THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING

OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW, MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

BEFORE THE BENCH OF

(1) Shri NAVNEET GOEL, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/07/2021 DATE 08.11.2021

Name and address of the appellant	M/s BHARAT OMAN REFINERIES LIMITED, VILLAGE & POST AGASOD, BINA, DISTRICT SAGAR (M.P.)
GSTIN or User ID	23AABCB7084M1ZH
Order of AAR under Appeal before AAAR	02/2021 dated 07.06.2021

PROCEEDINGS

(Under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are mirror image of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 hereinafter also referred to as ["the CGST Act and MPGST Act"] by BHARAT OMAN REFINERIES LIMITED, (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling No.02/2021 dated 07.06.2021.

3. BRIEF FACTS OF THE CASE

i. M/s Bharat Oman Refineries Limited (BORL) is a Company registered under the Companies Act, 1956 with Registrar of Companies, Gwalior and is carrying on

the business of Refining of Crude Oil in the Refinery located at Village Agasod, Bina, District Sagar, Madhya Pradesh

ii. M/s Bharat Oman Refineries Limited is head quartered at Village Agasod, Bina, District Sagar (M.P.)

iii. The appellant is registered under the provisions of GST law in the State of Madhya Pradesh, vide GSTIN: 23AABCB7084M1ZH and the principal place of business is in Gautam Nagar, BHOPAL – 462023.

iv. M/s BORL is a deemed Public Sector Undertaking, as the holding company, M/s Bharat Petroleum Corporation Limited (BPCL) has 51% paid up capital in the company.

v. The application u/s 97 of the Act seeking Advance Ruling was made before the Authority for Advance Ruling- Madhya Pradesh. The issues on which the Advance Ruling were required:-

I. Whether GST is applicable on payment of notice pay by an employee to the applicant employer in lieu of notice period, under clause 5(e) of Schedule II of CGST Act.

II. Whether GST is applicable on the amount of premium of Group Medical Insurance Policy of non-dependent parents recovered from the employees & retired employees at actuals covered under the said Policy.

III. Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the Refinery at Bina when it is no supply as per clause 1 of Schedule III of CGST Act.

IV. Whether GST is applicable on recovery of telephone charges recovered from the employees over and above the fixed rental charges payable to BSNL.

V. Whether the provision of Canteen services to all the employees without charging any amount (Free of cost) will fall under para 1 of Schedule II of CGST Act and will not be subjected to GST.

vi. Appellant is filling Appeal against the order of Authority for Advance ruling Madhya Pradesh Goods and Service Tax bearing order number 02/2021 dated 07.06.2021.

vii. The provisions of both the CGST Act and MPGST Act are the same, except certain provisions. Therefore, the reference to CGST Act would also mean a reference to the same provisions under MP GST Act, unless a specific

mention is made to any dis-similar provisions. It is further mentioned henceforth, for the purposes of this appeal before the Hon. Appellate Authority for Advance Ruling, the expression "CGST Act" shall mean both CGST Act and MP GST Act.

4. QUESTIONS RAISED BEFORE AUTHORITY FOR ADVANCE RULING (AAR)

Questions raised before AAR, are as under:-

i. Whether GST is applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period under clause 5(e) of Schedule II of GST Act?

ii. Whether GST is applicable on the amount of premium of Group Medical Insurance policy recovered at actuals from non-dependent parents of employees, and retired employees those who are covered under the said Policy?

iii. Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the Refinery at Bina when it is not a supply as per clause 1 of Schedule III of GST Act?

iv. Whether GST is applicable on recovery of telephone charges from the employees over and above the fixed rental charges payable to BSNL?

v. Whether full ITC is available to the applicant in respect of question Nos. II, III & IV, or ITC will be restricted to the extent of GST borne by the applicant-employer?

vi. Whether the provision of canteen services to all the employees without charging any amount (free of cost) will fall under Para 1 of Schedule III of GST Act and will not be subjected to GST?

vii. If reply to Q. VI is yes, whether in view of the explanation to Section 17(3) of GST Act, ITC shall be available to the applicant on the goods and services used in the activity of provision of free canteen services to the employees?

