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|  सत्यमेव जयते | RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN) |  राजस्थान |
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ADVANCE RULING NO. RAJ/AAR/2023-24/10

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| Umesh Kumar Garg Joint Commissioner | : | Member (Central Tax) |
| Mahesh Kumar Gowla Additional Commissioner | : | Member (State Tax) |
| Name and address of the applicant | : | M/S SHRIRAM PISTONS & RINGS LIMITED, SP-1/892,893, Industrial Area Pathredi, Near Chopanki, Bhiwadi, Alwar, Rajasthan - 301707 |
| GSTIN of the applicant | : | 08AAACS0229G1ZP |
| Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised | : | (d) admissibility of input tax credit of tax paid or deemed to have been paid (e) Determination of the liability to pay tax on any goods or services or both. (g) Whether any particular thing done by applicant with respect to any goods or services or both, within the meaning of that term |
| Date of Personal Hearing | : | 26.06.2023. |
| Present for the applicant | : | Adv. Shri Narendra Singhvi, Sr.Executive Umesh Chandra Rawat |
| Date of Ruling | : | 31.08.2023 |

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".

The issue raised by M/S Shriram Pistons & Rings Limited, SP-1/892,893, Industrial Area Pathredi, Near Chopanki, Bhiwadi, Alwar, Rajasthan - 301707 (hereinafter referred to as "applicant"). Applicant has entered a contract with a third-party canteen service provider for providing cooked food, drinks etc., to employees, in canteen area which is inside the factory of Applicant., in the name of M/s Shriram Pistons & Rings Limited. The Three

issues raised by applicant is fit to pronounce advance ruling & it falls under the ambit of the Section 97(2) (d),(e)& (g) given as under:

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both

(g) whether anything done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.

A Submission of The Applicant: (in brief)

Applicant has entered a contract with a third-party canteen service provider for providing cooked food, drinks etc., to employees, in canteen area which is inside the factory of Applicant. The canteen service provider is raising its invoices on Applicant and Applicant is making recoveries at subsidized rate from the salary of its employees for canteen facility.

Applicant wishes to know whether the activity of providing food at subsidized price to employees, can be considered as supply of service by Applicant to its employees.

Applicant further wishes to know whether it is eligible to take input tax credit of the GST charged by contractor for canteen services availed by it for its employees.

B Interpretation and understanding of applicant on question rose (in Brief)

The applicant submitted his interpretation which is under-

1. Shriram Pistons and Rings Limited ("Applicant"), is engaged in manufacture and supply of automobile parts (two wheelers and four wheelers) viz. engine parts such as pistons, piston rings, engine valves etc. at its manufacturing unit (factory) located at Pathredi, Rajasthan.
2. Applicant is a company incorporated under the Companies Act, 1956. It has various manufacturing, research and development centers and branch offices located in different states and accordingly Applicant has obtained GST registration in the respective locations. Applicant with GSTIN08AAACS0229G1ZP is registered with the Goods and Services Tax department in the state of Rajasthan and falls within the administrative jurisdiction of AC/CTO, Ward Circle-C, Bhiwadi, Rajasthan.
3. Employees are vital resources to carry out the day-to-day affairs of the factory. Applicant has more than 2000 employees working in its factory and copy of the supporting document viz. Form no. 23i.e. annual return filed by Applicant for year 2022, in compliance to Rajasthan Factories Rules, 1951, is enclosed as Annexure-A.
4. As per Section 46 of the Factories Act, 1948 ("Factories Act") read with Rule 69 of the Rajasthan Factories Rules, 1951 ("Rajasthan Factories Rules"), Applicant is under statutory obligation to provide canteen facility to its workers.
5. In order to provide canteen facility, Applicant has engaged a third-party canteen service provider ("canteen contractor"), for providing quality food and refreshments to its employees. Canteen contractor charges as per the agreed price per meal from Applicant. It is raising invoice under SAC 996333 and is charging GST @ 5% from Applicant. Copy of the invoices raised by canteen contractor, on sample basis, is enclosed as Annexure-B.

6. Further, in order to ensure administrative control, discipline and to avoid wastage of food, Applicant recovers a part (at subsidized rates) of the meal cost incurred by it from employees. Accordingly, the charges of the meals/snacks are deducted from the salary of the individual employee. Copy of relevant documents are enclosed as Annexure-C.
7. The said amount recovered from employees is paid to canteen contractor along with the remaining portion, which is paid by Applicant. It is pertinent to note here that Applicant does not retain any part of such amount and moreover, no profit is made by Applicant from such activity.
8. Under the aforesaid circumstances, Applicant is filing the present application seeking advance ruling to understand whether GST is payable on the amount recovered by Applicant from its employees for providing food in canteen. Also, whether Applicant is eligible to take Input Tax Credit ("ITC") of GST charged by canteen contractor for canteen service availed by it for its employees.

