APPELLATE AUTHORITY FOR ADVANCE RULING, RAJASTHAN GOODS AND SERVICES TAX
NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR - 302005 (RAJASTHAN)
Email : aaarjpr@gmail.com

Before the AAAR comprising of:

1. Sh. Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)

ORDER NO. RAJ/AAAR/12/2023-24 DATED 15.03.2024

Name and address of the Appellant	M/s Federal-Mogul Ignition Products India Limited SP-812/ B1 and 2, Phase-III, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, 301019
GSTIN/ UID of the Appellant	08AAACF4128M1ZJ
Issues under Appeal	Whether the subsidized deduction made by the Appellant from the Employees who are availing food facility in the factory would be considered as a "supply" by the Appellant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Rajasthan Goods and Service Tax Act, 2017. (a) In case answer to above is yes, 1) Whether GST is applicable on the nominal amount deducted from the salaries of their employees? 2) Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees? (b) Whether Input Tax Credit ('ITC') of the GST charged by the Canteen Service Provider would be eligible for availment to the Appellant?
Date of Personal Hearing	07.03.2024
Present for the Appellant	Shri Vikash Agarwal, CA, Authorized Representative
Details of Appeals	Appeal No. RAJ/AAAR/APP/05/2022-23 against Advance Ruling No. RAJ/AAR/2022-23/14 dated 18.10.2022

(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are pari materia barring a few exceptions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to correspondingprovisions of Rajasthan GST Act, 2017.

The present appeal has been filed under Section 100 of the Central Goods &Service Tax Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan Goods &Services Tax Act, 2017(hereinafter also referred to as 'the RGST Act') on the portal on 18.11.2022 bythe Appellant against AAR, Rajasthan Ruling Order No. RAJ/AAR/2022-23/14 dated 18.10.2022.According to the Appellant, the AAR Order was communicated to them on 21.10.2022 and they have filed an appeal on 18.11.2022 as such they have filed the appeal within the stipulated period of 30 days.

BRIEF FACTS OF THE CASE

1. M/s Federal-Mogul Ignition Products India Limited, Bhiwadi having GSTIN – 08AAACF4128M1ZJ)(hereinafter referred to as 'the Appellant') are engaged in the manufacture of auto components, supply and distribution of 'Spark Plug' used in two/three/four-wheeler automobiles. Further, they provide Canteen Services to their workers through contractual agreement with M/s Punjabi Flavourz Catering Service and recover subsidized deduction from workers.

2. The Appellant had sought Advance Ruling on the following questions: –

Whether the subsidized deduction made by the Appellant from the Employees who are availing food facility in the factory would be considered as a "supply" by the Appellant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Rajasthan Goods and Service Tax Act, 2017.

(a) In case answer to above is yes,

I. Whether GST is applicable on the nominal amount deducted from the salaries of their employees?

II. Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?

(b)Whether Input Tax Credit ('ITC') of the GST charged by the Canteen Service Provider would be eligible for availment to the Appellant?

3. The Appellant have contracted with M/s Punjabi Flavourz Catering Service (hereinafter referred to as 'the Canteen Service Provider') to operate Canteen within the Appellant's factory premises; and a part of the cost of the meals provided is deducted by the Appellant from their employees' salaries on a monthly basis and at fix rate opting for availing food facility in Canteen. A part of the cost of the meals provided to contractual workers is recovered from contractor in case of contract workers. **The Appellant are paying GST against supply of canteen service on recovery basis since July 2017.**

4. The AAR had to primarily decide whether the question on which Ruling is sought by the Appellant is an existing or ongoing transaction and falls within the meaning of the phrase "being undertaken" used in the definition of the term "Advance Ruling" or not, as **the supply which already taken place since long back from July 2017 and continue till date**.

5. The Appellant filed their application for seeking Advance Ruling on 11.03.2022 and as per submission made by them that they are paying GST since 2017. The Authority for Advance Ruling pronounced that they 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 Appellant.

The authority held that Section 95 of the CGST Act,2017 allows the 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 Appellant 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 Appellant themselves. In this case, the supplies of Services are being undertaken or proposed to be undertaken not by the Appellant but by the supplier(s) of services to the Appellant. These suppliers are distinct persons as per the provisions of the GST Act and GST is being paid since implementation of GST law. Thus, the authority opined that the Appellant are not a supplier in the present case, the Appellant as per the contract is a receiver of services supplied by the canteen service provider also.

