

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2023/14
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/54)
Date: - 31.03.2023

Name and address of the applicant	:	M/s. Cadila Pharmaceuticals Ltd, Plot No. 1389, Trasad Road, Dholka, Ahmedabad, Gujarat - 382225.
GSTIN of the applicant	:	24AAACC6251E1Z5
Date of application	:	15.11.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(c)(d)(e)(g)
Date of Personal Hearing	:	09.02.2023
Present for the applicant	:	Mitesh Jain (C.A.), Mihir Patel

Brief facts:

M/s. Cadila Pharmaceuticals Ltd, Plot No. 1389, Trasad Road, Dholka, Ahmedabad, Gujarat 382 225 [for short –‘applicant’] is registered under GST and their GSTIN is 24AAACC6251E1Z5.

2. The applicant is engaged in the business of manufacture, supply and distribution of various pharmaceutical products. The applicant has employed around 2745 full time permanent employees in their factory and corporate office. They are also registered under the Factories Act, 1948.

3. The applicant provides canteen facility to its employees at the factory and its corporate office. The reasons provided by the applicant for providing the aforementioned facility is that in terms of section 46 of the Factories Act, 1948, they are mandated to provide and maintain canteen for the use of its employees.

4. Since the factory premises is located far away from the city limits, the applicant provides canteen facility by appointing a canteen service provider [for short - **CSP**]. The employees are issued an ID card while joining which can be used to avail this canteen facility. They are charged only for the days on which an employee has punched his ID card and a pre-determined percentage is deducted



from the salary payable to the respective employee. The facility is tabulated below for ease of reference:

Sr. No.	Type of employee	Mode of availing facility	Basis of recovery	Mode of recovery	Book treatment	ITC availment	GST payment
1	Full time employees [at factory and corporate office].	ID card or biometric.	Based on consumption	Subsidized value	Amount deducted from employee is credited to canteen expense account. Amount charged by CSP is booked as an expense in P&L A/c.	No ITC is being availed	GST is paid @ 5% on the basis of no. of punches in the system on the value charged by the CSP.

5. The applicant has further set up the canteen facility in a demarcated area within its factory premises & also at their corporate office. The scope of work agreement [SOW], depicting the responsibilities of the applicant vis-à-vis that of the CSP is as under:

Responsibility of the Applicant	Responsibility of the CSP
1. Provide suitable premises for kitchen to prepare food. 2. Provide utensils and other equipments necessary for preparing food. 3. Make available power, water and infrastructure facility. 4. Provide vehicle for pick up of food & sending empty vessels back to the kitchen. 5. Arrange for pest control on regular basis.	1. Regularly preparing and serving breakfast, lunch and dinner. 2. Fortnightly prepare and fix menu. 3. Maintain food safety, hygiene & cleanliness. 4. Selecting appropriate staff for maintaining the kitchen and providing food. 5. Maintain proper record of receipt, issues, consumption, stock, etc. 6. Follow proper procedure, system, parameter.

6. It is the applicant's contention that since it is practically not possible to enter into a contractual agreement with every employee, the CSP has entered into an agreement with the applicant; that the applicant shall be paying full to the CSP in respect of goods served during the prescribed period on behalf of the employees; that a portion of the said amount is recovered from the employees and the remaining part is borne by the applicant; that the amount so borne by the applicant is treated as *staff welfare expenses* towards subsidized food served to employees.

7. Presently the applicant is liable to pay CSP who raises invoices with GST @ 5%; that the applicant does not avail input tax credit [ITC] on the GST component paid.