APPLICANT'S ELIGIBILITY FOR ADVANCE RULING:

1. Section 97(2) of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Rajasthan Goods and Services Tax Act, 2017 ("RGST Act"), entails that an advance ruling may be filed by Applicant on the following questions:
 - a) Classification of any goods or services or both;
 - b) Applicability of a notification issued under the provisions of this Act;
 - c) Determination of time and value of supply of goods or services or both;
 - d) Admissibility of input tax credit of tax paid or deemed to have been paid;
 - e) Determination of the liability to pay tax on any goods or services or both;
 - f) Whether the applicant is required to be registered;
 - g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
2. At the outset, it is made clear that the provisions of both CGST Act and RGST Act and rules made there under are same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act and CGST Rules would also mean a reference to the same provisions under the RGST Act and RGST Rules and vice versa.
3. Applicant submits that the advance ruling sought in the instant matter relates to determination whether recovery of subsidized charges from employees amounts to or results in supply of services and whether there is liability on Applicant to pay tax on such amount recovered from employees towards provision of food facility in the factory. Further, whether ITC is available to Applicant on GST charged by charged by canteen contractor for canteen service availed by it for its employees.
4. The question relating to determination of the liability to pay tax on any service is eligible to be posed for advance ruling before the Advance Ruling Authority in terms of Section 97(2)(e) of the CGST Act. The other questions raised are also eligible to be posed for advance ruling before the Advance

Ruling Authority in terms of Section 97(2)(g) and (d) of the CGST Act. Similar provisions are contained in Section 97 of RGST Act.

5. Further, Applicant is also registered in the state of Rajasthan. Hence, the present advance ruling application is maintainable before the Hon'ble Rajasthan Authority for Advance Ruling.

APPLICANT'S UNDERSTANDING

6. Applicant's interpretation is that the deductions made from the salary of employees for providing food facility does not qualify as 'supply of goods or services' in terms of Entry 1 to Schedule III of the CGST Act and will not be subjected to GST. Further, such deductions are not in nature of consideration for any supply.
7. Further, Applicant is eligible to take ITC of GST charged by canteen contractor for canteen service received by it for its employees as same is received in course or furtherance of its business of manufacture in terms of Section 16(1) of the CGST Act.
8. The submissions in support of the aforesaid interpretation have been enunciated in the following paragraphs:

- A. The food facility provided by Applicant to employees is excluded from the scope of 'supply' in terms of Clause (a) of Section 7(2) of the CGST Act.
9. It is submitted that the food facility provided by Applicant to its employees, is excluded from the purview of 'supply' in terms of clause (a) to Section 7 (2) of the CGST Act. The relevant provisions are reproduced below:

"SECTION 7. 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;

.....
(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either 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"

"SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

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

[Emphasis Supplied]

10. Section 7(2) of the CGST Act, begins with a non-obstante clause and overrides Section 7(1) of the CGST Act. A plain reading of above section provides that even in case where any activity may be treated as 'supply' in terms of Section 7(1), certain activities/ transactions would still be excluded from the scope of 'supply'.
11. Entry 1 of Schedule-III covers, services provided by employee to its employer in the course of employment or in relation to employment. It may be noted that any activity or transaction which is undertaken in the course of employment or in connection with employment has been specifically excluded from the ambit of supply.
12. The provisions of Section 7(2) of the CGST Act are non-obstante those of Section 7(1) and thus, activities/ transactions specified in Schedule-III shall not be treated as 'supply' for purposes of Section 7(1) and not liable to GST under Section 9.
13. The food facility is being provided by Applicant to its employees as a part and parcel of the employment terms and conditions. Therefore, the said food facility is clearly an activity, which is being undertaken in the course of employment only. The food facility has a direct nexus with the employment of employee with Applicant. On termination of employer-employee relationship, the concerned person cannot avail the said food facility. Therefore, by virtue of Section 7 (2) read with Entry 1 of Schedule III, the food facility does not amount to supply.
14. In the instant case, Applicant has made available food facility to its employees in the course or in relation to their employment whereby they can take a meal in the factory canteen. Further, as already stated above, the food facility is being provided in the factory of Applicant due to the mandatory requirement of Section 46 of the Factories Act read with Rule 69 of Rajasthan Factories Rules.
15. It is further submitted that the food facility is similar to the other facilities like providing workspace, air-conditioning, laptops, computers and photocopy machines etc., made available by employer, facilitating employees to contribute towards the business activities of employer.
16. These facilities are not for personal benefit of employees. Therefore, the food facility cannot be said to be an independent supply provided/made by employer to employees. Rather, it is statutory requirement of the Factories Act read with Rajasthan Factories Rules.
17. It is further submitted that the nominal amount recovered from employees is only towards recovery of part of the cost of food facility extended by Applicant. Bearing of part of cost by employees will not alter the nature of transaction. It is all part of one facility extended by employer, where the cost is partly borne by Applicant and partly by employees. Therefore, in absence of any supply by Applicant, no GST is payable on the recoveries made by Applicant from its employees.
18. Also, the press release issued by Central Board of Indirect Tax and Customs ("CBIC") on 10.7.2017, clarified the aspect with respect to taxability of perquisites supplied by the companies to their employees. In the last paragraph of the said press release, it was clarified that where free housing or membership of club, health centre etc. is provided to employees free of cost under the contract of employment and if cost of

such services forms part of the CTC of employees, then no GST will be payable on such services provided by employer to employee. The relevant part of the said press release is reproduced below:

“Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows there from that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the Input Tax Credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).”