5. RULING PRONOUNCED BY AUTHORITY FOR ADVANCE RULING (AAR)

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i. In respect to Question Number 1, We are of view that GST is applicable on payment of notice pay by an employee to applicant employer in lieu of notice period under clause 5(e) of schedule II of CGST Act.

ii. In respect to Question Number 2, we are of view that the premium of Group Medical Insurance Policy recovered by applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST.

iii. In respect to Question Number 3, This Authority holds that as per Section 15(1) of GST Act, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply. However, if the transactions are between related persons then value of supply is to be determined as per Rule 28. The employer and employee are related person as per Explanation to Section 15, and therefore, the valuation of canteen facility provided by applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by applicant from its employees.

iv. In respect to Question Number 4, the applicant-company is liable to pay GST on the amount recovered from its employees towards telephone charges at actuals.

v. Question number 5 is relating to availability of ITC to the Applicant in respect of inputs and input services pertaining to supply as per Question number 2,3 and 4.

On this question the authority is of the view that -

(A) The applicant shall be eligible to claim Input Tax Credit in respect of premium paid to insurance company to the extent of its further supply.

(B) The Applicant shall not be eligible for the ITC on in respect of canteen services.

(C) In respect of telephone charges paid to BSNL, the applicant shall be eligible to claim Input Tax Credit, as telephone charges are not covered by the provisions of Section 17 relating to blocked credit.

vi. In respect of question number 6 canteen services provided to the employees are to be treated as supply, even if there is no consideration. It will be liable to tax as per value determined in accordance with Rule 28.

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vii. In respect of question number 7, the reply to this question is already duly covered by reply to question number 5, and the applicant shall not be eligible to claim Input Tax Credit in respect of canteen services in view of specific provision of clause (ii) of Sl. No.7 of Notification No. 11 / 2017 - Central Tax (Rate), dt . 28.6.17, as substituted by Notification No. 20 / 2019 - Central Tax (Rate), dt. 30.9.19, w.e.f. 10.10.19 read with clause (xxxii) of Paragraph 4 relating to explanation given in Notification No. 11 / 2017 - Central Tax (Rate) .

viii. The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

6. QUESTIONS RAISED BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

The following question, which is the very same as posed before AAR, have been posed before the Appellate Authority: -

i. Whether GST is applicable on payment of notice pay by an employee to the applicant - employer in lieu of notice period under clause 5(e) of Schedule II of GST Act?

ii. Whether GST is applicable on the amount of premium of Group Medical Insurance Policy recovered at actuals from non-dependent parents of employees and retired employees those who are covered under the said Policy?

iii. Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the Refinery at Bina when when it is not a supply as per clause 1 of Schedule II of GST Act?

iv. Whether GST is applicable on recovery of telephone charges from the employees over and above the fixed rental charges payable to BSNL?

v. Whether full ITC is applicable to the applicant in respect of question Nos. II, III & IV or ITC will be restricted to the extent of GST borne by the applicant-employer?

vi. Whether the provision of canteen services to all the employees without charging any amount (free of cost) will fall under Para 1 of Schedule III of GST Act and will not be subjected to GST?

vii. If reply in Q. 6 is yes, whether in view of explanation to section 17(3) of GST, ITC shall be available to the applicant on the goods and services used in the activity of provision of free canteen services to the employees ?

