

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड(माल और सेवा कर)

**BEFORE THE AUTHORITY FOR ADVANCE RULINGS FOR THE STATE  
OF UTTARAKHAND  
(Goods and Services Tax)**

**Present:**

श्री अनुराग मिश्रा (सदस्य)

**Shri Anurag Mishra (Member)**

श्री रामेश्वर मीणा (सदस्य)

**Shri Rameshvar Meena (Member)**

**The 24<sup>th</sup> day of November, 2022**

**अग्रिम विनिर्णय संख्या. 12/2022-23**

**Ruling No: 12/2022-23**

**in**

**आवेदन संख्या . 07/2022-23**

**Application No: 07/2022-23**

1	आवेदक Applicant	M/s Tube Investment of India Limited, 230 & 231, Gangnoli, Laksar, Haridwar, Uttarakhand-247663.
2	अधिकारिता अधिकारी Jurisdictional Officer	-----
3	आवेदक की ओर से उपस्थित Present for the Applicant	Sh. K Sivarajan, Chartered Accountant Sh. K Karthikeyan, Company Representative
4	अधिकारिता अधिकारी की ओर से उपस्थित Present for the Jurisdictional Officer	None
5	Concerned Officer	Sh. Deepak Brijwal, Deputy Commissioner
6	आवेदन प्राप्ति की तिथि Date of receipt of application	26.08.2022
7	सुनवाई की तिथि Date of Personal Hearing	13.10.2022 (Through video Conferencing)

**नोट:** इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवाकर अधिनियम 2017 की धारा-99 के अन्तर्गत गठित अग्रिम विनिर्णय अपीलप्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**Note:** An appeal against this ruling lies before the appellate authority for advance ruling under Section 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, constituted under Section 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX  
UTTARAKHAND**

**PROCEEDINGS**

This is an application under Sub-Section (1) of Section 97 of the Central Goods & Service Tax Act, 2017 and Uttarakhand State Goods & Service Tax Act, 2017 (hereinafter referred to as CGST/SGST Act) and the rules made there under filed by M/s Tube Investment of India Limited, 230 & 231, Gangnoli, Laksar, Haridwar, Uttarakhand-247663 (herein after referred to as the "applicant") and registered with GSTIN 05AADCT1398N1ZW under the CGST Act, 2017 read with the provisions of the UKGST Act, 2017.

2. In the application dated 26.08.2022, the applicant submitted that:

- (a) That they are a leading engineering company engaged in manufacture of precision steel tubes and strips, automotive, industrial chains, car door frame and bicycles. And they have a factory in the state of Uttarakhand where in more than 500 workmen (both direct and indirect) are employed.
- (b) They have entered into agreement with the contractors to operate canteen within the factory premises to provide food to their employees.
- (c) They recover nominal amount from the employees on monthly basis and such recoveries are shown as a deduction in the monthly slip of the employees.
- (d) They do not avail input tax credit (ITC) on the expenses incurred on the services provided by the canteen service provider and are absorbing the GST charged by the canteen service provider as a cost in the books of accounts.
- (e) They discharge GST @5% on the cost of the canteen service provider total taxable value plus 10% notional mark up.

In view of the above facts, 'the applicant' is seeking advance ruling as to;

- a. *"Whether the nominal amount of recoveries made by the Applicant from the employees who are provided food in the factory canteen would be considered as a "Supply" by the applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017,*
- b. *In ease answer to the above is "Yes",*
  - *whether GST is applicable on the amount recovered from the employees for the food prided in the factory canteen or on the amount paid by the Applicant to the Canteen Service Provider?*



c. *Whether input tax credit (ITC) is available to the Applicant an GST charged by the Canteen Service Providers for providing the catering services of the factory where it is obligatory for the Applicant to provide the same to its employees as mandated under the Factories Act, 1948, even if the answer to question (a) is "No"?*

d. *Whether input tax credit (ITC) can be availed on GST charged by the Canteen service providers, the answer to the question (b) is "Yes"?"*

3. At the outset, we would like to state that the provisions of both the CGST Act and the SGST 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 SGST Act.

4. The Advance Ruling under GST 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.

5. As per the said sub-section (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of:

- (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.

5.2 In the present case applicant has sought advance ruling on the determination of the liability to pay tax on services, therefore, in terms of said Section 97(2) ( c), (d), (e) & (g) of CGST/SGST Act, 2017, the present application is hereby admitted.

