

No GST on charges collected from employees for canteen services provided under contractual agreement

The AAR, Gujarat in the matter of *M/s. Troikaa Pharmaceuticals Limited [Advance Ruling No. GUJ/GAAR/R/ 2022/38 dated August 10, 2022]* has ruled that no Goods and Services Tax (“GST”) is payable on the employees portion collected by the employer for providing canteen services as perquisites and paid to the canteen service provider in terms of contractual agreement, however, GST is payable on such portion, when provided to contractual workers. Further, held that Input Tax Credit (“ITC”) of GST paid on canteen charges provided to employees is available when it is obligatory to provide that service to employees under any law, but it is not available on canteen services provided to contractual workers.

Facts:

M/s Troikaa Pharmaceuticals Ltd. (“**the Applicant**”) provides canteen facility to its employees and workers, as mandated under the Factories Act, 1948 (“**the Factories Act**”) at a subsidized rate of 50%. The canteen service is provided by a third party, who raises an invoice as per the agreed billing frequency by charging 5% GST, which is borne 50% by the Applicant and balance 50% is recovered from the employee’s salary pay out.

The Applicant submitted that, the recoveries for providing canteen facility is not supply as per Section 7 of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) and it cannot be said that it is the ‘business’ of the Applicant. Further, the canteen service is made through an outside party under obligation in the Factories Act and neither had any intent to make profit or retain any profit from the amount recovered. Hence, no GST should be levied on such recovery of charges as neither the canteen service provided is an activity which is incidental or ancillary to the Applicant nor it is done in furtherance of business. Moreover, the Applicant should be allowed to claim ITC on the GST paid for such canteen service, being mandatory under the Factories Act.

Issues:

1. Whether GST shall be applicable on the amount recovered by the Applicant from its employees or contractual workers, when provision of third-party canteen service is mandatory under Section 46 of the Factories Act?
2. Whether ITC of GST paid on food bill of the Canteen Service Provider is available to the Applicant?

Held:

The AAR, Gujarat in the matter of **Advance Ruling No. GUJ/GAAR/R/ 2022/38** held as under:

- Noted that, the CBIC vide **Circular No. 172/04/2022-GST, dated July 6, 2022** has issued clarification regarding the liability of GST on the benefit provided by the employer to its employees in terms of contractual agreement. However, the contractual workers doesn't pass the test of employer-employee relationship.
- Opined that, although there is no profit on the supply of food to the contractual workers, there is a 'supply' as per Section 7(1)(a) of the CGST Act, therefore, the amount recovered by the Applicant from the contractual workers on account of third party canteen services comes under the definition of 'Outward supply' as defined in Section 2(83) of the CGST Act.
- Held that, GST at the hands of Applicant is not leviable on the amount representing the employees portion of canteen charges but is leviable on the contractual worker's portion collected by the Applicant and paid to the Canteen service provider.
- Further noted that, it is obligatory on the Applicant to provide canteen services to its employees under the Factories Act, although as per Chapter V of the Contract Labour (Regulation and Abolition) Act, 1970 ("**the CLRA Act**"), there is no mandate to the Applicant to provide canteen facility to the contractual worker.

- Held that, ITC on GST paid on canteen facility is admissible to the Applicant under Section 17(5)(b) of the CGST Act, on the foods supplied to the employees, subject to the condition that burden of GST have not been passed on to the employees.
- Further held that, that Applicant is not eligible to the ITC on food supplied by canteen service provider to the contractual worker under Section 17(5)(b) of the CGST Act.

Relevant Provisions:

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-

(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;”

Section 17(5)(b) of the CGST Act:

“Apportionment of credit and blocked credits.

(5) 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

(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.”

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