The AAR held that Advance Rulings can be given for a proposed transaction as well as a transaction being undertaken by the Appellant but the transactions on which GST is being paid since July 2017 are out of preview of advance ruling. Moreover, that Appellant filed their application before the Authority for Advance Ruling, Rajasthan on 11.03.2022 i.e. much later from the execution of contract i.e. July 2017 and Appellant are discharging his GST liability since July 2017 on canteen service supplied by them .Since the Appellant has asked for ruling on the transactions effected prior to the date of filing of the application before the Authority for Advance Ruling, Rajasthan with respect to supplies already being undertaken and GST being paid from 1.7.2017 onward.

Hence, without going into the merits of the case the Authority for Advance Ruling **pronounced that the subject application for Advance Ruling made by the Appellant is not maintainable** and hereby rejected under the provisions of the GST Act, 2017.

GROUDS OF APPEALS

6. The Appellant have filed an appeal on the following grounds:

6.1 That the definition meaning of the term 'ongoing' is 'continuing', 'still in progress'. In the instant case, the transaction although is being undertaken since July, 2017, it is still being undertaken and will be undertaken in the future also.

6.2 The Appellant submitted that going by the meaning of the term 'ongoing' it can be said that the transaction being undertaken by the appellant falls within the purview of definition of 'Advance Ruling' prescribed under Section 95 of the CGST Act.

6.3 The Appellant further submitted that the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'the CBIC') in flyer on Advance Rulings has clarified that under GST, Advance Ruling can be obtained for a proposed transaction as well as transaction already undertaken by the Appellant. The relevant extract of the flier is reproduced below:

'Under the present dispensation, advance ruling can be given only fora proposed transaction, whereas under GST, advance ruling can be obtained for a proposed transaction as well as transaction already undertaken by the applicant'

6.4 The Appellant placed reliance on Advance Ruling pronounced by the Appellate Authority for Advance Ruling, Rajasthan in the matter of M/s Shri Vinayak Buildcon [2022(5) TMI 450, Rajasthan].

6.5 Reliance in this regard is also placed on the Ruling pronouncedin the matter of M/s KEI Industries Limited [2019 (3) TMI 1073, Rajasthan]

6.6 The Appellant submitted that in the instant case that they wish to seek clarification on (i) admissibility of input tax credit of tax paid or deemed to have been paid and (ii) determination of the liability to pay tax on goods or services or both; of Section 97 of the CGST Act. Thus, both the questions on which Advance Ruling is sought are questions on which an Advance Ruling can be filed. Thus, the Appellant has rightly filed the advance ruling.

A. The AAR erred in concluding that the Applicant (now Appellant) are not a supplier in the present case and are only a receiver of services supplied by the canteen service provider

A.1 The AAR under Paragraph 12 of the impugned Order has observed that the transaction is not being undertaken by the appellant but by the supplier of canteen services. While under Paragraph 13 of the impugned Order the AAR have also observed that the Appellant have been discharging GST liability since July 2017 on canteen services supplied by them. Thus, the Hon'ble Authority for Advance Ruling has given contradictory observations in the impugned Order and has not understood the specific question with regard to which the advance ruling has been sought.

A.2 It is further submitted by the Appellant that as per Section 97(2)(d) of the CGST Act, 2017, an advance ruling can be filed on admissibility of input tax credit of tax paid or deemed to have been paid. This implies that the Appellant should either be a supplier or a recipient of the underlying supply on which ruling is sought. Thus, the Hon'ble Authority for Advance Ruling has erred in rejecting the application on the basis of the observation that the Appellant is not a supplier. In the instant case, the questions have been raised by the Appellant in the capacity of supplier of canteen services to its employees. Further, the Hon'ble Authority has failed to take cognizance of the fact that the ruling was also sought on eligibility of input tax credit with respect to the amount paid to the canteen service provider.

A.3 The Appellant submitted that they have been providing the facility of canteen services to their employees due to a legal obligation cast upon the Appellant by virtue of the Factories Act and has hence rightly filed the application for advance ruling.