7. GROUNDS OF APPEAL

Aggrieved by the rejection of the application for advance ruling, the appellant has filed this appeal dated 08-07-2021 under Section 100 of the CGST Act, 2017 and MPGST Act, 2017, on the following grounds:-

i. Appellant submits that the ld. AAR has erred in concluding that the applicant as an employer is tolerating the act or situation by accepting the amount in lieu of notice period i.e. relieving an employee without notice period. The ld. AAR has concluded that the applicant is tolerating the act and it is covered by para 5(e) of Schedule II of CGST Act and is a supply of service liable to tax. Such action of ld. AAR of interpreting the provisions of the law in such a restricted manner without taking into consideration the settled law laid down by the Hon. Madras High Court in the case of GE T & D India Limited is not correct.

ii. Appellant submits that the ld. AAR has grossly erred in ignoring the law laid down by the Hon. Madras High Court on the matter relating to levy of tax on notice pay, simply by stating that the law laid down by the Hon. High Court was under Service Tax regime and is not applicable under the present law. Such action of ld. AAR of simply rejecting the law laid down by the Hon. Madras High Court, though under the erst-while law is totally unlawful and unjustified.

iii. Appellant submits that the ld. AAR has erred in concluding that the premium of Group Medical Insurance Policy recovered by the appellants from the non dependent parents of employees and retired employees will fall within the ambit of supply and is liable to tax. Such action of ld. AAR of determining such recovery of premium as a supply liable to tax under GST is totally incorrect, as the same is not covered under the scope of supply u/s 7(1) of CGST Act, as it is not in the course or furtherance of business of the appellants. Further, the ld. AAR has failed to consider the submissions made by the appellants with regard to the fact that such activity rendered by the appellant is not covered by the definition of " business " as provided in section 2(17) of the CGST Act .

iv. Appellant submits that the ld. AAR has failed to consider the submissions made by the appellants that it does not possess the requisite license for providing the

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insurance services and therefore the said activity of recovery of insurance premium from the employees is not in the course or furtherance of business of the appellant. Hence, it is prayed that the findings recorded by the ld. AAR may kindly be set aside.

v. Appellant submits that the ld. AAR has erred in holding that the recovery of nominal amount for availing the facility of canteen by the employees is liable for GST. The ld. AAR has held that the transaction of recovery of nominal amount for availing the canteen facility by the employees shall be covered under clause (b) of section 2 (17) of the Act as a transaction incidental or ancillary to the main business of the applicant and is therefore covered under the definition of " outward supply " which is liable to tax.

vi. Further, Appellant submits that the ld. AAR has observed that the interpretation by the appellants relating to transaction falling under clause 1 of Schedule III is erroneous by stating that here employee is not providing any service rather employer is providing services to employees.

vii. Appellant submits that the ld. AAR has failed to consider the submissions made by the appellants that the employer is providing the canteen facility by recovering a nominal amount as a consideration for the services provided by the employees to the employer. Hence, the consideration made by the employer to the employees for such transaction, which is covered by Clause 1 of Schedule III of the Act shall be exempted from levy of tax.

viii. Further, Appellant submits that the ld. AAR has failed to take into consideration the Circular issued by CBIC in this regard, which supports the submissions made by the appellants.

ix. Appellant submits that the ld. AAR has also failed to take into consideration the decisions of other AAR'S on identical issue wherein it has been repeatedly held that the recovery of nominal amount from the employees is not liable for GST.

x. Appellant submits that the ld. AAR has concluded that the telephone charges recovered by the applicant from its employees over and above the fixed rental charges payable by the applicant to BSNL is covered under the definition of " business " as provided in section 2(17) of the Act and therefore it is covered under the definition of " supply ". Hence, the ld. AAR has held that the amount recovered from its employees at actual shall be liable for tax.

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xi. Appellant submits that the ld. AAR has failed to consider the submissions made by the appellants that it does not possess the requisite license for providing the telecommunication services to its employees and therefore the said activity of recovery of telephone charges from the employees is not in the course or furtherance of business of the appellant.

xii. Appellant submits that the findings recorded by the ld. AAR are not correct and not according to the law. Hence, it is prayed that the same may kindly be set aside.

xiii. Appellant submits that the ld. AAR has failed to take into consideration the detailed submissions made by the appellants with regard to attracting the levy of GST on canteen services provided to all employees without charging any amount (free of cost and is part and parcel of the cost to company).

xiv. Appellant submits that the ld. AAR has erred in concluding that the canteen services provided to the employees are to be treated as supply, even if there is no consideration and it is liable to tax as per the value determined in accordance with Rule 28.

xv. Appellant submits that the ld. AAR has failed to take into consideration the Press Release dated, 10.07.2017 issued by CBIC, as the consideration of this Press Release would have resulted in the conclusion, that the providing of free canteen services to its employees shall be covered by Para 1 of Schedule III of CGST Act and therefore, it is neither supply of goods nor supply of services. Hence, the findings recorded by the ld. AAR are not correct and not according to the law. Hence, it was prayed that the same may kindly be set aside.