8. The appellant has further contended as follows:



No GST on canteen facility

- the amount recovered from salary of the employees for providing subsidized canteen facility cannot be considered as supply;
- merely setting up a canteen facility for employees and deducting nominal cost would not tantamount to supply u/s 7 of the CGST Act;
- that to levy tax the activity is required to qualify as supply in the first place;
- that the term supply includes all forms of supply of goods & services & includes agreeing to supply when the supply is for a consideration and is in the course or furtherance of business;
- that provision of canteen facility to employees is mandatory in terms of the Factories Act;
- that the applicant merely provides a demarcated space ;
- that the supply is by the CSP to the employees & not from the CSP to the applicant;
- that no GST is to be levied on the third party canteen charges collected by employer from employee;
- that they wish to rely on the below mentioned case laws/rulings

- [a] Amneal Pharmaceuticals P Ltd [TS-569-AAAR (Guj)-2021-GST]
- [b] Troika Pharmaceuticals Ltd [Advance Ruling no. Guj/GAAR/R/22/38]
- [c] Cadila Healthcare [Advance Ruling Guj/GAAR/R/22/19]
- [d] Dishman Carbogen Amcis Ltd [Advance Ruling Guj/GAAR/R/22/2021]
- [e] Dakshina Kannada Coop Milk Producers Union Ltd [2021 (8) TMI 352]
- [f] R J Tolsma vs Inspecteur der Omzetbelasting Leewarden (C-16/93 (judgement of sixth Court, sixth chamber)
- [g] Bai Mumbai Trust [Commercial suit (I) MP/ 236/2017]
- [h] IIT [1976(38) STC 428 (All);
- [i] University of Delhi [AIR 1963 SC 1873]
- [j] Cricket Club of India [AIR 1969 SC 276]
- [k] TATA Motors Ltd [GST-ARA-23/2019-20/B-46]
- [l] TATA Power Company Ltd [GST-ARA-99/2019-20/B-92]
- [m] Posco India Pune Processing Centre P Ltd [GST-ARA 36/18-19/B-110]
- [n] Jotun India P Ltd [2019 (10) TMI 482]
- [o] Troikaa Pharmaceuticals Ltd [Guj/GAAR/R/2022/38]
- [p] Hindustan Coca Cola Beverages P Ltd [2014-TIOL-2460-CESTAT-Mum]

- that there was no intention on the part of the applicant to contract with its employees with respect to the service of food and beverages in its canteen premises; that this basic requirement of qualifying as a supply is not satisfied;
- that there must be a legal intention to enter into a contractual relationship with its recipient which casts roles and responsibility on each of the contractual party to fall within the ambit of supply under GST;
- that in terms of section 7, *ibid*, an activity can be considered as supply only if it is made or agreed to be made for a consideration; that consideration is defined u/s 2(31) *ibid*;
- that supply must involve enforceable reciprocal obligations; that a receipt of payment without an agreement, cannot be linked to a supply for the purpose of levying GST; similarly deduction in employees salary is only a transaction in money between applicant and its employees;
- that the activity of provision of canteen facility, does not fall within the ambit of business; that it is termed as an expense and therefore the activity of setting up canteen facility & subsequent deduction of nominal value would not tantamount to supply u/s 7 *ibid*;
- that there is no independent contract with the employee for setting up canteen facility; that the canteen facility has been set up on account of a legal obligation; that it is only to their employees and in the course of employment relationship; that in terms of Schedule III and press release dated 10.7.2017, supply by employer to employee in terms of contractual agreement entered into between the employer and the employee, is not subject to GST;
- that even in terms of the circular dated 6.7.2022, perquisites provided by employer to employee, as per contractual agreement is not subject to GST;



ITC of the GST paid by the applicant to CSP

- the proviso to section 17(5)(b) *ibid*, ITC 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;
- that in terms of Troikaa Pharmaceuticals Ltd [Guj/GAAR/R/2022/38] and Hindustan Coca Cola Beverages P Ltd [2014-TIOL-2460-CESTAT-Mum] there is no doubt that a taxpayer is allowed to avail ITC on procurement of food & beverages when the same is made under any existing and enforceable law; that the provision of canteen facility is not made out of the free will of the applicant & is provided solely on account of a statutory obligation case on the applicant.

9. The applicant has filed this application for advance ruling to ascertain the GST implication on the existing arrangement of canteen facility being provided to all the employees at the factory and the corporate office of the applicant. Vide the aforesaid application, the applicant has raised the following question for advance ruling *viz*

- (i) Whether the subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017?
- (ii) If yes, whether GST is applicable on the amount deducted from the salaries of its employees?
- (iii) If yes, on what portion GST will be applicable *ie* amount paid by the applicant to the canteen service provider or only on the amount recovered from the employees?
- (iv) Whether ITC of GST charged by the canteen service provider would be eligible for availment to the applicant?