B. The AAR has erred in not considering the submissions put forth by the Appellant with regard to the questions raised before the AAR.
Recovery of nominal amount from the employees cannot be subject to payment of GST

B.1 The Appellant submitted that the nominal amount deducted from the salary of the employees for providing the canteen facility cannot be considered as supply as per Section 7 of CGST Act, therefore, GST cannot be levied on such activity.

Applicability of relevant legal provisions to the present case

B.2 The Appellant submitted that merely setting up of a canteen facility for the employees (to meet statutory obligation laid under Section 46 of the Factories Act, 1948) and deduction of nominal cost/charges would not tantamount to Supply under Section 7 of the CGST Act

Concept of 'Supply' under CGST Act and its applicability thereof

B.3 That on perusal of Section 9(1) of the CGST Act, it is clear that to levy tax on any activity, the activity is required to qualify as a 'Supply' in the first place. The Appellant refer to the provision of Section 7 of the said Act.

Provision of canteen facility to the employees is only due to mandatory Statutory Obligation

B.4 The Appellant stated that it is merely providing demarcated space for canteen facility as mandated under the provisions of the Factories Act to its employees for eating food during specified times. Further, the Appellant deduct a very nominal charge from the employees for availing the benefit of the facility provided.

No GST to be levied on third-party canteen charges collected by employer from employee

B.5 The Appellant relied on the recent Ruling of Gujarat AAAR in the matter of M/s Amneal Pharmaceuticals Pvt. Ltd. [TS-569-AAAR(GUJ)-2021-GST]wherein the Ruling of AAR was modified, and it was ruled that no GST is to be levied on third-party canteen charges collected by employer from employee.

B.6 The Appellant placed reliance on the decision of Karnataka Authority for Advance Ruling in the case of M/s Dakshina Kannada Co-Operative Milk Producers Union Ltd [2021 (8) TMI 352]wherein it was held that there is no supply of services by employer by paying part consideration of employees' refreshments.

B.7 The Appellant also placed reliance on the recent decision of Maharashtra Authority for Advance Ruling in the case of M/s Emcure Pharmaceuticals Limited (Advance Ruling No. GST-ARA-119/2019-20/B-03, Dated 04 January 2021) wherein it is held that GST would not be payable on recoveries made from the employees towards providing canteen facility at subsidized rates in the factory and office.

B.8 The Appellant further relied upon the judgement of European Court of Justice (ECJ) in the case of R. J. Tolsma Vs Inspecteur der Omzetbelasting Leeuwardenin case C-16/93 (Judgement of the Court, Sixth Chamber) wherein it was held that the Supply of Service effected consideration only when the provider of the service and the recipient enter into a legal relationship wherein the provider carries out a service and receives remuneration in return for the said service. In the present case also; there was no intention of the Applicant to contract with its employees with respect to the service of food and beverages in its canteen premises – and hence, this basic requirement of qualifying as a supply itself is not satisfied.

B.9 The Appellant submitted that they are responsible and obligated to ensure that the statutory deductions such as provident fund/employee state insurance etc. are made on a timely basis from the salary of all the employees of the Appellant including the contractual employees. While there is a direct control over the deduction of statutory deductions directly from the salary of the factory employees such as management, the Appellant exercise indirect control over the deduction of such statutory levies from the salary of the contractual employees. To summarize, the ultimate responsibility for deduction of statutory levies is on the Appellant.

The Supply shall be effected for a 'Consideration'

B.10 With respect to the definition of supply, as mentioned in Section 7 of the CGST Act, (Supra) the Appellant found it pertinent to evaluate another element of supply which states that an activity could be considered as a supply only if it is "made or agreed to be made' for a consideration. In view of the Appellant it is very critical to analyze the term "consideration" against the deduction of nominal amount from its employees' salary.

B.11 The term 'consideration' has been defined in Section 2(31) of the CGST Act, 2017.

B.12 The Appellant submitted that a supply must involve enforceable reciprocal obligations. Hence, the deduction in employees' salary made by the Appellant would constitute a mere transaction in money between the Appellant and their employees.

B.13 Also, the Appellant relied upon the judgement of Bombay High Court in the case of Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra [Commercial Suit (l) No. 236 of 2017] has held that for GST to be payable on any payment, there must be the necessary quality of reciprocity to make it a 'supply'.