5.3 Accordingly opportunity of personal hearing was granted to the applicant on 13.10.2022. Sh. K Sivarajan, Chartered Accountant and Sh. K Karthikeyan, Company Representative, on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submission already made in their application. Sh. Deepak Brijwal, Deputy Commissioner, Concerned Officer from the State Authority was also present during the hearing proceedings. He presented the facts and requested the authority to decide the case on merits.

6. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing No. 05AADCT1398N1ZW. Before proceeding in the



present case, we have to first go through the submissions made by the applicant which are as under:

- i. That they are a company incorporated under Companies Act, 1956 manufacturing precision steel tubes and strips, automotive, industrial chains, car door frame and bicycles in the state of Uttarakhand where in 520 workmen (both direct and indirect) are employed. And in compliance with the provisions of the Factories Act, 1948 they provide canteen facility to those employees.
- ii. They have entered into agreement with the contractors to operate canteen within the factory premises to provide food to their employees and the amount raised by the canteen operator is booked as expenses in the P & L account without taking the benefit of ITC of the GST paid by them.
- iii. They recover nominal amount from the employees on monthly basis and such recoveries are shown as a deduction in the monthly slip of the employees and the recoveries made is credited to the expense account.
- iv. Under the provisions of the Factories Act, 1948 they are obligated and mandated to provide canteen facility to its employees at the factory and considering the large number of employees working at the factory. And to cater to the above-mentioned obligations, the Applicant has set up the canteen facility in a demarcated area within its factory premises wherein tables, chairs, utensils, washrooms, wash basins, storage rooms for keeping the cooked food, washing the utensils etc. have been provided and the applicant is responsible for electricity supply essentials and other equipment for running the canteen. This facility is available to all of the employees and it is agreed that the Applicant shall contract and pay in full to the service provider for the food served during a prescribed period on behalf of the employees and nominal amount is recovered from the employees on monthly basis and the balance amount is borne by the Applicant.

**7.** In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed by the applicant for our consideration. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issue involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law. Now we proceed by taking up the issue:

**8.** We have carefully considered all the submissions made by the Applicant. The applicant is a leading engineering company engaged in manufacture of precision steel tubes and strips, automotive, industrial chains, car door frame and bicycles and wherein in a factory in the state of Uttarakhand more than 500 workmen (both direct and indirect) are employed. The applicant recover nominal amount from the employees on monthly basis to provide food to them and for same they have engaged contractors, who operates canteen within the factory premises. The applicant discharge GST @5% on the taxable value which is sum total of the cost of the canteen service provider plus 10% notional mark up. It has also been submitted by the applicant that they do not avail input tax credit (ITC) on the expenses incurred on the services provided by the canteen service



provider and are absorbing the GST charged by the canteen service provider as a cost in the books of accounts.

It is seen that the Applicant had set up a canteen facility, for the benefit of its employees and workers. The clarification sought is as to whether GST is liable to be paid on that part of the amount collected from their employees towards provision of food and also that whether ITC is available on the GST paid by them on the taxable value of the canteen service. We find that the applicant has contended that since the supply of food in canteen is part of employment contract, the same shall be ousted from the scope of supply vide the Entry 1 in Schedule III of the CGST Act, 2017 and that there is no supply between the Applicant and the employees and the Applicant is not engaged in the business of provision of canteen services. Further, the amount received from the employees is in the nature of recovery and not consideration.

Thus, it is seen that the applicant provides canteen facility in the factory and while extending the canteen facility, provides meals/food at concessional rates, i.e., no meal is extended free and specified amount in respect of the food consumed by the employee are collected by the applicant against such consumption of food. With the above facts, the question sought on the liability to pay GST on the amount collected by the employees is taken up. While dwelling into the matter it has to be kept in mind that consuming food at the canteen facility made available by the applicant in their premises cannot be made mandatory and it's purely optional at the end of the employees.

The applicant contends that the provision of food in canteen is on account of the mandate prescribed in the Factories Act, 1948; therefore, the same would be covered under Entry 1 in Schedule III of the CGST Act, 2017. However, we observe that as per Sl. No (1) of Schedule III of the CGST Act, 2017, only services by an employee to the employer in the course of or in relation to his employment are neither a supply of goods nor a supply of service. But in this case supplies are provided by the employer to the employees for a consideration, though nominal. We also find that CBIC vide the Press Release dated 10.07.2017 with the description "GST on gifts", clarified 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 nor supply of services). It follows that supply by the employer to the employee in terms of contractual agreement of employment (part of the salary/CTC) is not subject to GST.

