


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/50/2020
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/12)

Date: 30.07.2020

Name and address of the applicant	:	M/s Amneal Pharmaceuticals Pvt. Ltd., 882/1-871, Ground Floor, Near Hotel Karnavati, Sarkhej-Bavla Highway, Village- Rajoda Bavla, Ahmedabad 382220 (Gujarat).
GSTIN of the applicant	:	24AAGCA0781K1ZP
Date of application	:	22.02.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	<i>(g) Whether any particular thing 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, within the meaning of that term?</i>
Date of Personal Hearing	:	09.07.2020 (through Video Conferencing)
Present for the applicant	:	Shri Satyajit. D. Naik

BRIEF FACTS

The applicant submitted that they are a 100% EOU, carrying out canteen facilities through third party canteen service at their factory. More than 500 employees are working in the factory. The model that they have in their factory is that the food is being offered to employees on subsidized rate whereby the employee's share of the cost is being deducted from their salary.

2. The applicant further submitted that in short, they are collecting and paying the portion of the employee to third party (i.e. Canteen service Provider). Hence, this is not their main object of business. This is nothing but the facility provided to employee without making any profit and working as a mediator between employee and contractor of canteen service provider. Therefore, in their view, no GST shall be payable by employee to company on the subsidized value of food.

3. Further, the applicant has referred Sr. No. 19 of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 issued by the Govt. of India whereby services in relation to supply of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 was exempted under the Service Tax law marked with Exhibit-A. Therefore, the basis and concept of levy of tax should not be changed.

4. Further, the applicant is of opinion that this activity does not fall within the scope of 'supply' as the same is not in the course or furtherance of its business. They only facilitating the supply of food to the employees, which is a statutory requirement, and is recovering only employee share as actual expenditure incurred in connection with the food supply, without making any profit.

5. On the other side, the canteen service provider charging GST on supply of food and same is not entitled to avail as ITC by them as it has been restricted by virtue of Section 17(5) of the CGST Act, 2017. In such case, the canteen service provided by company should not be construed as "Service" and no GST shall be payable. Therefore, in their view, no GST shall apply on the food service provided by the company via third party.

6. In above backdrops, the applicant has sought for an advance ruling in respect of the following question:

Whether GST is applicable on the amount recovered from employee on account of third party canteen services which is obligatory under Section 46 of the Factories Act, provided by company?

7. At the time of personal hearing held through Video Conferencing on 09.07.2020, the Authorised Representative of the applicant, Shri Satyajit Naik, reiterated the facts as stated in the Application and as mentioned herein above.

DISCUSSION & FINDINGS:

8. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 provisions under the GGST Act.

9. In this case, a moot point is to be decided as to whether GST is applicable on the amount recovered from employee on account of third party canteen services which is obligatory under Section 46 of the Factories Act, provided by the company.

10. We note that the applicant is a 100% EOU. More than 500 employees are working in the factory. They are providing canteen services through third party exclusively for their employees in the factory. They offered food to their

employees on subsidized rate whereby the employee's share of the cost is being deducted from their salary. The applicant has further submitted that the canteen service provided to the employees is not being carried out as a business activity. It is according to the provisions of the Factories Act, 1948.

11. We find that the term, '**outward supply**', has been defined in Section 2(83) of the CGST Act, 2017, as below:

'Outward Supply' in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business".

12. The term "**business**" is defined in Section 2(17) of the CGST Act, which reads like this:

"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 incidents or ancillary to sub-clause (a); ...

From the plane reading of the definition of "business", it can be safely concluded that the supply of food by the applicant to its employees would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business.

13. Schedule II to the CGST Act, 2017 describes the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service:

"supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is-for cash, deferred payment or other valuable consideration."

14. Even though, there is no profit as claimed by the applicant on the supply of food to its employees, there is a "supply", as provided in Section 7(1)(a) of the CGST Act, 2017. The applicant would definitely come under the definition of "Supplier", as provided in sub-section (105) of Section 2 of the CGST Act, 2017.

15. The term '**consideration**' is defined in Section 2(31) of the CGST Act, 2017, which is extracted below:

'consideration' in relation to the supply of goods or services or both includes,-

a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or-both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

Since the applicant recovers the cost of food from its employees, there is 'consideration', as defined in Section 2(31) of the CGST Act, 2017.

16. In view of the above, we hold that recovery of amount from employee on account of third party canteen services provided by the Company, which is obligatory under Section 46 of the Factories Act, 1948 would come under the definition of 'outward supply' as defined in Section 2(83) of the CGST Act, 2017 and therefore, taxable as a supply under GST.

17. In the light of the aforesaid circumstances, we rule as under.

R U L I N G

Question 1: Whether GST is applicable on the amount recovered from employee on account of third party canteen services which is obligatory under Section 46 of the Factories Act, provided by company?

Answer: Answered in the Affirmative, as discussed above.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.07.2020.