B.14 In the instant case, the Appellant have been deducting a nominal amount from their employee's salary as a recovery of expenses under employment relationship without any commercial objective and only to maintain discipline and prevent wastage of food and resources. The same is also shown as a deduction in the salary slip provided to the employees. The Appellant submitted that there is no reciprocity of any activity or transaction i.e. quid-pro-quo between the Appellant and the employees in this respect. Thus, in the absence of an identifiable supply, the Appellant assert that the activity would not constitute 'consideration' for any supply.

The Supply should be effected in the course or furtherance of business under the CGST Act.

B.15 With respect to the definition of supply, as mentioned in Section 7 of the CGST Act, an activity could be considered as a supply only if it is in the course or furtherance of business.

B.16 In this regard, the Appellant referred to the definition of 'business' as defined in Section 2(17) of the CGST Act and their activity is not covered under the definition of business as the said services are not being provided to the employees with a business/profit motive.

B.17 The Appellant further stated that they have incurred capital expenditure on building the canteen facility and have also been making payment to the vendor out of their own pocket. The Appellant are of the strong opinion that this act of theirs affecting a recovery of a nominal amount from the employees against providing such facilitiescan by no stretch of imagination be said to have been undertaken considering business motive.

B.18 Further, the Appellant that in the case of Indian Institute of Technology Vs. State of Uttar Pradesh &Ors.[1976(38)STC 428 (All.)]it was held that – (a) the statutory obligation of maintenance of a hostel which involved supply and sale of food was an integral part of the objects of the Institute; and (b) the running of the said hostel could not be treated as the principal activity of the Institute. Consequently, the Institute was held to not be doing business.

B.19 The Appellant also found shelter in Similar Ruling passed in the case M/s. Cadila Healthcare Limited [2022 (4) TMI 1339]in which it was held that the canteen service facility provided by M/s Cadila to its employees is not an activity made in the course or furtherance of business to deem it a Supply by M/s Cadila to its employees. Accordingly, GST is not payable by M/s Cadila on the amount representing the employees portion of canteen charges, which is collected by them and paid to the Canteen service provider.

B.20 Further, they have relied on similar Ruling given by Gujarat AAR in case of M/S. Cadmach Machinery Pvt. Ltd. [2022 (4) TMI 1337].

Extension of Canteen facility to Appellant's employees in the course of employment relationship

B.21 Notwithstanding anything mentioned above, the Appellant stated that Schedule III of the CGST Act which provides that "Services by an employee to the employer in the course of or in relation to his employment" shall be treated neither as a Supply of Goods nor a Supply of Services.

B.22 They submitted that press release issued on 10 July 2017 by CBIC, wherein the GST implications on the services of Employer and Employee has been clarified. Para 3 of the said provides that:

> *"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 therefrom 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)."*

B.23 The Appellant submitted that considering the press release dated 10th July 2017, common facilities provided commonly to employees without any recovery would not be subject to GST as they cannot be considered as gifts:

1. Telephone / mobile services
2. Internet services
3. Education reimbursement for employees' children
4. Transport facilities
5. Membership of gym, health club etc.
6. Subscription to journals
7. Canteen facility etc.

B.24 The Appellant also submitted that the CBIC vide Circular No. 172/04/2022- GST dated 6 July, 2022 (hereinafter referred to as 'the Circular') has clarified that perquisites provided by the employer to the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

B.25 They added that in case perquisites are provided to the employee in terms of contractual agreement, the same will be treated as a part of the employment agreement and will not be subject to tax by virtue of Schedule III of the CGST Act.

B.26 They Appellant submitted that in the present facts no independent contract between the Appellant and the employee exists for setting up of the canteen facility. The canteen facility at the factory is being undertaken on account of the legal obligation casted upon the Appellant for their employees only and hence the same must be considered as a part of employment contract.

B.27 Further, the Appellant added that as the facility of canteen is provided due to the existing 'Employer-Employee' relationship, an employee is not allowed to use the canteen facility once the 'Employer-Employee' relationship ceases i.e. when the employment is terminated or resigns. This makes it evident that 'Employer-Employee' relationship is a pre–requisite to avail the canteen facility.