We are of the opine that the above press release makes it clear that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST, however, in the instant case, firstly it is not mandatorily compulsory to consume the food and secondly the Canteen facility is provided by the applicant in their factory in accordance with the mandate under the Factories Act, 1948; but in lieu of such facility, collects an amount though nominal, fixed as employee cost, therefore, the contention that the activity of supply of food for a nominal charge by them is neither a supply of goods nor a supply of service, is not legally tenable.



The next contention of the applicant is that there is no supply between the Applicant and the employees and the Applicant is not engaged in the business of provision of canteen services but has established the canteen as required under the Factories Act. The Factories Act, 1948 on providing the facility of Canteen, states as under:

*"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 therefor;*

*(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)".*

From the above provision, it is seen that the Act mandates establishing a canteen when more than two hundred and fifty workers are 'ordinarily' employed in a factory and as per sub- clause (2)(dd) above, certain expenditure are to be borne by the employer. In the case at hand, abiding by the above provisions, since the number of workmen exceeds 250 in number; the applicant has established the canteen. The cost to be borne by the applicant as per the above provisions has had to be borne by the applicant, thereafter the employee cost is arrived and then deducted on monthly basis. We observe that the term "business" is defined in Section 2(17) of the GST Act 201 7 as:

*"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); .*

In the case at hand, establishing a canteen facility in the factory is an activity incidental to the running of their business. The Factory Act, above mandates establishing canteen, bearing certain mandatory costs in running of the canteen by the employer in as much as the number of workers is above 250, accordingly, and the applicant has established the canteen in their premises and bears certain running cost while collecting the nominal rate, which is an activity in furtherance of their business. In this regard, the definition of 'outward supply', as per Section 2(83) of the CGST Act, 2017, has to be studied. The same is reproduced 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".*

Thus supply made by a taxable person in the course or furtherance of business is an 'Outward supply'. It has been brought out above, that establishing canteen is in the furtherance of business of the applicant and supply of food to the employees when the same is not contractually agreed, is not an allowance as a part of the employment. Thus, the provision of food in the canteen for a nominal cost is a 'Supply' for the purposes of GST. 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."*

Therefore, the supply of food is a 'Supply of Service'.

The other contention made by the applicant is that the amount received from the employees is in the nature of recovery and not consideration as the recovered amount is directly paid to the third-party vendor without any profit element in the hands of the Applicant. As stated supra, the running of canteen in the factory of the applicant is in the course of furtherance of business. The applicant has chosen to run the canteen through a third party vendor in the factory. It is also clear that in running of such canteen, the employer, i.e., the applicant is mandated to bear certain costs. The contention that the applicant only collects the employee cost and pays the third party vendor & that such employee cost is only a recovery is not acceptable. Provision of canteen facility and bearing certain costs in running of canteen are mandated on the part of the employer as per the Factories Act. Accordingly, such canteens are provided. It has been established that the supply of food in the canteens are 'Supply of Service' by the applicant. 'Consideration' is defined in Section 2(31) of the CGST Act 2017 as:

*'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"*

In the case at hand, the applicant supplies food to their employees at a nominal cost, and the same is the consideration for such supply made by the applicant on which GST is liable to be paid. The recovery of cost from the salary as deferred payment does not alter the



fact of the service provided and the person providing the said supply. The third party vendor has entered into agreement with the applicant for running of canteen in their unit and is paid service charges which is a supply made by the third-party-vendor to the applicant. The supply of food by the employer, i.e. the applicant to their employees is composite supply of food held as 'Supply of service' as per Schedule-II of the GST Act and the amount collected by the applicant is a 'Consideration' on which GST is liable to be paid

We also find that in the case in hand the applicant has claimed that they are adding 10% mark up cost on the cost of service provider for payment, but they have not provided the components of such "mark up cost" or what are the constituents, even though they are silent on the issue of cost of the area and the infrastructure, which admittedly includes tables, chairs, utensils, washrooms, wash basins, storage rooms for keeping the cooked food, washing the utensils provided by them to the canteen service providers i.e. contractors. We also find that the electricity and other equipment for running the canteen is also supplied by the applicant, but the cost incurred or capitalized in the books of accounts have not been charged from the contractors for using and utilizing the infrastructure of the applicant as discussed supra, which ought to have been the cost for the contractors to be included in the taxable value.