8. PERSONAL HEARING

The appellant was given an opportunity of personal hearing on 06.10.2021 through virtual mode. Shri S. Krishnan, has attended the personal hearing on behalf of the appellant. After hearing, the appellant has expressed his satisfaction through a letter and asked for decision.

9. DISCUSSION AND FINDINGS

We have carefully gone through the submissions made by the appellant in his application as well as the submission made at the time of personal hearing.

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Point no.1 - The first question raised by the applicant is that whether GST is applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period under clause 5(e) of Schedule II of GST Act. On this point the Ld. AAR has found that the applicant employer is tolerating the act by relieving the employee without following the notice period clause upon payment of an amount. As a consequence the Ld. AAR concludes that the situation is covered under clause 5(e) of the Schedule II of the CGST Act i.e. (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; which is liable to GST.

2. We have carefully gone through the facts presented by the applicant. Any employee leaving the employment of the applicant is required to serve minimum 30 days notice as per the terms of the appointment. But if any employee is not able to serve the full 30 days notice period there is an option to the employee to pay an amount equal to his monthly salary for the number of days which is not able to serve the notice period. This option to pay an amount instead of serving the 30 days or less notice period facilitates the employee where he desires to quit immediately by giving compensation to the employer for his sudden and unexpected exit.

3. We find that Clause 5(e) of the Schedule II of the CGST Act is similar to the earlier Service Tax law i.e. Section 66E(e) of the Finance Act, 1994. With reference to the said earlier Act, the Central Board of Excise and Customs (CBEC) had issued a guidance note dated 20.6.2012. Para 2.9.3 of the said guidance note reads as under:

> 2.9 Provision of service by an employer is outside the ambit of service
>
> 2.9.3 Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to Service Tax?
>
> No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of the employment. Hence, amounts so paid would be chargeable to Service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.

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4. The said query raised pertains to the opposite situation i.e. where the employer pays the employee for premature termination of service and in this situation it was clarified that premature termination was treatable as amounts paid in relation to services provided by the employer in the course of employment. As regards the present situation where the employee had paid the employer for waiver of notice period, the matter had come up before the hon'ble Madras High Court in W.P. Nos 35728 to 35734 of 2016 in the case of GE T&D India Ltd Vs Deputy Commr of Central Excise, LTU, Chennai. The hon'ble high court applying the CBEC's clarification observed that "*the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit*". The hon'ble Court further held that '*the definition in clause (e) of Section 66E is not attracted to the scenario before me as, in my considered view, the employer has not 'tolerated' any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non-compete. Notice pay, in lieu of sudden termination however, does not give rise to the rendition of service either by the employer or the employee.*"

5. In the GST era also services provided by an employee to the employer is treated as neither supply of goods or services under Schedule III of the CGST Act. Schedule III pertains to activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Clause 1 reads as under –

1. Services by an employee to the employer in the course of or in relation to his employment.

6. Thus 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. In present case also the said compensation which accrues to the employer is in relation to the services provided by the employee. Such compensation is related to the services not provided by him to the employer during the course of employment. In other words, the employer is being compensated for the employee's sudden exit. 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.

7. We are of the considered view that the ratio the decision of the hon'ble Madras High Court in GE T&D India Ltd Vs Deputy Commr of Central Excise, LTU, Chennai quoted above, is squarely applicable to the present case. Though the said judgment pertains to the Service Tax period we do not find any change in the position of law in this regard after introduction of GST. In view of the above finding, we hold that the Ld. AAR had erred in concluding that such activity was leviable to GST.

