


<b>GUJARAT AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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ADVANCE RULING NO. GUJ/GAAR/R/2024/14  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/34)

Date: - ~~30~~ .05.2024

Name and address of the applicant	:	M/s. Zentiva Private Limited, Plot No. 3501-3515-6301-6313 and 16 Meter Road-C, GIDC, Ankleshwar, Bharuch, Gujarat, 393002
GSTIN of the applicant	:	24AABCZ4046P1ZX
Jurisdiction Office	:	Center Commissionerate – Vadodara Division - Ankleshwar Division-VIII Range –IV
Date of application	:	12.09.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d)(e)
Date of Personal Hearing	:	24.04.2024
Present for the applicant	:	Miss Priyanka Kalwani (Advocate) Miss Aanchal Kesari

### Brief facts:

M/s. Zentiva Private Limited, Plot No. 3501-3515-6301-6313 and 16 Meter Road-C, GIDC, Ankleshwar, Bharuch, Gujarat- 393002 [for short- ‘applicant’] is registered under GST and their GSTIN is 24AABCZ4046P1ZX.

2. The applicant is a pharmaceutical and active pharma ingredient (API) manufacturing company. The applicant has engaged canteen service providers [for short- ‘CSP’], transport service providers [for short- ‘TSP’] who provide food and transportation facilities to the applicant’s employees, as per the terms of company policy.

3. The applicant has more than two hundred and fifty workers working in its factory. As per section 46 of the Factories Act, 1948 (hereinafter referred to as ‘Factories Act’), in factories wherein more than two hundred and fifty workers are employed, a canteen shall be provided and maintained by the occupier for the use of the workers. Thus, by virtue of section 46 of the Factories Act, the applicant provides meals which include breakfast, lunch, snacks and dinner to its employees.



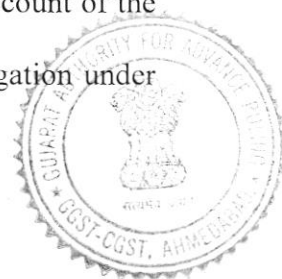
4. The applicant provides canteen facilities to its employees in terms of the canteen policy dated 16.08.2023. In terms of the canteen policy, the applicant is deducting Rs. 260/- per month from the salary of the employees towards the meals provided in the canteen and the remaining cost is borne by the applicant.

5. In addition to above, the applicant is also providing canteen facility to Supervised Contract Employees and Third-Party Employees. In the case of Supervised Contract Employees and Third-Party Employees, the applicant recovers Rs. 260/- per month per employee from contractors/manpower supply company respectively along with GST at the rate of 5% under SAC 9963. The remaining cost of the meal is borne by the applicant.

6. The applicant has attached the Purchase Order issued to the CSP as Annexure 1, Canteen Policy as Annexure 2, a sample copy of the tax invoice issued by CSP as Annexure 3 and a sample copy of the tax invoice raised by the applicant for discharging tax on the total amount paid to the CSP as Annexure 4 with their application.

7. The applicant's contention is that the canteen facility provided to their employees is not in the nature of supply u/s 7 of the CGST Act, 2017 & hence would not be leviable to GST owing to the following reasons viz

- that the canteen facility is provided in terms of the company policy and thus, a perquisite provided by an employer to its employees in the course of employment;
- that it is not provided in the course of furtherance of business; that there is no quid-pro-quo and no intention to undertake the business of providing canteen facilities;
- that the recovery made from employees is ultimately paid to the CSP;
- that they would like to rely on the below mentioned rulings/circular which substantiate their averment that no GST is leviable;
  - Circular no. 172/04/2022-GST dtd 6.7.2022;
  - M/s Bharat Oman Refineries Ltd. reported at 2021-TIOL-36-AAAR-GST;
  - M/s Rites Limited reported at 2022-VIL-283-AAR;
  - Bai Mumbai Trust and Others vs. Suchitra and others reported at 2019 (9) TMI 929;
  - Amneal Pharmaceuticals Pvt. Ltd. reported at 2021 (9) TMI 1293;
  - M/s Dishman Carbogen Amcis Ltd. reported at 2021 (8) TMI 836;
  - M/s Cadmach Machinery Pvt. Ltd., 2022 (4) TMI 1337- AAR-Gujarat;
  - M/s Emcure Pharmaceuticals Limited, 2022 (1) TMI 186- Maharashtra;
  - M/s. Cadila Pharmaceuticals Ltd reported at 2023 (4) TMI 298;
  - M/S. AIA Engineering Limited reported at 2023 (4) TMI 297;
  - M/s EIMCO Elecon India Limited reported at 2023 (9) TMI 164;
  - M/s. Troikaa Pharmaceuticals Limited reported at 2022 (9) TMI 200;
  - M/s Zydus Lifesciences Limited. reported at 2022 (10) TMI 304;
  - M/s SRF Limited reported at 2022 (10) TMI 305;
- that they are eligible to avail ITC on the GST charged by the CSP on account of the following reasoning viz
  - the canteen facility is provided in pursuance of a statutory obligation under factories act;