10. Personal hearing was granted on 9.2.2023 wherein Shri Mitesh Jain and Shri Mihir Patel appeared and reiterated the facts as stated in the application. They further stated that they would be providing copies of relevant contracts to substantiate their plea. Thereafter, vide their letter dated 28.2.2023, the applicant has provided copy of contract with CSP and copy of the agreement or policy document for cafeteria/canteen service to employees [only one page].

11. Assistant Commissioner, CGST, Division V, Ahmedabad North, vide their letter dated 6.2.2023, has relying on Sections 7 and 16 of the CGST Act, 2017, stated that the issue raised should be viewed in light of the various ruling & facts & circumstances submitted by the applicant and has requested that it may be decided on merits.

Discussion and findings

12. 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.

13. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

14. Before advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions/circular for ease of reference:

• **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;

¹[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; ²[and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[****]

(d) ⁴[****].

⁵[(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.

(3) Subject to the provisions of ⁶[sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

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

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



• **Section 17. Apportionment of credit and blocked credits.- [relevant extracts]**

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:-

- ²[(a);
(aa);
(ab);

(b) ³[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.]

• **CBIC's press release dated 10.7.2017**

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 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).

• Circular No. 172/04/2022-GST

S. No.	Issue	Clarification
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) 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 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



	<p>clause (b)?</p>	<p>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.”</p> <p>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 subsection (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.”</p> <p>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.</p>
5	<p>Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?</p>	<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 into 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 GST when the same are provided in terms of the contract between the employer and employee.</p>

Factory

15. The facts having been enumerated *supra* we do not intent to repeat the same for the sake of brevity.



16. The first issue to be decided is whether the subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017. Now, in terms of Section 7 of the CGST Act, 2017, supply means all forms of 'supply' of goods/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. The exception being Schedule I, which includes the activities made or agreed to be made without a consideration and Schedule III, which includes activities which shall be treated neither as a supply of goods or services. The applicant's case is that they employ 2745 persons who are full time employees and who have been provided with canteen facility in terms of section 46 of the Factories Act, 1948. We find that the applicant is paying GST @ 5% in terms of the invoices raised by the CSP. The applicants primary role is that he provides a demarcated space and that the amount is paid by him to the CSP [a part of which is collected from the employees] on behalf of the employees for administrative convenience. As is already mentioned, the applicant's contribution is treated as staff welfare expenses in his books of accounts.

17. Now in terms of Circular No. 172/04/2022-GST, it is clarified 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 GST when the same are provided in terms of the contract between the employer and employee. We find that factually there is no dispute as far as [a] the canteen facility is provided by the applicant as mandated in Section 46 of the Factories Act, 1948 is concerned; and [b] the applicant has provided [one page] a copy of the agreement for cafeteria /canteen services to employees wherein in terms of Para 14.3, it is stated as follows:

"Policy

In corporate and plant locations, Cadila provides employees multiple options on the variety of food served. There are snacks, mini-meals as well as regular balanced meals that are served. Meals and snacks are provided on a cost sharing basis while business meetings are borne by the Company.

Type of Food /Drink	Timings		Location
Meals	Breakfast	8.00 am to 9.00 am	Corporate /Plant
	Lunch	12.30 pm to 1.30	



	Evening snacks Dinner	pm 6.30 pm to 7.00 pm 8.00 pm to 9.00 pm	
Business Meeting Refreshments	Tea and Cookies available on request		All meeting rooms

In view of the foregoing, we hold that the subsidized deduction made by the applicant from the employees who are availing food in the factory would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017.

18. Since the answer to the above is not in the affirmative, the ruling sought in respect of the second and the third question is rendered infructuous.

