

No ITC on canteen services and business promotion expenses incurred by the company

The Hon'ble AAR Haryana in *M/s. Musashi Auto Parts Pvt. Ltd. [Advance Ruling No. HAR/HAAR/R/2019-20/18 dated February 4, 2020]* has held that Input Tax Credit ("ITC") is not available with respect to canteen services provided by the employer to their employees and on business promotion expenses. Further, held that the distribution of food coupons among employees for part consideration will attract tax liability and the coupon value will form part of total taxable value of the service provider i.e., caterer.

Facts:-

M/s. Musashi Auto Parts Pvt. Ltd. ("**Applicant**") is engaged in the business of manufacturing and supply of auto parts. Since, the Applicant is a manufacturing company and have around 2400 full time working employees, it is mandatory for the Applicant to provide food facilities for employees, if the number of employees are more than 250 as per Section 46 of the Factories Act, 1948 ("**Factories Act**").

The Applicant incurs lot of expenses on maintenance of canteen facility including deployment of its own employees for supervision and management of canteen operations. The Applicant also recovers a nominal amount (25% of the value charged by caterer) from the employees in form of card punch per meal or coupon to maintain discipline and prevent wastage of food and resources.

Further, the Applicant also purchases edible items like sweets, dry fruits and gifts like electronics, gold and silver coins/articles for the purpose of business promotion.

Issues:-

- Whether the Applicant is eligible to claim ITC on the canteen services and on business promotion expenses?
- Whether distribution of coupons to employees attracts GST liability?

Held:-

The Hon'ble AAR Haryana in *Advance Ruling No. HAR/HAAR/R/2019-20/18 dated February 4, 2020* has held as under:

ITC on Canteen Services

- Observed that, the co joint reading of Section 16 and 17(5)(b) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") suggests that the ITC 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.

- Further observed that, the Applicant is engaged in the business of manufacturing of automobiles and not in the business of provision of food or catering. The mandatory part 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.
- Rejected the claim of the Applicant to take ITC for the canteen services as per the proviso under Section 17(5)(b) of the CGST Act and stated that a careful reading of Section 17(5) of the CGST Act suggests that said proviso is with regard to the provision contained in Section 17(5)(b)(iii) and not Section 17(5)(b)(i) *ibid*.
- Held that, the Applicant is not eligible to claim ITC with respect to the GST paid by it against the receipt of food and catering services supplied by the vendor.

Distribution of Coupons

- Observed that, the Applicant was incurring expenditure with regard to many facilities like free cost of LPG gas supply, refrigerator, furniture etc. provided to the caterer. If the Applicant did not provide the supplies free of cost to the caterer, the caterer would have had to make arrangements and incur expenditure and it would have led to an increase in the cost of supply. But in this case, these facilities are provided by the Applicant free of cost and in turn, the caterer provides food to the employees of the Applicant at a subsidized rate.
- Further observed that, the Applicant recovers a part of the amount paid to the caterer from the employees in order to maintain discipline and prevent food wastage but in essence, these are charges recovered by the Applicant in lieu of facilities provided to the caterer.
- Therefore, 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 CGST Act, the value of coupon is a part of the value of services provided by the caterer and as such the coupon value is taxable.
- Rejected the Applicant's contention that as per Para 1 of Schedule III of the CGST Act, 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.

ITC on business promotion expenses:

- Observed that, 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) of the CGST Act expressly bars ITC in respect of disposal of goods by way of gifts.
- Held that, the Applicant has itself submitted that it was distributing these items to its customers and employees by way of presents. Hence, the Applicant is not eligible for claiming ITC on these items.

Our Comments:-

The Hon'ble AAAR, Kerala in ***M/s Caltech Polymers Pvt. Ltd. [Case No. CT/7726/2018-C3 order dated September 25, 2018]*** has held that the canteen services provided by the company to their employees for no profit is in course of furtherance of business, as the term business under Section 2(17) of the CGST Act also includes ancillary and incidental activities to the main business.

Similar stand was taken by Gujarat AAR, in the matter of ***M/s Amneal Pharmaceuticals Pvt. Ltd. [Advance Ruling No. GUJ/GAAR/R/50/2020 dated July 30, 2020]***

Further, after the amendment in Section 17(5) of the CGST Act vide Central Goods and Services Tax (Amendment) Act, 2018 w.e.f February 1, 2019 a proviso got inserted under Section 17(5)(b) of the CGST Act which is applicable to all the sub-clauses of Section 17(5)(b) of the CGST Act and not only to sub-clause (iii) of Section 17(5)(b) ibid. Therefore, ITC is available on goods and services under Section 17(5)(b) of the CGST Act, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

But it is to be noted that credit may not be admissible when there is no obligation upon employer to provide such services to its employees, like a service provider not governed by the provisions of Factories Act and allied laws, or when concessional rate is charged taxable at 5% GST (with no ITC), which is subjective and can be debated on principle of double taxation as credit not made available on inward supplies unless obligated and condition of not to avail ITC if outward supply is charged at 5%.

Furthermore, the goods that are distributed by the organization to its customers/dealers/distributors are done by them in order to increase their sales and promote their brand and this cost is already taken into account by the organizations while finalizing the pricing of the other items manufactured. Therefore, ideally, they should not be regarded as gifts as per the provision of Section 17(5)(h) of the CGST Act which denies ITC on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Relevant Provisions:-

Section 2(17)(a) & (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 16(1) of the CGST Act:

“(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.”

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

“(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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