

GST would be levied on recovery of canteen services regardless “profit-making” aspect

The Hon’ble Gujarat AAR, in the matter of *M/s Amneal Pharmaceuticals Pvt. Ltd. [Advance Ruling No. GUJ/GAAR/R/50/2020, dated July 30, 2020]* held that GST would be levied on recovery of amount from employee on account of third party canteen services provided by a company to their employees which is obligatory under Factories Act 1948 (“**Factories Act**”), as it will amounts to supply under Section 7(1)(a) of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) even if there is no profit making.

Facts:

M/s Amneal Pharmaceuticals Pvt. Ltd. (“**Applicant**” or “**the Company**”) is a 100% Export Oriented Unit engaged in the manufacturing of pharmaceuticals products, which is also carrying out canteen facilities through third party canteen service at their factory, where more than 500 employees are working. The model that Applicant have in their factory is that the food is being offered to employees on subsidized rate whereby the employee’s share of the cost is being deducted from their salary. The canteen service provided to the employees is not being carried out as a business activity and it is obligatory according to the provisions of the Factories Act.

Issue:

Whether GST is applicable on the amount recovered from employee on account of third party canteen services which is obligatory under Section 46 of the Factories Act, provided by the Company?

Held:

The Hon’ble Gujarat AAR, in *Advance Ruling No. GUJ/GAAR/R/50/2020, dated July 30, 2020* held as under:

- Observed that, from the plain reading of the definition of "business", it can be safely concluded that the supply of food by the Applicant to its employees would definitely come under clause (b) of Section 2(17) of the CGST Act, as a transaction incidental or ancillary to the main business.
- Noted that, Schedule II to the CGST Act, describes the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule *ibid*, composite supply of "*supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is-for cash, deferred payment or other valuable consideration*" is declared as supply of service.
- Even though, there is no profit on the supply of food to its employees, there is a "supply", as provided in Section 7(1)(a) of the CGST Act and the Applicant would be covered under the

definition of "Supplier", as provided in sub-section (105) of Section 2 of the CGST Act. Further, since the applicant recovers the cost of food from its employees, there is 'consideration', as defined in Section 2(31) of the CGST Act, 2017.

- Therefore, the recovery of amount from employee on account of third party canteen services provided by the Company, which is obligatory under Section 46 of the Factories Act would come under the definition of 'outward supply' as defined in Section 2(83) of the CGST Act, 2017. Hence, taxable as a supply.

Comments:

The Hon'ble AAR Kerala in the similar matter of *M/s. Caltech Polymers Pvt. Ltd. [Order No. CT/531/18-C3, dated March 26, 2018]*, has held that, supply of food by the employer to its employees, even though there is no profit involved, but only the cost of food is recovered, the activity of supplying food and charging price for the same from the employees would come within the definition of "supply" as provided in Section 7(1)(a) of the CGST Act. Consequently, the employer would come under the definition of "supplier" as provided in Section 2(105) of the CGST Act. Moreover, since the employer recovers the cost of food items from their employees, there is "consideration" as defined in Section 2(31) of the CGST Act and the transaction is incidental or ancillary to the core business (even though there is no profit involved) therefore, falls under Section 2(17)(b) of the CGST Act (definition of business).

Note- The above order has been affirmed by the Hon'ble AAAR Kerala in *M/s. Caltech Polymers Pvt. Ltd. [Order No. CT/7726/2018-C3, dated September 25, 2018]*.

Moreover, the above transaction even if made without consideration will be covered under Entry No. 2 of Schedule-I to the CGST Act, which states that supply of goods or services or both between **related persons** or between distinct persons, when made in the course or furtherance of business, is to be treated as supply even if made without consideration. Since the employee and employer are related persons according to the explanation to Section 15(5) of the CGST Act the transaction would amount to deemed supply and therefore, it would be taxable as per Section 15 read with Rule 28 of the Central Goods and Services Tax Rules, 2017.

Further, post amendment vide *Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. February 2, 2019*, a proviso got inserted to Section 17(5)(b) of the CGST Act which allows Input Tax Credit ("ITC") in respect of such goods or 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.

Relevant Provisions:

Section 2(17)(a) and (b) of the CGST Act:

“(17) “business” includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a)”

Section 2(31) of the CGST Act:

“consideration’ in relation to the supply of goods or services or both includes,-

a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or-both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.”

Section 2(83) of the CGST Act:

““outward supply” in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;”

Section 7(1)(a) of the CGST Act:

“Scope of supply.

7. (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;”

Clause (6)(b) of the Schedule II to the CGST Act:

“Activities or transactions to be treated as supply of goods or supply of services-

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.”

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