- that proviso to section 17(5)(b) of the CGST Act provides that ITC shall be available in respect of goods and services or both, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force;
- that the canteen facility to its employees is in furtherance of its obligations under Factories Act; that the restrictions, imposed u/s 17(5), *ibid*, is not applicable in the instant case since the canteen facility is extended to its employees as a part of its statutory obligations under the provisions of Factories Act;
- that they would like to rely on the below mentioned rulings/circular which substantiate their averment that applicant is eligible to avail ITC on input service of canteen;
  - *M/s Troikaa Pharmaceuticals Limited;*
  - *Bharat Oman Refineries Lt;*
  - *M/s EIMCO Elecon India Limited reported at 2023 (9) TMI 164;*
  - *M/S. Tata Autocomp Systems Ltd reported at 2023 (7) TMI 142;*
  - *M/S. Cadila Pharmaceuticals Ltd reported at 2023 (4) TMI 298;*
  - *M/S. AIA Engineering Limited reported at 2023 (4) TMI 297;*
  - *Tata Motors Ltd. reported at [2023] 146 taxmann.com 356 (AAAR-GUJARAT)*

8. The applicant has further procured services of renting/hiring of motor vehicle having a seating capacity of less than 13 persons from TSP. The applicant provides transportation facility to the following types of employees, who are on the payroll of the applicant.

- Management employees (Executive, Assistant Manager, Manager, Head of Department etc.)
- Staff (Plant Operator, Electrician, Boiler Attendant etc. which are called blue collar employees).

9. The applicant is discharging applicable GST under Reverse Charge Mechanism (hereinafter referred to as 'RCM') on renting of motor vehicle services. For providing transportation facility, the applicant is not recovering any amount from the management employees. However, the applicant recovers a nominal amount of Rs. 75/- per month from the salary of employees falling under the category of staff. The applicant has further enclosed the transport policy as Annexure 6 with their application.

10. The applicant's contention is that the transportation facility provided to their employees is not in the nature of supply u/s 7 of the CGST Act, 2017 & hence would not be leviable to GST owing to the following reasoning *viz*

- that the transport facility is provided in terms of the company policy and thus a perquisite provided by an employer to its employees in the course of employment;
- that the facility is made available to the employee for their convenience;
- that it is offered only to the employees;
- that the applicant is not availing ITC of GST paid towards services received from TSP;
- that they would like to rely on the below mentioned rulings/circular which substantiate their averment that no GST is leviable;



- *M/s Emcure Pharmaceuticals Ltd.* reported at 2022 (60) G.S.T.L. 231 (AAR-GST- Mah);
- *M/s SRF Limited* reported at 2022 (10) TMI 305
- *M/s Tata Autocomp Systems Ltd.*, 2023(7) TMI 142
- *M/s. Zydus Lifesciences Ltd.* (Formerly Known As Cadila Healthcare Ltd.), 2022 (10) TMI 304;
- Circular no. 172/04/2022-GST dtd 6.7.2022;

11. In view of the foregoing, the applicant has filed this application, seeking advance ruling on the below mentioned questions viz

- i. Whether GST is liable to be discharged on the portion of the amount recovered by the Applicant from its employees towards the canteen facility provided to the employees?
- ii. Whether GST is liable to be discharged on the transportation facility provided by Applicant to its employees?
- iii. Whether the Applicant is eligible to avail input tax credit of the GST charged by the canteen service provider for the canteen facility provided to its employees?

12. Personal hearing was granted on 24.04.2024 wherein Miss Priyanka Kalwani, Advocate and Miss Aanchal Kesari appeared on behalf of the applicant and reiterated the facts as stated in the application. On being asked they informed that the ruling sought is for permanent employees and they have more than 250 employees on payroll.

### **Discussion and findings**

13. 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.

14. 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.

15. Before advertizing to the submissions made by the applicant, we would like to reproduce the relevant sections, circulars, 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;

<sup>1</sup>[(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; <sup>2</sup>[and]

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

(d) <sup>4</sup>[\*\*\*\*].

<sup>5</sup>[(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 <sup>6</sup>[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:-

<sup>2</sup>[(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) .....;

(ab) .....;

(b) <sup>3</sup>[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.]**

<sup>2</sup> & <sup>3</sup> by s.9 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February, 2019.