[Emphasis Supplied]

19. Further CBIC, vide Circular No. 172/04/2022-GST dated 6.7.2022 (issued vide F. No. CBIC-20001/2/2022-GST), in Sl. 5 clarified as following:

| Perquisites provided by employer to the employees as per contractual agreement | |
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| 5. Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered between the employer and the employee are liable for GST? | <p>1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</p> <p>2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows there from that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to</p> |

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| | <p>GST when the same are provided in terms of the contract between the employer and employee.</p> |
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[Emphasis Supplied]

20. In view of the above, it is submitted that the food facility provided by Applicant to its employees would not amount to 'supply' under GST. Accordingly, GST is not payable on the amount recovered from employees' portion of canteen charges, which is collected by Applicant and paid to canteen contractor.
21. It is submitted that the subject activity or transaction, if any, is undertaken in the course of employment or in connection with employment and does not amount to supply of goods or services by virtue of Section 7(2) read with Entry 1 of Schedule III. Also, as per the Press release issued by the Ministry of Finance dated 10.7.2017, services provided by employer to employees in terms of the contractual agreement entered between employer and employee will not be subjected to the GST.
22. It is abundantly clear that any services provided by employer to employees in course of employment relationship will not be subjected to GST. This is more so, when the amount charged by Applicant is fully paid to the third-party contractor and no profit or pecuniary benefit is involved in this activity, and thus, there is no consideration at all. Hence, the provision of canteen facility is excluded from the purview of supply.
23. Therefore, Applicant humbly submits that canteen facility provided by Applicant to its employees does not qualify as supply. Therefore, GST is not payable on canteen facility provided by Applicant to its employees. It is settled position under GST regime that the amount recovered from employee for usage of canteen facility does not pertain to any 'supply'.
24. It is submitted that it is a settled legal position that the recovery of part amount for canteen facility from employees does not pertain to any 'supply' under GST and hence, not taxable.
25. In this regard, at the outset, reliance is placed on ruling of Hon'ble UPAAR in Applicant's own case (Advance Ruling No. UP ADRG -16/2022 dated 5.12.2022), wherein it has been conclusively held that no GST is payable on such recovery of part amount from employees. The said ruling has been given in the same facts, as involved in the present matter.
26. Reliance is also placed on the following Advance Ruling of various states:
 - a. In Re: SRF Limited, 2022 (10) TMI 305 – Authority for Advance Ruling, Gujarat, wherein it was held that canteen facility and transportation services provided by applicant to its employees cannot be considered as supply of goods or services and hence, cannot be subjected to GST.
 - b. In Re: Cadila Healthcare Limited, 2023 (68) G.S.T.L. 203 (A.A.R. - GST - Guj.), it was held that the subsidized deduction made by applicant from its employees towards canteen facility is collected by applicant and paid to canteen service provider, without retaining any portion thereof. Therefore, such canteen facility provided by applicant to its employees cannot be deemed to be an activity made in the course or furtherance of business to qualify as supply vis-à-vis applicant.
 - c. In Re: North Shore Technologies Private Limited, 2021 (49) G.S.T.L. 315 (A.A.R. - GST - U.P.), wherein it was held that the subsidized amount collected from employees for usage of transportation facility is paid to

the third-party vendor, without retaining such collected amount towards provision of such transportation facility. Therefore, the arrangement of transportation for employees and recovery from employees towards such transport facility, under the terms of the employment contract, cannot be considered as supply of service in the course of furtherance of business.

- d. In Re: Dakshina Kannada Co-Op. Milk Producers Union Ltd., 2021 (55) G.S.T.L. 574 (A.A.R. - GST - Kar.), wherein applicant was providing lunch and refreshments to its employees by engaging a canteen contractor. The bill for the supply of food to employees was paid by applicant and applicant was also collecting a specified amount from employees which was less than the amount paid to canteen contractor. In the aforesaid factual matrix, applicant sought ruling on the question as to whether provision of subsidized lunch and refreshments to employees through contractors is to be treated as supply and if yes under which tariff classification it has to be classified. The Hon'ble Authority held that applicant merely pays the part consideration towards the cost of lunch and is not engaged in providing any supply.
 - e. In Re: Dishman Carbogen Amcis Ltd., 2022 (62) G.S.T.L. 245 (A.A.R. - GST - Guj.), wherein it was held that GST is not leviable on the part amount collected from employees in respect of canteen charges and paid to canteen service provider.
 - f. In Re: Intas Pharmaceutical Ltd., 2022 (62) G.S.T.L. 83 (A.A.R. - GST - Guj.), wherein it was held that GST not leviable on amount representing employees' portion of canteen charges at hands of applicant.
27. In the above-mentioned rulings, it has been consistently ruled by the Hon'ble Advance Ruling Authority of various states that the GST is not leviable on the amount recovered from employee and paid to the third-party canteen service provider.
 28. The understanding of Applicant that GST is not leviable on the part amount collected by it from its employees for the food facility is supported from the above-stated rulings. Applicant has no intention to carry out canteen business and it is only a facilitator in the transaction between employee and canteen contractor.
 29. Applicant is only paying the part value of the invoice raised by canteen contractor on its own and the remaining amount after collecting the same from employees. Thus, Applicant has only collected the amount and transferred the same to canteen contractor.
 30. The amount collected by Applicant is not for any supply, it only collects the amount as a pass through for the food facility provided to employees. This fact is evident from the invoice issued by canteen contractor on Applicant, which shows that Rs.45 per meal has been charged as consideration, whereas Applicant only deducted Rs.41 from the salary of employees and, thus it bears Rs.4 per meal. Hence, nothing has been retained by Applicant from the amount deducted from the salary of employees. Copy of the invoice issued by canteen contractor and relevant documents, is already enclosed as Annexure-B and Annexure-C respectively.
 31. Hence, the provision of food facility by Applicant to its employees through canteen contractor cannot be said to be canteen services provided by Applicant to its employees.

32. In light of above, it is submitted that it is not involved in providing any supply and, accordingly no GST is payable on the part amount recovered from the salary of employees.

Without prejudice, the subsidized deduction made by Applicant from the salary of employees, who are availing food facility in the factory, does not constitute 'supply' per se in terms of Section 7 read with Schedule I of the CGST Act, as it is not in furtherance of business of Applicant.