B.28 Reliance is also placed on the Ruling issued by the Hon'ble AAR Maharashtra in case of M/s Tata Motors Limited[GST-ARA -23/2019-20/B-46 dated 25 August 2020] wherein it was held that since the Applicant (i.e. Tata Motors) had not been supplying any services to its employees, in view of the provisions of Schedule–III; GST was not applicable on the nominal amounts recovered by the said Applicant from its employees for providing transportation facilities (with the same being applicable to canteen facility). It was further observed that the Applicant, in itscapacity of being the employer was the recipient of the service and employees were the users of such services. The Hon'ble AAR held that by virtue of Clause 1 of Schedule–III to CGST Act 2017, GST was not applicable to the nominal amount recovered by the applicants from their employees.

B.29 Further, reliance is also placed on the decision of Maharashtra AAR in the case of M/s The TATA Power Company Limited (No.GST-ARA-99/2019-20/B-92) wherein the authority has held that amounts recovered towards Top-up and parental insurance premium from the employees does not amount to a supply of any service under Section 7 of the Central Goods & Service Tax Act, 2017.

B.30 Further reliance has been placed on decision in the case of Posco India Pune Processing Center Private Limited [GST-ARA-36/2018-19/B-110 dated 7 September 2018] in a similar matter as above.

B.31 The Appellant submitted that similar Ruling has been passed in the case of M/s Jotun India Pvt Ltd. [2019 (10) TMI 482]by the Authority for Advance Ruling, Maharashtra.

B.32 Reliance in this regard is also placed by the Appellant on the Advance Ruling passed in the matter of M/s Zydus Lifesciences Ltd. [Guj/GAAR/R/2022/42] wherein it has been observed as under:

> *'The provision of services of transport and canteen facility to its employees is as per the contractual agreement between the employee and the employer in relation to the employment. As cited in the above referred provisions of Schedule III and the clarification issued vide Circular No. 172/04/2022-GST dated 06-07-2022, the provision of the services of transportation and canteen facility cannot be considered as supply of goods or services and hence cannot be subjected to GST.'*

B.33 The Appellant submitted that if such services are covered by employment contract and form part of the cost to the company (C2C) then they are not to be considered as supply. Section 7(2) of the CGST Act, which overrides Section 7(1) of CGST, makes it amply clear that any transaction which is provided by the employee to employer in the course/relation to the employment shall be out of the scope of GST. Once the activity comes under Schedule III, then anything which contradicts or withstands this clause shall be ineffective or inoperative qua this clause.

C. Eligibility of ITC of the GST paid by the Appellant to the Canteen Service Provider

C.1 Section 17(5) (b) of the CGST Act, 2017 specify where input tax credit is not available. The Appellant found it pertinent to refer to Section 17(5)(b) of the CGST Act, 2017, as reproduced below:

"(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.2 The Appellant submitted that in terms of the Circular No. 174/06/2022,it has also been clarified that 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.

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.

C.3 In this regard, the Appellant reiterated the fact that they are a Company engaged in the manufacture, supply and distribution of automotive components used in two/three/four-wheeler automobiles. As per Section 46 of the Factories Act, 1948, "in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens, shall be provided and maintained by the 'Occupier' for the use of the workers." In Section 2(n) of the Factories Act, 1948 defines the term 'occupier' of a factory as "the person who has ultimate control over the affairs of the factory" – in this case it is the Appellant.

C.4 The Appellant also submitted that in terms of Rule 72 of the Rajasthan Factories Rules, 1951 (hereinafter referred to as 'the Factories Rules'), it has been specified that food stuff, beverages and other items served in the canteen shall be sold on non-profit basis.

C.5 Further reliance is placed by the Appellant on Ruling pronounced by AAAR, Madhya Pradesh in the case of M/s Bharat Oman Refineries Limited 2021 (12) TMI 999] wherein it was held that provision of 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) of the CGST, Act 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.

In light of the above facts& circumstances of the case, the Appellant averred that they were allowed to avail ITC on the GST charged by the Canteen Service Provider as it is made under a legal requirement.

PERSONAL HEARING

7. Personal hearing in the matter was held on 07.03.2024.It was attended by Sh. Vikash Agarwal, CA & Authorized Representative of the appellant.He reiterated the submissions already furnished as grounds of appeal in the appeal submitted in hard copy on 07.12.2022.

The matter was heard by the AAAR on admissibility.