Point No.2 – 1. This question is regarding that whether the amount of premium paid towards Group Medical Insurance policy of non-dependent parents recovered from employees and recoveries from retired employees who were covered under the policy is taxable under GST or not. The AAR has ruled in the affirmative.

2. We have gone through the facts of the case, written contention of the appellant company and documentary evidences produced on record. The issue put before us is in respect of whether the aforesaid activity undertaken by applicant is supply of services or not. We have observed as follows;

3. The applicant is a registered person under GST Act and is in the business of refining of crude oil in the refinery at Bina, Sagar District, M.P.

4. The applicant has taken a 'Group Medi-claim insurance policy' for all its employees as a welfare measure. Employees, spouse and children and dependent parents of employees are covered under this policy for which no recovery is made from the employees and same forms part of CTC. Apart from the above, the employees are given an option to enroll their non-dependent parents for availing benefit of this scheme. Retired employees are also given an option to avail the benefit. When employees include their non-dependent parents under the scheme, additional insurance premium is paid by the appellant company which is subsequently recovered from the salary of the employees at actuals. Similarly the amount is recovered from retired employees at actuals. The applicant states that they were not an insurance company and it is not providing any insurance services to non-dependent parents of employees or to the retired employees. This service of insurance is actually provided by the Insurance Company and they were simply collecting insurance premium as a mediator. They state that collection of premium of insurance policy from persons is not the business of the appellant company.

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5. We find from the documents of insurance scheme submitted on record that the applicant has taken a New India Flexi Floater Group Medi Cliam policy issued by the New India Assurance Co. As stated the applicant is collecting amounts only in respect of Mediclaim cover provided to the employees non-dependent parents and retired employees who opt for such cover. Evidently, the Applicant is not in the business of providing insurance coverage. Secondly, **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 its 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.

6. The term "supply" is defined under Section 7 of the CGST Act, 2017 which is reproduced below:

"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, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

(b) import of services for a consideration whether or not in the course or furtherance of business, and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration.

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government

on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as

(a) a supply of goods and not as a supply of services, or

(b) a supply of services and not as a supply of goods

7. Thus, in order to constitute a 'supply', the following elements are required to be satisfied:

(i) there should be supply of "goods" and / or services";

(ii) supply is for a "consideration";

(iii) supply is made **"in the course or furtherance of business":**

8. From the above, it is clear that any activity done against consideration is treated as supply however, such an activity must be in the course of business or for the furtherance of business.

9. The term "in the course of business" or "furtherance of business" is not defined under CGST Act. However, the term business has been defined in Section 2(17) of the CGST Act, 2017 which is reproduced below for ready reference :

"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);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business,

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(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club, and any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

10. From the above definition, the term "business" broadly means any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Any activity ancillary or incidental to these activities are also covered as business. It has also been provided that any activity or transaction falling in above categories would be business whether or not there is volume, frequency, continuity or regularity in transactions.

11. From the reading of the above definition and section (supra), we find that the activity undertaken by the applicant like providing of mediclaim policy for the employees' non-dependent parents/ retired employees through insurance company neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST ACT 2017. Accordingly, facilitating medical insurance services to non dependent parents and retired employees upon recovery of premium amount on actuals cannot be considered as 'supply of service' under CGST Act or MPSGST Act.

Point No.3 – 1. Whether GST is applicable on recovery of nominal amount for availing the facility of canteen at the Bina refinery? On this question, the Ld AAR has pronounced that facility of canteen services was liable to GST and valuation of canteen facility provided by the applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by the applicant from its employees.