33. It is submitted that the subsidized amount recovered from employees, by Applicant, for providing food facility is not covered within the ambit of "supply" under clause (a) of Section 7(1) of the CGST Act.
34. In order to analyses the present issue, reference is made to Section 7(1) of the CGST Act, which defines the term 'supply' as under:

"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;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

[Emphasis Supplied]

35. Section 7 (1)(a) of CGST Act defines the term 'supply' widely to include all forms of supply of goods or services or both such as sale, transfer, disposal, etc. made or agreed to be made for a consideration in the course or furtherance of business. Therefore, in order to constitute supply under Section 7 (1)(a) of the CGST Act, the following key elements are required to be satisfied:

- a. Supply of goods or/and services;
- b. Consideration;
- c. In the course or furtherance of business.

36. It is clear from the above that in order to constitute supply under Section 7 of the CGST Act, the supply should be in the course of business or furtherance of business. The term "in the course of business" or "furtherance of business" is not defined under the CGST Act. However, it is pivotal to appreciate that the term "Business" has been defined under Section 2 (17) of the CGST Act and reads as under:

"Section 2 (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);
- (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;
- (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 to tallest or or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;"

[Emphasis Supplied]

37. A bare reading of the above clause (a) provides that the term "business" includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Also, as per clause (b) any activity ancillary or incidental to the activities covered under clause (a) are also treated as business.
38. Further, clause (c) also states that any activity or transaction falling in the above categories would be business whether or not there is volume, frequency, continuity or regularity in transactions. Hence, the above definition provides that business includes any activity in the nature of trade, commerce, manufacture, etc.
39. It is reiterated that 'supply' can come into existence only when there is any activity done in the course of business or furtherance of business. It is clear from the above discussion that business means any activity in the nature of trade, commerce, manufacture, etc.
40. Further, Section 7(1)(c) of the CGST Act provides that the scope of supply includes activities specified in Schedule I, made or agreed to be made without consideration.
41. Entry 2 to Schedule I of the CGST Act provides that supply of goods or services or both, between related persons or between distinct persons as specified in Section 25 of the CGST Act, when made in the course or furtherance of business shall be considered as supply even if made without consideration.
42. Explanation (a) to Section 15 to the CGST Act defines related for the purposes of the CGST Act. Explanation (a)(iii) provides that employer and employee are deemed to be related persons.
43. On a conjoint reading of the above provisions, any supply of goods or services between employer and employee in the course or furtherance of business even without consideration will be treated as supply for the purposes of Section 7 of the CGST Act.
44. It is submitted that Applicant is engaged in the business of manufacture of engine parts such as pistons, piston rings, engine valves etc. The entire business activities are aimed towards the manufacture, develop, sale,

- distribution, promotion of pistons, engine valves only. As stated above, Applicant is providing canteen facility to employees at the Rajasthan unit.
45. It is submitted that as per Section 46 of the Factories Act read with Rule 69 of the Rajasthan Factories Rules, every factory is mandatorily required to provide and maintain canteen in the factory in which more than 250 workers are employed. Therefore, in order to comply with the said mandatory condition, Applicant is providing and maintaining canteen at the factory. Applicant is not engaged in the "business" of providing canteen facility to its employees.
 46. Further, the objective of providing canteen facility in its factory is to provide a healthy and workable environment to employees and same is provided as a perquisite. It is being provided in order to increase the working efficiency of employees and not to undertake any business activity.
 47. As mentioned above, Applicant is involved in the business of the manufacturing and selling of automotive components. It is not providing canteen facilities to its employees in course or in furtherance of the business.
 48. Canteen facilities are provided by canteen contractor, for which it is raising an invoice on Applicant along with GST. Therefore, canteen services are being provided by the third-party service provider only. Applicant is merely acting as a facilitator to provide canteen facility to its employees.
 49. Thus, Applicant is not in the business of providing canteen facility or food services. It is only the statutory requirement due to which Applicant is providing the food facility to its employees. Hence, canteen facility cannot be said to be a business activity of Applicant and the provision of canteen facility to employees cannot qualify as supply.
 50. It is also submitted that the business of manufacturing, cooking, packing, supplying food items is strictly regulated under the Food Safety and Standard Act, 2006 ("FSSAI Act"). Canteen contractor may be complying with the conditions of FSSAI Act. However, Applicant is receiving canteen facilities for its employees. Therefore, Applicant does not hold a license to carry out food related business.
 51. It is submitted that, had Applicant been engaged in the business of canteen services, Applicant would have been required to obtain the requisite registration and undertake necessary compliance under the FSSAI regulations. The relevant provisions under FSSAI Act are extracted below:
"Section 3 (1) (n) "Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients;

Section 3 (1) (o) "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made there under;"

[Emphasis Supplied]

