, fly cinder, geysers, water coolers and utensils such as steel thallies with spoons. The applicant also provides for regular repair and maintenance, alongwith replacement if any required, for gas related equipments, garbage bags and pest control in the kitchen and store. Meaning thereby, that the applicant company is incurring expenditure with regard to these facilities provided to the caterer. The caterer provides food and beverage services to the employees of the applicant and payment to that effect is made to the caterer by the applicant company. The company claims that in order to maintain discipline and prevent food wastage, the company recovers a part (25%) of the amount paid to the caterer from the employees. Had the applicant company not provided the above mentioned supplies free of cost to the caterer, the caterer would have had to make arrangements and incur expenditure for the same and it would have led to an increase in the cost of supply. But in this case, these facilities are provided by the company free of cost and in turn, the caterer provides food to the employees of the company at a subsidized rate. The company is charging around 25% of the charges paid to the caterer from the employees. The company claims to be recovering these charges in order to maintain discipline and to check wastage of food, but in essence, these are charges recovered by the company in lieu of facilities provided to the caterer. In Para No. 4 of Heading (b) of Annexure 'C' attached to the written submission, the applicant has itself submitted that if the applicant would charge tax from the employees on the subsidized price, then the question of open market value shall arise. The liability will then arise on the open market value and this will impact either as a burden on employees or an additional burden on the company which will ultimately impact on the cost of the final product.

4.8 Section 15 of the CGST Act defines value of taxable supply. It reads:-



15. (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include—*

- (a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
- (b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
- (c) .....
- (d) .....
- (e) *Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

As discussed the applicant has been incurring the cost of LPG etc. and the caterer is subsidizing the food in lieu of that, therefore, in light of the provisions of section 15(2)(b) and 15(2)(e) of the Act, the values of coupon is a part of the value of services provided by the caterer and as such the coupon value is taxable.

The applicant has further contended that the amount recovered from the employees against the coupon is under employer-employee relationship and anything done under such relationship is exempt from being taxed under Para 1 of Schedule III of the CGST Act, 2017. But Para 1 of the Schedule reads:-



A handwritten signature in blue ink, appearing to be 'S. Anand', written over the stamp.



*“Services by an employee to the employer in the course of or in relation to his employment.”* It suggests that the services of employees to the employer are excluded from the purview of GST and not vice-versa. Hence, the coupons issued by the applicant are taxable.

The applicant company purchases sweets, dry fruits, coins etc for the purpose of business promotion. The company contends that, being in manufacturing business, mainly dealing in the manufacturing of automobile parts, the company has to give some benefits to its customers and employees by way of presents in order to promote its business and if the applicant company would be denied taking credit on expenses related to business promotion, then the same shall lead to a cascading effect of tax and may result in a step back option for company from the business activity. The applicant has also relied upon some rulings of the Bombay High Court in this regard.

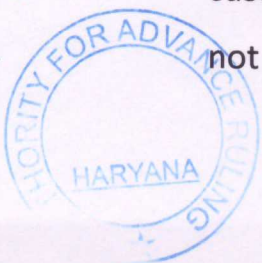
- 4.9 The purchase and distribution of sweets, dry fruits, coins or silver items for the purpose of business promotion cannot be termed as an activity carried out in the course or furtherance of business by any stretch of imagination. Section 17(5)(h) expressly bars input tax credit in respect of disposal of goods by way of gifts. The provision is reproduced as under:-

*Section 17(5) reads:*

*Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

*(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or fee samples;*

- 4.10 The applicant itself has submitted that it is distributing these items to its customers and employees by way of presents. Therefore, the applicant is not eligible for credit of input tax against the inward supply of these items.



A handwritten signature in blue ink, appearing to be "Rajesh Kumar".

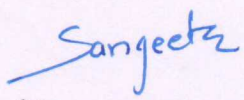


5. **Ruling:**

- 5.1 (a) The company is not eligible to take input tax credit on GST charged by vendor for canteen services availed by it for its employees.
- (b) The distribution of coupons among employees will attract tax liability.
- (c) The coupon value shall form part of the total taxable value of the caterer i.e. service provider.
- 5.2 (a) The company is not eligible to take input tax credit on business promotion expenses.

Ordered accordingly.  
To be communicated.

04.02.2020  
Panchkula.

  
(Sangeeta Karmakar)  
Member CGST



  
(Madhubala)  
Member SGST

**Regd. AD/Speed Post**

M/s Musashi Auto Parts Pvt. Ltd.,  
Plot No. 33-35 and 46-60,  
Sector-7, Near Bawal Rewari Road,  
Industrial Growth Centre, Bawal,  
Rewari, Haryana.

Copy to:

1. The Commissioner of Central Goods & Services Tax, Faridabad, GST Bhawan, New C.G.O. Complex, N.H-4, Faridabad, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Rewari.

o/c