Corporate Office

19. We find that the appellant has sought a ruling for canteen services provided at his Corporate Office also. Before advertent to the contention we would like to reproduce the relevant sections of the Factories Act, 1948 viz

(m) "factory" means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of 5 [the Mines Act, 1952 (35 of 1952)], or 6 [a mobile mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place].

On going through the website of the applicant <https://www.cadilapharma.com>, the Corporate Office of the applicant is situated at Sarkhej-Dholka Road, Bhat, Ahmedabad, India, 382210. The factory of the applicant is located at Ankleshwar, Dholka, Kadi. The corporate office of the applicant is not located within the precincts of the factory. However, the corporate office would fall within the ambit of the term 'establishment' as defined under section 2(c) of the Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019, which states as follows:



(c) "establishment" means an establishment which carries on, any business, trade, manufacture or any journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or exchange or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession or manufacture; and includes, -

- (i) establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others), architect, engineer, accountant, tax consultant or any other technical or professional consultant;
- (ii) a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto;
- (iii) shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 do not apply ;
- (iv) such other establishment as the State Government may, by notification in the *Official Gazette*, declare to be an establishment for the purposes of this Act;

Further, section 23 of the said Act states as follows:

23. The employer shall provide and maintain in the shop or establishment, wherein not less than one hundred workers are employed or ordinarily employed to maintain a canteen for the use of its workers:

Provided that, if a group of shops or establishments decide to provide a common canteen, then the same shall be permitted by the Inspector by an order, subject to such conditions as may be specified in the order.

On a conjoint reading of the above, it is evident that [a] the canteen facility is provided by the applicant to the full time employees of its corporate office as mandated in Section 23 of the Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019, is concerned; and [b] the applicant has provided [one page] a copy of the agreement for cafeteria /canteen services to employees. Hence, in terms of the clarification issued by the Board vide Circular No. 172/04/2022-GST, at para 5, we hold that the subsidized deduction made by the applicant from the employees who are availing food in the Corporate Office would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 .



20. Again, since the answer to the above is not in the affirmative, the ruling sought in respect of the second and the third question is rendered infructuous.

Input Tax Credit

21. The next question on which the applicant has sought ruling is whether Input Tax Credit of GST charged by the CSP would be eligible for availment by the applicant. In this connection, before proceeding further, certain factual aspects which we would like to mention, though at the cost of repetition are *viz*

- that they employ 2745 full time employees working on permanent basis at their factory and the corporate office;
- that section 17(5)(b) *ibid*, was amended on 1.2.2019, and is reproduced *supra*;
- that the applicant is mandated vide section 46 of the Factories Act, 1948 to provide canteen facility to its employees within the factory premises and in terms of Section 23 of the Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019 to provide canteen facility to its employees at the Corporate office;
- that circular no. 172/4/2022-GST clearly clarifies that post substitution, effective from 1.2.2019, based on the recommendation of the GST council in its 28th meeting, the proviso after sub clause (iii) of clause (b) of Section 17(5) of the CGST Act, 2017 is applicable to the whole of clause 17(5)(b), *ibid*.

22. In view of the foregoing, we hold that Input Tax Credit will be available to the appellant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 and Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019 as far as provision of canteen service for full time/direct employees working on permanent basis at the factory/corporate office is concerned. It is further held that the ITC on GST charged by the canteen service provider will be restricted to the extent of cost borne by the appellant only. Our view is substantiated by the Ruling of the Gujarat Appellate Authority for Advance Ruling order No. GUJ/GAAAR/Appeal/2022/23 dated 22.12.2022 in the case of M/s. Tata Motors Ltd, Ahmedabad.

22. In view of the foregoing, we hold that Input Tax Credit will be available to the appellant in respect of food and beverages as canteen facility is



obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 as far as provision of canteen service for full time/direct

23. In the light of the foregoing, we rule as under:

RULING

1. The subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.

2 & 3. Since the answer to the above is not in the affirmative, the ruling sought in respect of the second and the third question is rendered infructuous.

4. Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory and the corporate office, in view of the provisions of Section 17(5)(b) as amended effective from 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963 and Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

(MILIND KAVATKAR)
MEMBER (SGST)

(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 31/03/2023