52. From the above, the term “food business” means any undertaking involved in the activities related to manufacture, processing, packaging, storage, transportation and in distribution of food. It also provides that a food business operator is a person who carries or owns a food business and is responsible for carrying out the compliance of FSSAI Act, rules and regulations made under FSSAI Act.
53. In this regard, it is submitted that Applicant is not involved in any of the activities mentioned above. Applicant only enters into the contract with a canteen contractor, who provides the food to its employees. It is only a facilitator in the said transaction.
54. Further, according to Regulation 2.1 of Food Safety and Standards (Licensing and Registration of Food Businesses), Regulations 2011, all the food business operators in the country will have to be registered. Since, Applicant is not a food business operator, it is under no obligation to obtain registration and to carry out compliance of the FSSAI Act and Rules. This also supports the above contention that Applicant is not engaged in the business of canteen services.
55. In view of the above, Applicant’s business is neither a “food business” nor Applicant qualifies as a “food service operator”. Therefore, it cannot be said to be engaged in the business of providing canteen services.
56. It is also submitted that the meaning of the term business should be restricted to cover only commercial activities. Any activity which is towards providing any support or service such as helping, aiding or assisting own employees cannot be treated at par with business. In the present case, the provision of canteen facility is merely a support function extended by Applicant to its employees. Hence, the said activity cannot be equated with business.
57. It is pertinent to note that the expression “in the course or furtherance of” has nowhere been defined or elucidated under the CGST Act. In the absence of clarification on the expression, reliance is to be placed on the general principles of interpretation for understanding the same. Based on the plain reading of the expression, it is generally construed that activities undertaken by a person in connection with or having a proximate and close nexus to its business is in the course or furtherance of business.
58. It is also submitted that as per clause (b) of Section 2(17) of the CGST Act, business also includes any activity which is in connection with or incidental or ancillary to the activities covered under clause (a) of Section 2 (17) of the CGST Act. Hence, one may question as to whether the provision of canteen facility can be said to be in connection with or incidental or ancillary to the principal business of automotive components.
59. In this regard, it is submitted that the connected activities or incidental or ancillary activities cannot be construed to include all activities carried out by the business. Furthermore, as per Black’s Law Dictionary (Ninth Edition), “incidental” means dependent upon, subordinate to, arising out of, or otherwise connected with (something else, usually of greater importance). Also, the term “ancillary” is defined in the Black’s Law Dictionary (Ninth Edition) as supplementary; subordinate.
60. The activities which are having direct nexus with the main business can be said to be ancillary or incidental. One of such examples could be sale of by-products. However, canteen facility is not related to or connected with the

principal business of supply of automotive components in that manner. Hence, the same cannot be construed as incidental or ancillary to the main business of Applicant.

61. Reliance is also placed on the following judgments:

- a. Panacea Biotech Limited vs. Commissioner of Trade and Taxes (2013) 59 VST 524 (Del.)
- b. Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd., 1967 (4) TMI 180 - Madras High Court
- c. State of Gujarat vs. Raipur Manufacturing Co. Ltd., 1966-VIL-03-SC

62. It is submitted that canteen facility provided by Applicant to its employees cannot be said to be principal or ancillary or incidental business activity of the business of Applicant. Therefore, one of the essential ingredients i.e. 'business' is missing to constitute 'supply' under GST.

63. It may be noted that Applicant approached Hon'ble Uttar Pradesh Advance Ruling Authority (UPAAR) for ruling on the same issues reproduced as under:

- a) Whether providing food to employees at subsidized price falls outside the scope of "supply"?
- b) Whether subsidized deduction made from the salary of employees can be considered as consideration for 'supply of service' by Applicant to its employees?
- c) Whether GST is applicable on the amount deducted from the salary of the employees?
- d) Whether Applicant is eligible to take input tax credit on the GST charged by third party contractor for canteen services availed by it for its employees?

64. UP AAR delivered ruling on 5.12.2022 vide Advance Ruling No. UP ADRG - 16/2022 dated 5.12.2022. It was ruled by Hon'ble UPAAR that Applicant is not making any supply and GST is not applicable on the amount deducted from the salaries of employees. It has also been ruled that Applicant is eligible to take input tax credit on GST paid on the food supplied to employees of the company subject to the condition that burden of GST has not been passed on to the employees of the company. The relevant portion of the ruling is reproduced as under:

"17. We are not inclined to accord these activities provided by M/s Shriram Pistons and Rings Limited to its employees to be an activity made in the course or furtherance of business to deem it a Supply by M/s Shriram Pistons and Rings Limited to its employees in view of the above clarification and therefore amount collected by M/s Shriram Pistons and Rings Limited from employees towards canteen charges in terms of the contractual agreement in lieu of providing canteen service i.e. food is not liable to GST.

We, therefore observe that the applicant is not liable to pay GST on the amount deducted/recovered from the employees. Further the applicant is recipient of canteen service to facilitate the employees and Canteen Service Provider raises the Bill of canteen charges inclusive of GST as per the contract. The applicant collects/ recovers the partial amount from the employees and is required to pay the gross amount inclusive of GST

to the canteen service by adding residual amount in the employees' portion and is required to pay gross amount of Bill inclusive of GST to the Canteen Service Provider.™

[Emphasis Supplied]

Copy of the above ruling is enclosed herewith as Annexure-D.

65. It is further submitted that Entry 2 to Schedule I of the CGST Act, referring to supply of goods or services or both between related persons or between distinct persons even without consideration, is also not applicable, since the subject activities/ transactions are not supply of goods or services or both in terms of Schedule Ii of the CGST Act itself, as already discussed earlier.
66. Thus, it is submitted that the part amount collected by Appellant from its employees for providing canteen facility cannot be taxed under GST as supply.

APPLICANT IS ELIGIBLE TO CLAIM INPUT TAX CREDIT OF TAX PAID TO CANTEEN CONTRACTOR FOR PROVIDING CANTEEN SERVICES TO APPLICANT.

Service provided by canteen contractor is in course or furtherance of Applicant's business.