2. The appellant has a manufacturing setup and maintains/manages industrial canteen for providing food and refreshments to its employees as they cannot leave the premises due to the nature of their work and the refinery is mandated to work round the clock. The appellant is required by law to maintain canteen facilities for its employees under Section 46 of the Factories Act, 1948. For this facility the

appellant recovers Rs. 700/- per month from the salary of the employees as a standard deduction, irrespective of the fact whether the employees are availing canteen facility or not. The canteen facility has been outsourced and run by a canteen contractor. As the appellant has arranged to provide the food to its employees at subsidized rate (and not free of cost), the appellant collects some portion of the total amount of food price to be paid to the 'Canteen Service Provider' from the employees, by deducting it from the salary of the employees. The appellant has submitted that it is only facilitating the supply of food to the employees, which is a statutory requirement under the Factories Act, 1948, and is recovering only employee's share towards actual expenditure incurred in connection with the food supply, without making any profit.

4. The appellant has referred to para 1 of Schedule III and states that it is part and parcel of employment contract between the employer and the employee. As such, it is services by an employee to the employer in the course of or in relation to his employment in accordance with clause 1 of Schedule III of CGST Act which is neither a supply of goods nor a supply of services. As per section 7(2) of CGST Act, Schedule III supersedes Schedule I and Schedule II, which means even if it is supply u/s 7(1), no tax will be payable in view of provisions contained in clause 1 of Schedule III.

5. We have considered the submissions made by the appellant in the appeal filed by them as well as at the time of personal hearing, Ruling given by the MPAAR and other evidences available on record.

6. In the present case, as submitted by the appellant, it has provided / arranged a canteen for its employees, which is run by a third party i.e. Canteen Service Provider. The Canteen Service Provider supplies foodstuffs to the employees of the appellant against consideration and pays applicable Goods and Services Tax thereon. However, in respect of the consideration being paid to the Canteen Service Provider, as per the agreed arrangements between the appellant and its employees, part of that consideration / amount is borne by the appellant whereas the remaining part is borne by its employees. The employees' portion of consideration / amount to be paid to the Canteen Service Provider is collected by the appellant and the consolidated amount of consideration (employees' portion as well as appellant's portion) is paid to the Canteen Service Provider by the appellant. The query raised in the present case is limited to the question of applicability of Goods and Services Tax on collection of employees' portion of consideration by the appellant.

7. It is evident from the aforesaid nature of transaction that the appellant does not supply any goods or services to its employees against the amount collected from

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the employees. The appellant collects employees' portion of amount and pays the consolidated total amount, which includes appellant's share of amount also, to the Canteen Service Provider towards the foodstuffs provided to employees by the Canteen Service Provider. The appellant neither keeps any margin in this activity of collecting employees' portion of amount nor makes any separate supply to the employees. Furthermore, it is not the appellant who is supplying the foodstuff or canteen service to its employees, but it is a third party who is supplying the foodstuff or canteen service to the employees of the appellant. In our view, as the appellant is not carrying out the said activity of collecting employees' portion of amount to be paid to the Canteen Service Provider, for any consideration, such transactions are without involving any 'supply' from the appellant to its employees and is therefore not leviable to Goods and Services Tax. We observe that the MPAAR has ruled that the Goods and Services Tax is applicable on the amount recovered from employees, mainly on the premises that 'the appellant is supplying food to its employees', which would be covered under the definition of the term 'business' under Section 2(17) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017. However, the appellant has asserted before us that it is collecting the portion of employees' share and paying to Canteen Service Provider, a third party, which is nothing but the facility provided to employees, without making any profit and working as mediator between employees and the contractor / Canteen Service Provider. Under these circumstances, we hold that the Goods and Services Tax is not applicable on the activity of collection of employees' portion of amount by the appellant, without making any supply of goods or service by the appellant to its employees.

8. We, therefore, allow the appeal filed by the appellant by holding that the Goods and Services Tax is not applicable on the collection, by the appellant, of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider.

Point No.4 – Whether GST is applicable on recovery of telephone charges from the employees over and above the fixed rental charges payable to BSNL?

2. This question is similar to that of point no.2 i.e. recovery of amount of premium of Group Medical Insurance policy recovered at actual which has been discussed above. Applying the same rationale and from the from the reading of the above definition of business and Section 7(supra), we find that the activity undertaken by the applicant like providing of telephone facility to employees through BSNL neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST

ACT 2017. Accordingly, facilitating telephone connection to employees upon recovery of usage charges on actuals cannot be considered as 'supply of service' under CGST Act or MPSGST Act.