- **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)?	<p>1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: "Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."</p> <p>2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment</p>



		<p>in subsection (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."</p> <p>3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of subsection (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of subsection (5) of section 17 of the CGST Act.</p>
5	Whether various 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?	<p>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.</p> <p>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.</p>

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

### Canteen

17. The first issue to be decided is whether the deduction of nominal amount made by the applicant from the employees who are availing food in the factory premises 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 who have been provided with canteen facility in terms of section 46 of the Factories Act, 1948. The applicant is on record that the canteen facility is being provided to supervised contract employees and third party employees apart from the permanent employees. However, during the course of personal hearing, on being specifically asked, the authorized representative stated that the ruling being sought is specifically in respect of permanent employees only. We therefore restrict our findings to the canteen facility being provided to permanent employees only.

18. 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, is concerned; and [b] the applicant has provided a copy of their canteen policy, the relevant paras of which is reproduced below viz

*Clause (3) Canteen policy*

*c) Good nutrition and healthy eating habits are essential for employees. The purpose of this policy is to provide clarity on the administration of the canteen and its governance thereof.*

*d) A nominal subsidized charge of 260/- Rs per month per employee is deducted from every employee's monthly pay irrespective of the facility availed or not.*

In view of the foregoing, we hold that the 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.

### **Input Tax Credit**

19. The next question on which the applicant has sought ruling is whether Input Tax Credit 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 persons employees at their factory;
- that section 17(5)(b) *ibid*, was amended on 1.2.2019, and is already 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 28<sup>th</sup> 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*.

20. In view of the foregoing, we hold that Input Tax Credit 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 employees other than contract employees is concerned. It is further held that the ITC on GST charged by the CSP will be restricted to the extent of cost borne by the applicant only. Our view is substantiated by the Ruling of the Gujarat Appellate Authority for Advance Ruling order No. GUJ/GAAAR/Appeal/2022/23 dated 22.12.2022 in the case of M/s. Tata Motors Ltd, Ahmedabad.

21. In view of the foregoing, we hold that Input Tax Credit will be available to the applicant in respect of canteen facility which is obligatory under the Factories Act, 1948, read with Gujarat Factories Rules, 1963.

### **Transportation**

22. The third issue to be decided is whether the services by way of renting/hiring of motor vehicle having a seating capacity of less than 13 persons from the TSP is supply of service by the applicant to its employees under the provisions of section 7 of the CGST Act, 2017. What section 7 encompasses is mentioned *supra* in para 15.

23. The applicant's contention is that since there is a dearth of transportation facilities near the location of the factory, for the convenience of its employees to commute from their residence to the factory premises and vice-versa they are arranging transportation facility through TSP.



24. 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 is provided in terms of the contract between the employer and employee. We find that factually there is no dispute as far as the applicant has provided transport facility in terms of their transport policy, the relevant paras of which are reproduced below viz

*c). objective*

*Providing transportation makes employee everyday commute hassle free and improve employee performance and overall company growth. Main objective is to ensure*

- 1. Safety*
- 2. Going Green*
- 3. Hassel Free Employee Commute*
- 4. Enhancing Employer Branding*
- 5. Coherence and lucidity about the facility*

*d). Transport Facilities & Amenities*

- *Though it is not a fastening responsibility of the company to provide transport facility, the same has been extended to employees as a gesture of goodwill.*
- *No charges are deducted are from Management employees, it is free of cost for all employees. A subsidized amount of 75 Rs per month is deducted from the Staff as a part of their Long term Settlement (Collective bargaining).*
- *Presently the bus/vehicle route covers (as per the current travel routes)*
- *Each and every route is a safety assessed route and specifies a fixed time for pick-up and drop facility for all the employees.*
- *SLT members on special request can avail transport facility up to 20 kms of radius from company with prior approval of Site Head.*
- *This facility can be availed only on the working days of the Company.*

In view of the foregoing, we hold that the deduction for bus transportation facility would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017.


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


**RULING**

1. GST is not liable to be discharged on the portion of the amount recovered by the Applicant from its employees towards the canteen facility provided to the employees.
2. GST is not liable to be discharged on the transportation facility provided by Applicant to its employees.



3. Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its employees other than contract employees working in their factory, in view of the provisions of Section 17(5)(b) as amended effective from 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its permanent employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

  
(MILIND KAVATKAR)  
MEMBER (SGST)

  
(AMIT KUMAR MISHRA)  
MEMBER (CGST)

Place: Ahmedabad

Date: 30 /05/2024