67. Section 16(1) of the CGST Act provides that every registered person shall 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.
68. Further, the term 'business' is defined in Section 2(17) of the CGST Act which has been reproduced in above paragraphs.
69. It is submitted that canteen service provided by canteen contractor to Applicant is having a direct nexus with the business activities of Applicant since it is made available, in order to facilitate employees of Applicant to perform their jobs. It is similar to other facilities provided by any employer to its employees like desk, laptop etc.
70. Moreover, it is the statutory obligation of Applicant under the Factories Act to provide canteen facility to its employees. Accordingly, canteen facility provided by Applicant is incidental to the manufacturing activity. Thus, the service provided by canteen contractor are received by Applicant for furtherance of its business. Therefore, Applicant is eligible to avail the ITC in terms of Section 16(1) of the CGST Act. Further, the requirements under Section 16(2) also stand fulfilled by Applicant.
ITC is available in terms of the second proviso to section 17(5)(b) of the CGST Act.
71. Section 17(5) of the CGST Act provides that notwithstanding anything contained in Section 16(1) of the CGST Act, ITC in respect of goods or services mentioned therein will not be available.
72. Thus, even if ITC is available as per Section 16(1) of the CGST Act, the same cannot be availed, if it is barred by Section 17(5) of the CGST Act. Section 17(5)(b) of the CGST Act, which merits discussion in light of the facts of the instant case, is extracted hereunder for ease of reference:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (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.”

[Emphasis Supplied]

73. On a perusal of the above provision, it can be seen that ITC with respect to food and beverages (which will also include canteen services) is restricted under GST Law subject to two provisos mentioned in the provision. As per the second proviso (highlighted above in bold and italics), ITC in respect of canteen services 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.
74. It is pertinent to note that the proviso clearly mentions that in a case where it is obligatory for an employer to provide any of the goods or services or both as listed in Section 17(5)(b) to its employees under any law for the time being in force, ITC in respect of such goods or services or both shall be available to employer.
75. Therefore, in case of canteen service, the second proviso of Section 17(5)(b), is applicable and ITC in respect of canteen services received from a service provider is available to an employer where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.
76. It is submitted that Applicant is under a statutory obligation to maintain a canteen in terms of Section 46 of the Factories Act read with Rule 69 of the Rajasthan Factories Rules, since it has more than 250 workers. The relevant portion of Section 46 of the Factories Act is extracted hereunder:
- “46. Canteens .-(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the date by which such canteen shall be provided;
- (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made therefore,
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- (dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
- (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c)."

[Emphasis Supplied]

77. In exercise of the powers conferred under the Factories Act, the State Government of Rajasthan framed the Rajasthan Factories Rules, which also mandated maintenance of canteen in the factory under Rule 69 *ibid*. The relevant provision is reproduced below:

"69. Canteens. —

[(1) x x x]

(2) The occupier of every factory notified by the State Government, and wherein more than two hundred and fifty workers are ordinarily employed shall provide in or near the factory an adequate canteen according to the standards prescribed in these rules."

[Emphasis Supplied]

78. In view of the above provisions, it is abundantly clear that Applicant is maintaining its canteen under a statutory mandate provided in Section 46 of the Factories Act read with Rule 69 of the Rajasthan Factories Rules. Therefore, Applicant is eligible to avail ITC of the GST paid by canteen contractor, in terms of second proviso to Section 17(5)(b) of the CGST Act.
79. It is submitted that the second proviso is applicable to the entire Section 17(5)(b) of the CGST Act and not only to sub-clause (iii). This has been clarified by the CBIC vide Circular No. 172/04/2022-GST dated 6.7.2022 (issued vide F. No. CBIC-20001/2/2022-GST) in Sl. 3, as following:

"Circular No. 172/04/2022-GST
F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
New Delhi, Dated the 6th July, 2022

| Clarification on various issues of Section 17(5) of the CGST Act | |
|---|---|
| 3. | Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of |
| | 1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted |

the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?

with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under:

“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.”

2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified “that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.”

3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

80. In view of the aforesaid, the second proviso is applicable to the entire Section 17(5)(b) of the CGST Act. In the instant case, it is obligatory for Applicant to have canteen in its factory in terms of Section 46 of the Factories Act due to more than 250 workers. Therefore, Applicant has engaged canteen contractor to provide canteen service to fulfill its obligation under the Factories Act and Rajasthan Factories Rules. Accordingly, Applicant is eligible to avail ITC of GST paid against the invoice raised by canteen contractor and such credit is not subject to the rigor of Section 17(5)(b)(i) of the CGST Act.
81. As a settled law, circulars issued by the CBIC are binding on the department. In this regard, reliance is placed on judgment of Hon'ble Supreme Court in Commissioner of C. Ex., Bolpur vs. Ratan Melting & Wire Industries, 2008 (231) E.L.T. 22 (S.C.).
82. Similar view has been taken by Hon'ble UPAAR in Applicant's own case (Advance Ruling No. UP ADRG -16/2022 dated 5.12.2022).
83. Thus, Applicant is eligible to take ITC of the GST paid on the invoices raised by canteen contractor in terms of Section 16(1) of the CGST. The GST has been paid in furtherance to the business as well as is not subject to the

rigor of Section 17(5)(b) as such facility was provided under a statutory obligation.

84. In view of the above, it is submitted that canteen facility provided by Applicant to its employees would not amount to 'supply' under GST. Accordingly, GST is not payable on the amount recovered from employees' portion of canteen charges which is collected by Applicant and paid to canteen contractor. Further, Applicant is eligible to avail ITC of the GST paid on the invoices raised by canteen contractor for canteen service availed by Applicant for its employees.