CONCLUSION AND FINDINGS

8. We have carefully considered the material evidence available on record including the oral submissions made by the authorized representative of the appellant at the time of personal hearing held on 07.03.2024.

9. We observe that the Appellant had sought Ruling before the Authority for Advance Ruling, Rajasthan on the following questions:-

Whether the subsidized deduction made by the Appellant from the Employees who are availing food facility in the factory would be considered as a "supply" by the

Appellant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Rajasthan Goods and Service Tax Act, 2017.

(a) In case answer to above is yes,

I. Whether GST is applicable on the nominal amount deducted from the salaries of their employees?

II. Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?

(b) Whether Input Tax Credit ('ITC') of the GST charged by the Canteen Service Provider would be eligible for availment to the Appellant?

10. We note that the Appellant have contracted with M/s Punjabi Flavourz Catering Service (hereinafter referred to as 'the Canteen Service Provider') to operate Canteen within the Appellant's factory premises. A part of the cost of the meals provided to employees is deducted by the Appellant from their salaries on a monthly basis and at fix rate opting for availing food facility in Canteen. A part of the cost of the meals provided to contractual workers is recovered from contractor. The Appellant are paying GST against supply of canteen service on recovery basis since July 2017.We further note that the Appellant have provided copies of two contracts made by them with M/s Punjabi Flavourz Catering Service ('the Canteen Service Provider') one is made for the period 16.01.2020 to 15.01.2022 and second one is made for the period 16.01.2022 to 15.01.2024 and whereas application seeking advance ruling was made by them before AAR, Rajasthan on 11.03.2022.

11. The AAR, Rajasthan had to inter alia decide whether the questions on which Ruling is sought by the Appellant is an existing or ongoing transaction and whether or not it falls within the meaning of the phrase "being undertaken" used in the definition of the term "Advance Ruling" as **the supply started w.e.f. July 2017 and continues till date**.

12. As per submissionsaverred by the Appellant before the AAR, they have been paying GST since 2017. The Authority for Advance Ruling pronounced that they 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 Appellant.

The authority held that Section 95 of the CGST Act, 2017 allows the 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 Appellant. In other words,the subject application could be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the Appellant themselves. In this case, the supplies of Services are being undertaken or proposed to be undertaken not by the Appellant but by the supplier(s) of services to the Appellant. These suppliers are distinct persons as per the provisions of the GST Act and GST is being paid since implementation of GST law. Thus, the authority opined that the Appellant are not a supplier in the present case, the Appellant as per the contract is a receiver of services supplied by the canteen service provider also.

The AAR held that Advance Rulings can be given for a proposed transaction as well as a transaction being undertaken by the Appellant but the transactions on which

GST is being paid since July 2017 are out of preview of advance ruling. Moreover, the Appellant filed their application before the Authority for Advance Ruling, Rajasthan on 11.03.2022 i.e. much later than the execution of contract i.e. July 2017 and Appellant are discharging their GST liability since July 2017 on canteen service supplied by them. The Appellant have asked for ruling on the transactions effected prior to the date of filing of the application before the Authority for Advance Ruling, Rajasthan with respect to supplies already being undertaken and GST being paid from 1.7.2017 onward.

In view of above, the AAR, Rajasthan **pronounced that the subject application for Advance Ruling made by the Appellant was not maintainable** and accordingly rejected of under the provisions of the GST Act, 2017.

13. The matter was heard by the AAAR on admissibility of the appeal.

14. The Appellant have argued that:-

(i) the definition meaning of the term 'ongoing' is 'continuing', 'still in progress'. In the instant case, the transaction although being undertaken since July, 2017, is still being undertaken and will be undertaken in the future also.

(ii) going by the meaning of the term 'ongoing' it can be said that the transaction being undertaken by the appellant falls within the purview of definition of 'Advance Ruling' prescribed under Section 95 of the CGST Act.

(iii) the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'the CBIC') in flyer on Advance Rulings has clarified that under GST, Advance Ruling can be obtained for a proposed transaction as well as transaction already undertaken by the Appellant.