To sum up, in the case at hand, the applicant has established canteen facilities as mandated under Factories Act, 1948 and supplies food at a nominal cost through third-party-vendor. The supply of food by the applicant is 'Supply of Service' by the applicant to their employees as the same is not a part of the employment contract and the canteen facility is provided as mandated under Factories Act. The nominal cost, which is recovered from the salary as deferred payment is 'consideration' for the supply and GST is liable to be paid.

Further we find that Kerala Authority of Advance Ruling, Kerala in the case of Caltech Polymers Pvt. Ltd. held that if the company's canteen services are covered under "outward supply" under Section 2(83) of the Central Goods and Services Act, 2017, GST will be payable on food expenses collected from employees.

With regard to the eligibility of ITC on the GST paid by the applicant on the services of canteen services by the canteen service provider, we observe that the Input Tax Credit on Goods and Services Tax paid on Canteen Facility is barred credit u/s 17(5)(b)(i) of the Central Goods and Services Act, 2017 and hence inadmissible. We observe that two clauses in Section 17(5)(b)(i) and 17(5)(b)(iii) of the CGST Act, which governs the supply of goods and services, are not related by the punctuation used at the end of the provisions. "Colons and semicolons are two types of punctuation," according to the concept, and "Semicolons are used to unite two independent clauses/sub clauses, or two complete thoughts that might stand alone as entire sentences." Hence it can be said that ITC is not allowed on canteen charges even though it is obligatory under any other law.

We also find that the Authority for Advance Ruling, Gujrat in the case of M/s Tata Motors Limited held that Input Tax Credit on Goods & Services Tax charged by canteen



service provider will not be available even when the same is obligatory in terms of Factories Act, 1948.

We observe that the applicant has referred to the rulings of various advance ruling authorities and appellate authorities, wherein it is held that the collection of employees share and paying to canteen service provider without profit is not a supply. We are of the opinion that prima-fade Advance Ruling extended to one applicant cannot be generalized and applied to all cases. Furthermore, in the case at hand, as brought out in the para supra, the applicant who runs factory, wherein more than 250 workers are employed is mandated to provide the canteen facility in the premises and bear certain costs & the provision of food at nominal rate and recovery of such nominal rate is not as per the employment contract. In view of the stated factual matrix of the case, we find the case laws relied upon by the applicant do not have even persuasive values to this case and therefore not elaborated individually.

9. In view of the discussions held above, we rule as under:

#### **RULING**

- a. **Whether the nominal amount of recoveries made by the Applicant from the employees who are provided food in the factory canteen would be considered as a "Supply" by the applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 - Yes, it is a supply.**
- b. **Whether GST is applicable on the amount recovered from the employees for the food provided in the factory canteen or on the amount paid by the Applicant to the Canteen Service Provider - GST is applicable on both the amount i.e. amount paid to the canteen service provider and also on the nominal amount recovered from the employees.**
- c. **Whether input tax credit (ITC) is available to the on GST charged by the Canteen Service Providers for providing the catering services of the factory where it is obligatory for the Applicant to provide the same to its employees as mandated under the Factories Act, 1948, even if the answer to question (a) is "No" - Benefit of ITC is not admissible on the GST on the amount paid to the canteen service providers and also on the amount recovered from the employees.**
- d. **Whether input tax credit (ITC) can be availed on GST charged by the Canteen service providers, the answer to the question (b) is "Yes - No, ITC is not admissible on the GST on the amount paid to the canteen service providers.**

  
**ANURAG MISHRA**  
**(MEMBER)**

  
**RAMESHVAR MEENA**  
**(MEMBER)**



**AUTHORITY FOR ADVANCE RULING  
GOODS & SERVICE TAX: UTTARAKHAND  
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND  
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

**F. No.: 7/S.Tax-UKD/GST/Sec-97/2022-23/DDN/ 5070      Date: 24.11.2022**

**Copy to:**

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for information please.
2. The Commissioner, SGST, Commissionerate, Uttarakhand for review please.
3. The Commissioner, CGST, Commissionerate, Dehradun for review please.
4. The Assistant Commissioner, Range-I, CGST, Roorkee for information and necessary action.
5. The Assistant Commissioner, Sec-2, SGST, Roorkee for information and necessary action.
6. The Concerned officer, CGST, Dehradun.
7. The Concerned officer, SGST, Dehradun.
8. The Appellate Authority of Advance Ruling, Uttarakhand for information please.
9. Guard File.