ISSUES REQUIRING ADVANCE RULING AND APPLICANT'S UNDERSTANDING:

In the light of aforementioned, Applicant seeks to raise the following questions for Advance Ruling: -

- a) Whether providing food to employees at subsidized price falls outside the scope of "supply" as the same is covered by Entry 1, Schedule III of the Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?
- b) Whether the subsidized deduction made from the salary of employees, who are availing facility of food in the factory, can be considered as consideration for 'supply of service' by Applicant to its employees, in furtherance of business, as per Section 7 read with Schedule I of the Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?
- c) In case answer to (b) is yes, whether GST is applicable on the amount deducted from the salaries of employees?
- d) Whether Applicant is eligible to take input tax credit on the GST charged by third party contractor for canteen services availed by it for its employees?

Applicant's Understanding:

- 1) Canteen facility available to employees, shall be outside the scope of "supply" and same shall be covered by Entry 1, Schedule III of the CGST Act and RGST Act.
- 2) In absence of any supply made by Applicant, the subsidized deduction from the salary of employees, shall not be considered as consideration for 'supply of service'.
- 3) Since there is no supply of goods or services, no GST is payable on the deductions made by Applicant from the salary of its employees for canteen facility.
- 4) Applicant is eligible to take ITC of GST charged by canteen contractor for canteen service received by Applicant for its employees, in terms of Section 16(1) of the CGST Act read with the second proviso to Section 17(5)(b) of the CGST Act.

C QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT: -

(i) Whether providing food to employees at subsidized price falls outside the scope of "supply" as the same is covered by Entry 1, Schedule III of the Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?

(ii) Whether the subsidized deduction made from the salary of employees, who are availing facility of food in the factory, can be considered as consideration

for 'supply of service' by Applicant to its employees, in furtherance of business, as per Section 7 read with Schedule I of the Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?

(iii) In case answer to (b) is yes, whether GST is applicable on the amount deducted from the salaries of employees?

(iv) Whether Applicant is eligible to take input tax credit on the GST charged by third party contractor for canteen services availed by it for its employees?

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 26.06.2023. Adv. Shri Narendra Singhvi, Sr. Executive Umesh Chandra Rawat, Authorized Representatives appeared for personal hearing. They reiterated the submission already made in written submission. They relied on various ruling in their favour and particularly ruling in their own case in Uttar Pradesh dated 05.12.2022. They submitted a compilation of relevant legal provisions, circulars, and ruling/judgement.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

The Jurisdictional Deputy Commissioner, State Tax, Circle-C, Bhiwadi, Divisional Kar Bhawan, Rajasthan, has given his comments vide his letter S.N. 358 dated 12.06.2023 which is as under-

QUESTION AND ANSWER FOR WHICH THE PRESENT AAR HAS BEEN FILED

Q1. Whether providing food to employees at subsidized price falls outside the scope of "supply" as the same is covered by Entry 1, Schedule III of the Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?

Ans-No, As per Section 7 of Rajasthan GST Act, 2017 nominal amount of recoveries (consideration) made by the applicant from the employees who are provided food in the factory canteen would be considered as a 'Supply' by the applicant.

Section 7. Scope of supply-(1) For the purpose 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;

Q2. Whether the subsidized deduction made from the salary of employees, who are availing facility of food in the factory, can be considered as consideration for 'supply of service' by Applicant to its employees, in furtherance of business, as per Section 7 read with Schedule I of the Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?

Ans- Yes, Subsidized deduction made from the salary of employees, who are availing the facility of food in the factory will be considered as consideration for supply of services by the applicant to its employees in furtherance of business.

Q3. In case answer to (b) is yes, whether GST is applicable on the amount deducted from the salaries of employees?

Ans- Yes, GST is applicable on both the amount, Amount recovered from the salaries of employees and amount paid by the Applicant to the canteen service provider.

Q4. Whether Applicant is eligible to take input tax credit on the GST charged by third party contractor for canteen services availed by it for its employees?

Ans- No, -Credit of ITC is not admissible on the GST on the amount paid to the canteen service providers and on the amount recovered from the employees, because that the Input Tax Credit on Good and Service Tax paid on Canteen Facility is barred credit u/s 17(5)(b)(i) of the Central Good and Service Tax Act, 2017/ Rajasthan Good and Service Tax Act, 2017.

Section 17. Apportionment of credit and blocked credit—(5) Notwithstanding anything contained in Sub-section(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 beverage, 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.

F. FINDINGS, ANALYSIS & CONCLUSION:

At the outset we would like to make it clear that the provisions of CGST Act and RGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the RGST Act.

1) We have carefully examined the statement of facts, supporting documents filed by the Applicant. We have perused the records on file and gone through the facts of the case and the submissions made by the applicant as well as the department. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

2. As per written submission made by the applicant (i.e.M/S Shriram Pistons &Rings Limited, SP-1/892,893, Industrial Area Pathredi, Near Chopanki, Bhiwadi, Alwar, Rajasthan - 301707), Applicant is engaged in manufacture and supply of automobile parts (two wheelers and four wheelers) viz. engine parts such as pistons, piston rings, engine valves etc. at its manufacturing unit (factory) located at Pathredi, Rajasthan. Further, the applicant is involved providing Canteen Services to it worked through **contractual agreement with third party contractor** and recover subsidized deduction from workers.

3. The questions of law raised by the Applicant is -

(i) Whether providing food to employees at subsidized price falls outside the scope of "supply" as the same is covered by Entry 1, Schedule III of the Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?

(ii) Whether the subsidized deduction made from the salary of employees, who are availing facility of food in the factory, can be considered as consideration for 'supply of service' by Applicant to its employees, in furtherance of business, as per Section 7 read with Schedule I of the Central

Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017?

(iii) In case answer to (b) is yes, whether GST is applicable on the amount deducted from the salaries of employees?

