

GST not applicable on payment of notice pay and allowed ITC on canteen services

The AAAR, Madhya Pradesh in the matter of *M/S. Bharat Oman Refineries Limited [Advance Ruling No. MP/AAAR/07/2021 dated November 8, 2021]* reversed the ruling of AAR which held that GST is applicable on recovery of:

- Notice pay from an employee by employer in lieu of notice period
- Telephone charges
- Group Medical Insurance Policy (“**the Policy**”) recovered from employees and providing
- Canteen facility to employees free of cost

Held that, the AAR had erred in concluding that such activity was leviable to GST. Further held that Input Tax Credit (“**ITC**”) shall be available on obligatory canteen services provided by the employer to their employees.

Facts:

This appeal has been filed by M/s Bharat Oman Refineries Limited (“**the Appellant**” or “**the Employer**”) against the ruling passed by the AAR, Madhya Pradesh in *M/S. Bharat Oman Refineries Limited [Advance Ruling Order No. 02/2021 dated June 7, 2021]*, wherein, it was held that, GST is applicable on payment of notice pay by an employee to employer in lieu of notice period and telephone charges, premium of the Policy recovered from employees and free of cost canteen facility provided to employees. Further AAR disallowed the ITC with respect to canteen services provided by the employer to their employees.

Issue:

Whether the Appellant is liable to pay GST on amount recovered in lieu of notice pay by an employee, the premium of the Policy at actuals from non-dependent parents of employees, telephone charges, and nominal charges for availing and canteen facility or free of cost canteen facility to the employees, and whether the ITC of tax paid or deemed to have been paid is admissible on such facilities provided?

Held:

The AAAR, Madhya Pradesh in *Advance Ruling No. MP/AAAR/07/2021 dated November 8, 2021* held as under:

- Noted that, para 5(e) of the Schedule II of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) is similar to the Section 66E(e) of the Finance Act, 1994 (“**the Finance Act**”) applicable during Service Tax regime. In the GST era also, services provided by an employee

to the employer is treated neither as supply of goods nor supply of services under Schedule III of the CGST Act.

- Relied on the judgment of the Hon'ble Madras High Court in ***GE T & D India Limited v. Deputy Commissioner of Central Excise [W.P. Nos. 35728 to 35734 of 2016]*** wherein, it was held that, no service tax is payable on notice pay recovery made by the Employer.
- Stated that, the services by an employee to the Employer in the course of or in relation to his employment have been placed out of the purview of GST. Further, the compensation which accrues to the Employer is in relation to the services provided by the employee and is related to the services not provided by him to the Employer during the course of employment i.e. the Employer is being compensated for the employee's sudden exit.
- Observed that, the Appellant is collecting amounts only in respect of Mediclaim cover in lieu of the Policy provided to the employee's non-dependent parents and retired employees who opt for such cover. Evidently, the Appellant is not in the business of providing insurance coverage and providing such insurance cover is not a mandatory requirement under any law for the time being in force and therefore, non-providing insurance coverage to employees non-dependent parents and retired employees would not affect Appellants business by any means. Therefore, activity of recovery of cost of insurance premium at actuals cannot be treated as an activity done in the course of business or for the furtherance of business.
- Reversed the ruling passed by the AAR, Madhya Pradesh and held that:
 - Merely because the Employer is being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for premature exit.
 - Facilitating medical insurance services in lieu of the Policy to non-dependent parents and retired employees upon recovery of premium amount on actuals and telephone connection to employees upon recovery of usage charges on actuals cannot be considered as 'supply of service' under CGST Act.
 - GST is not applicable on the collection by the Appellant, of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider and the Appellant is providing the facility to employees, without making any profit and working as mediator and the Employer is mandated to run a canteen under the Factories Act, 1948 ("**the Factories Act**"). Further, canteen services provided to employees without charging any amount i.e. free of cost will also fall under Para 1 of Schedule III of CGST Act that shall be treated neither as a supply of goods nor a supply of services and therefore, not be subjected to GST.
 - ITC on GST paid towards telephone services and Policy would not be available to the Appellant in terms of Section 17(1) of the CGST Act and Section 17 (5) of the CGST Act respectively. Further, ITC in respect of canteen facility provided by the Appellant would be available as per Section 17(5)(b), as obligatory for an Employer to provide the same to its employees under the Factories Act.

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