(iv) they placed reliance on Advance Rulings pronounced by the Appellate Authority for Advance Ruling, Rajasthan in the matter of M/s Shri Vinayak Buildcon [2022(5) TMI 450, Rajasthan] and also Ruling pronounced in the matter of M/s KEI Industries Limited [2019 (3) TMI 1073, Rajasthan]

(v) in the instant case, they wish to seek clarification on (i) admissibility of input tax credit of tax paid or deemed to have been paid and (ii) determination of the liability to pay tax on goods or services or both; of Section 97 of the CGST Act, Thus, both the questions on which Advance Ruling is sought are questions on which an Advance Ruling can be filed. Thus, the Appellant has rightly filed the advance ruling.

15. The moot point for decision before us is as to whether or not the application dated 11.03.2022 filed by the Appellant for seeking advance ruling on various questions is maintainable.

16. In the instant case, the AAR, Rajasthan held that the supply is not covered under Section 95 of the CGST Act, 2017. On the other hand, the Appellant have contended thatthe transaction although being undertaken since July, 2017, it is still being undertaken and will be undertaken in the future also They placed reliance on the Rulings of

AAAR/AAR and also relied upon the Flyer issued by the CBIC. As contended by the appellant the transaction though being undertaken since July, 2017, it is still being undertaken and will be undertaken in the future also.Therefore, it is imperative to go through the provisions under which advance ruling can be sought to ascertain applicability of the relied upon Rulings of AAAR/AAR.

17. We note that the provisions of Section 95 (a) of the CGST Act, 2017 readas 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 <u>being undertaken or proposed to be undertaken</u> by the applicant;".*(emphasis applied)

18. The law, therefore, covers two kinds of supplies under the purview of the AR mechanism:

(i) <u>Supplies being undertaken</u> – meaning thereby supplies which have begun, but not concluded. Once the supply has concluded, it will cease to be covered by the term "being undertaken". It is noted that the period covered by second contract with M/s Punjabi Flavourz Catering Service is for 16.01.2022 to 15.01.2024. The application was filed on 11.03.2022. Each contract covers multiple or series of supplies. Thus, supplies continuing on or after 11.03.2022 shall have the status of ongoing supplies. Thus, the activity of the appellant is covered under "Supplies being undertaken". We note that the transactions covered by the contract are in the nature of a series of supplies. One supply is followed by another supply. Thus, supplies which have been made cannot be covered by the AR mechanism. However, supplies that are ongoing and which are yet to concluded can be covered.

(ii) <u>Proposed to be undertaken</u> – There is no doubt about supplies which are yet to commence as these are without any doubt covered by the AR mechanism.

Therefore, we hold that the Authority for Advance Ruling, Rajasthan has erred in not pronouncing the Ruling on Merits.

19. We observe that AAR Rajasthan have not taken note of the above contract furnished by the appellant for the period from 16.01.20022 to 16.01.2024.which was valid during the period when Ruling was pronounced.

20. We feel that it will be in the fitness of things if the Authority for Advance Ruling re-consider whole application dated 11.03.2022 filed by the appellant before the Authority for Advance Ruling, Rajasthan on merits.

21. In view of the above discussions, we pass the following order:

ORDER

The Ruling of AAR, Rajasthan dated 18.10.2022 is set aside and the matter is remanded back to the AAR to decide the application afresh on merits after considering all the questions posed by the appellant in their application dated 11.03.2022.

(Mahendra Ranga)
Member (Central Tax)
(Mahendra Ranga)
Member, AAAR (Central Tax)

(Dr. Ravi Kumar Surpur)
Member (State Tax)
(Dr. Ravi Kumar Surpur)
Member, AAAR (State Tax)

SPEED POST

To
M/s Federal-Mogul Ignition Products India Limited,
C/o Shri Vikash Agarwal, CA,
M/s Price Waterhouse & Co. LLP,
18th Floor, Building 10 Tower C,
DLF Cyber City, Gurugram - 122022

F. No. IV (16)05/AAAR/RAJ/2022-23/789 Date. 12 .03.2024

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur.
4. The Commissioner, CGST Commissionerate, Alwar.
5. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
6. The Deputy/Assistant Commissioner, CGST Division-C, Bhiwadi (CGST Commissionerate, Alwar)
7. The Deputy Commissioner, State Tax Department, Circle -C Bhiwadi, Ward-C Zone Bhiwadi,
8. M/s Federal-Mogul Ignition Products India LimitedSP-812/ B1 and 2, Phase-III, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, 301019
9. The web-manager - www.gstcouncil.gov.in
10. Guard File.