

GST is not leviable on employee portion of canteen charges and free bus transportation facility – Gujarat AAR

5 May 2022



Summary

The Gujarat Authority of Advance Ruling (AAR) has ruled that the canteen facility and bus transportation facility provided by the applicant is not deemed to be a supply. Therefore, the AAR held that the Goods and Services Tax (GST) is not leviable on the amount representing the employees' portion of canteen charges, which is collected by the applicant and paid to the canteen service provider. The authority took a view that GST is not leviable on free bus transportation facility provided to its employees. The AAR also opined that input tax credit (ITC) of GST paid on the hiring of bus having an approved seating capacity of more than 13 persons is not a blocked credit and therefore, is admissible. Further, the advance ruling authority stated that ITC of GST paid on canteen facility is blocked credit and inadmissible to the applicant.

Facts of the case

- The applicant¹ provides canteen and bus transportation facility to its employees, as a part of its employment arrangement and based on Human Resource (HR) policy. The applicant recovers nominal amount for the canteen facility provided to employees whereas bus transportation facility is provided free of cost and no recoveries are made.
- The applicant engaged third-party service providers in order to provide canteen and bus transportation facilities. Such services are provided directly to the employees however invoices are raised to the applicant.
- The applicant submitted that it is mandatory² to provide and maintain a canteen in its premises. Thus, the amount charged for the canteen facility does not involve any profit or pecuniary benefit. Accordingly, the said facility lies outside the purview of supply and hence no GST shall be levied. Further, the applicant submitted that

transportation services via non-AC carriage is exempt³ from GST and the applicant is eligible⁴ to avail ITC of GST paid on availing such bus services.

Gujarat AAR observations and ruling⁵:

- **Canteen and transportation facility not in course or furtherance of business:** The employer provides canteen facility at subsidised rates to the employees. A part of the canteen charges is borne by the employer whereas other part by employees which is paid directly to the service provider and no profit is retained by the applicant. Further, the applicant provides free of cost transportation facility to its employees which is a part of its HR policy. Hence, the facilities provided are not the activities made in the course or furtherance of business. Accordingly, these cannot be deemed to be as a supply to its employees.
- **ITC inadmissible on canteen facility:** The proviso to the first subclause⁶ ending with a semicolon shall be read independent of

¹ M/s. Emcure Pharmaceuticals Limited

² As per section 46 of the Factories Act, 1948

³ Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017

⁴ As per Section 16 of CGST Act, 2017

⁵ GUJ/GAAR/R/2022/22 dated 12 April 2022

⁶ Section 17(5)(b)(i)

third subclause⁷ and its respective proviso. This is because the legislature intends the subclauses to be distinct and separate with different qualifying factors and conditionalities. Thus, both the provisos are not connected. Accordingly, ITC on GST paid on canteen facility is blocked and is inadmissible to the applicant.

- **Eligible of ITC on hiring of bus:** As per the provisions⁸, ITC shall be available in respect of motor vehicles having a seating capacity of more than 13 persons. In the instant case, the bus hired for transportation of employees had a capacity of more than 13 persons and do not fall under the blocked credit. Thus, ITC is admissible to the applicant.

Our comments

This issue has been a matter of exhaustive litigation since the inception of GST.

This is a welcoming ruling wherein the Gujarat AAR has held that GST cannot be levied on a transaction only because charges have been recovered.

Corresponding to the present ruling, the Gujarat AAR in the case of Cadila Healthcare Limited has held that the canteen service facility provided to employees is not an activity in the course or furtherance of business and not leviable to GST.

On the contrary, the Kerala AAR in the case of Caltech Polymers Private Limited⁹ had taken a different view and held that recovery of food expenses for canteen services will be termed as outward supply which is taxable under GST.

Such divergent views create ambiguity and unwarranted litigations. Therefore, it is the need of the hour that the government should provide more clarity in this regard.

⁷ Section 17(5)(b)(iii)

⁸ Section 17(5) of the CGST Act, 2017

⁹ Order No. CT/531/18-C3 dated 26 March 2018

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