(iv) Whether Applicant is eligible to take input tax credit on the GST charged by third party contractor for canteen services availed by it for its employees?

4. On Examine of the application submitted by the applicant, it revealed that applicant is involved providing Canteen Services to its workers/employees through contractual agreement with third party contractor and recover subsidized deduction from workers. The applicant submitted that to provide canteen facility, Applicant has engaged a third-party canteen service provider ("canteen contractor"), for providing quality food and refreshments to its employees. Canteen contractor charges as per the agreed price per meal from Applicant. It is raising invoice under SAC 996333 and is charging GST @ 5% from Applicant.

Further, in order to ensure administrative control, discipline and to avoid wastage of food, Applicant recovers a part (at subsidized rates) of the meal cost incurred by it from employees. Accordingly, the charges of the meals/snacks are deducted from the salary of the individual employee. The said amount recovered from employees is paid to canteen contractor along with the remaining portion, which is paid by Applicant. It is pertinent to note here that Applicant does not retain any part of such amount and moreover, no profit is made by Applicant from such activity.

we find that the applicant is involve in providing/ supplying Canteen Services to its employees as well as contract workers. The Applicant has contracted with Third party (hereinafter referred to as 'the Canteen Service Provider') to operate Canteen within the Applicant's factory premises; and a part of the cost of the meals provided is deducted by the Applicant from their employees' salaries on a monthly basis.

5. Based on the written submission made by the applicant and documents submitted by applicant, we find that applicant have agreements from various firms for supply of man power which is his inward supply and not the question of Law before us. On going through the sample copies of Bills etc. it revealed that the applicant is paying GST against supply of canteen service on recovery basis since long prior to filing application before AAR.

6. It is relevant to mention here that the applicant filed his application for seeking advance ruling on 21.03.2023.

7. We shall now examine the provisions of laws as laid down under the GST Act for the purposes of advance rulings. Chapter XVII of the GST Act comprising of Sections 95 is relevant provisions for advance ruling purposes.

8. As per Section 95 of CGST Act, 2017; this authority shall decide on matters or on questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken, by the applicant and "Authority" means the Authority for Advance Ruling, constituted under Section 96. Thus Section 95

allows this authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant itself. In this case, the supplies of Services are being undertaken or proposed to be undertaken not by the applicant but by the supplier(s) to the applicant. This supplier, contractor of canteen service is distinct persons as per the provisions of the GST Act and GST is being paid since implementation of GST law.

9. From the above-mentioned provision, it is seen that this authority is constituted to decide on matters or questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Thus, we find that the applicant is not a supplier in the present case, the applicant as per the contract is a receiver of services supplied by the canteen service provider also.

10. Further, We observe that purpose of Advance ruling is to provide certainty of tax liability in advance in relation to a future activity to be undertaken by the applicant and help the applicant in planning about GST liability on activities well in advance along with proper interpretation and understanding of tax laws. Advance rulings can be given only for a proposed transaction & matters related to qualifies for advance ruling whether it will be undertaken or proposed to be undertaken. We also observe that advance ruling under GST can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant but the transactions on which GST is being paid since long are out of preview of advance ruling.

11. Moreover, on gone through the facts of the case, we observe that applicant filed their application before the Rajasthan Authority for Advance Ruling (RAAR) on 21.03.2023 i.e. much later from the execution of contract on canteen service supplied by him if supplied. We observe that applicant motto is to find out whether the mechanism opted by him for payment of GST on said service is right or wrong, whereas applicant already paying the GST in the matter. which is against the spirit of advance ruling.

12. Since the Applicant has asked for ruling on the transactions effected prior to the date of filing of the application before the RAAR, we find it appropriate to visit the definition of the 'Advance Ruling' given under Section 95(a) of the CGST Act, 2017 which is reproduced as under: -

"95. Definitions of Advance Ruling— In this Chapter, unless the context

otherwise requires—

(a) —advance ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section

100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;”.

From the above definition, it is very much clear that the scope of the ruling for Authority for Advance Ruling (AAR) is limited to the transactions being undertaken or proposed to be undertaken. In the instant case, as already narrated, the application seeking advance ruling was filed on 21.03.2023 before the RAAR with respect to supplies already being undertaken and GST has been already paid. Hence, the case is out of the purview of the Advance Ruling. As per Section 95 of CGST Act, 2017; this authority shall decide on matters or on questions specified in sub-section (2) of Section 97, and “Authority” means the Authority for Advance Ruling, constituted under Section 96. Hence, the case does not fall under the purview of the Advance Ruling

In view of the foregoing, without going into the merits of the case, we rule as under: -

RULING

**(Under Section 98 of the Central Goods and Services Tax Act, 2017
and the Rajasthan Goods and Services Tax Act, 2017)**

The subject application for advance ruling made by the applicant is not maintainable and hereby rejected under the provisions of the GST Act, 2017.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.


(Umesh Kumar Garg)
MEMBER
CENTRAL TAX




(Mahesh Kumar Gowla)
MEMBER
STATE TAX

SPEED POST

M/S Shriram Pistons & Rings Limited, Sp-1/892,893, Industrial Area Pathredi,
Near Chopanki, Bhiwadi, Alwar, Rajasthan – 301707

F. No. AAR/SF/2023-24/ 94-98

Date: 31/08/23

Copy to: -

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.

3. The Pr.Commissioner, CGST and Central Excise Commissionerate UDAIPUR, Rajasthan.
4. The Deputy Commissioner State Tax, Circle-C, Bhiwadi, Divisional Kar Bhawan, Rajasthan, Rajasthan

O/C