Point No. 5 – 1. Whether full ITC is applicable to the applicant in respect of question numbers II, III & IV or ITC will be restricted to the extent of GST borne by the applicant employer ?

2. On this question we have to refer to Section 17 of the CGST Act that deals with apportionment of credit and blocked credits. Relevant extract is reproduced below -

> 17 (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
>
> (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
>
> (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
>
> Explanation.-For the purposes of this sub-section, the expression ''value of exempt supply'' shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.
>
> (4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:
>
> Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(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:-

[(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:-

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

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(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(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.]

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

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3. It become evident from the aforesaid provisions that ITC of GST paid on inward supplies of –

a. 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 **would not be available** except 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.

b. Membership of a club, health and fitness centre; and travel benefits extended to employees on vacation such as leave or home travel concession

However, 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.

4. Applying the aforesaid provisions we find that –

a. Input credit of GST paid to BSNL on usage charges recovered from employees would not be available to the appellant as they are not providing any outward supply of telephone services and the facility is also not attributable to the purposes of their business in terms of Section 17(1) of the CGST Act.

b. Input credit of GST paid to the insurance provider would also not be available to the applicant as health insurance is in the excluded category under Section 17 (5) of the CGST Act and as said insurance services are not any outward supply of the applicant.

c. As regards provision of canteen facility we find that the appellant has submitted that the canteen facility was required to be provided by a company as per Section 46 of the Factories Act, 1948. Therefore applying the proviso under Section 17(5)(b) 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, we are of the view that input credit of GST paid would be available to the appellant.

Point No.6 – 1. Whether the provision of canteen services to all the employees without charging any amount (free of cost) will fall under Para 1 of Schedule III of GST Act and will not be subjected to GST ?

2. On this matter we find that Schedule III pertains to activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Clause 1 reads as under –

> 1. Services by an employee to the employer in the course of or in relation to his employment.

Thus 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. In this case canteen services are provided to employees by the employer. So this is not a case where some services have been provided by the employee to the employer. There is nothing on record to show that the said facility provided to employees is part of the wage structure. **Therefore, we do not find any reason to hold that canteen facilities would fall under Schedule III of the CGST Act**. However, at point no.3 we have held that canteen services would not be leviable to GST at the hands of the employer because of our findings that the employer was merely a facilitator between the canteen service provider and the employee and that the employer was mandated to run a canteen under the Factories Act.

Based on the aforesaid findings following order is being passed –

ORDER

1. GST is not applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period.
2. GST is not payable by the employer on the amount of premium paid towards Group Medical Insurance policy of non-dependent parents recovered from employees and from retired employees.
3. GST is not payable by the employer on recovery of nominal amount for availing the facility of canteen.

4. GST is not payable on recovery of telephone charges from the employees over and above the fixed rental charges payable to BSNL.

5 (a) Input credit of GST paid to BSNL on usage charges recovered from employees would not be available to the appellant as they are not providing any outward supply of telephone services and the facility is also not attributable to the purposes of their business in terms of Section 17(1) of the CGST Act.

5 (b) Input credit of GST paid to the insurance provider would not be available to the applicant as health insurance is in the excluded category under Section 17 (5) of the CGST Act and as said insurance services are not any outward supply of the applicant.

5 (c) Input credit of GST paid to canteen service provider would be available to the appellant in terms of poviso under Section 17(5)(b) 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.

6. Provision of canteen services to all the employees without charging any amount (free of cost) will not fall under Para 1 of Schedule III of GST Act.

NAVNEET GOEL

(Member)
Madhya Pradesh Appellate Authority

RAGHWENDRA KUMAR SINGH

(Member)
Madhya Pradesh Appellate Authority

No. 04../2021/A.A.A.R./.08

Indore, dated -08/11/2021

Copy to:-

1. The Appellant.
2. The AAR, Madhya Pradesh.
3. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. Office Copy

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