

Amount recovered from the employees towards third-party canteen services is not liable to GST, however, it is liable to GST if recovered from the contractual workers - Gujarat AAR

15 September 2022



## Summary

The applicant arranges a canteen facility for its employees and contractual workers, which is run by a canteen service provider (CSP). In case of employees, the applicant collects a part of canteen charges from its employees and pays to the CSP. However, in case of the contractual workers, the workers directly pay a portion of the amount to the CSP. In this respect, the Gujarat Authority for Advance Ruling (AAR) has held that Goods and Services Tax (GST) is not payable on the amount recovered from the employees towards the canteen facility however, the same is payable in the case of the contractual workers. The AAR has placed reliance on the circular<sup>1</sup> and stated that the amount collected from the employees in terms of the contractual agreement is not liable to GST. Further, in case of the contractual workers, the contractor pays the salary to the contractual workers and such workers are not employees of the applicant. Hence, the supply of food to the contractual workers is a 'supply of service' wherein the cost recovered from the contractual workers is 'consideration' which is liable to GST. In respect to the admissibility of input tax credit (ITC), the AAR has ruled that since it is mandatory for the applicant to provide canteen facility to its employees, therefore, ITC of GST paid on canteen facility is admissible on food supplied to the employees, subject to the condition that the employees have not borne the GST burden. However, in case of the contractual workers, since it is not mandatory on the applicant to provide the canteen facility to them, therefore, ITC is not eligible on food supplied to the contractual workers.

## Facts of the case

- The applicant<sup>2</sup> provides canteen facilities to its employees and contractual workers as required under the Factories Act, 1948<sup>3</sup>.
- The applicant arranges food through CSP, who prepares and supplies the food directly to the employees and the contractual workers. The applicant provides the canteen facility at subsidised rate of 50% to its employees and contractual workers.
- The CSP issues an invoice for the full amount on the applicant against the food supplied to the employees. The applicant recovers 50% amount from the employees' salary and pays the full invoice value to the supplier. However, in case of workers, invoice is issued on the applicant only for the half value as the workers pay balance amount directly to the CSP.
- The applicant contended that it is not the business of the applicant to provide canteen services, and the recovery for providing canteen service is not covered under the ambit of 'supply'. Further, it has no direct nexus with its pharmaceutical business, and therefore, it is not ancillary or incidental activity to the main business. Hence, GST cannot be levied on the canteen facility provided to employees and the contractual workers and recovery of employee share to make payment to CSP.
- The applicant further submitted that partial recovery of food bill is not a consideration in the hands of the applicant. The applicant is providing this

<sup>1</sup> Circular No. 17210412022-GST dated 6 July 2022

<sup>2</sup> M/s Troikaa Pharmaceuticals Private Limited

<sup>3</sup> Section 46

facility only as a facilitator, and there is no profit element involved in it. Besides, the applicant contended that it is eligible to claim ITC on food bill as per the provisions<sup>4</sup> of the Central GST (CGST) Act.

- The applicant has sought an advance ruling to seek clarity on taxability of recovery amount as well as entitlement of ITC.

### AAR observations and ruling<sup>5</sup>

- **No GST on recovery from employees towards canteen charges:** The AAR relied on the circular clarifying that the prerequisites provided by employer to employee in terms of contractual agreement are not liable to GST. Accordingly, the amount recovered from the employees towards canteen charges in terms of the contractual agreement is not liable to GST.
- **Taxability of recovery from contractual workers:** The AAR stated that the contractual workers are not the employees of the applicant, rather they are working through a contract. The AAR relied on the Supreme Court's judgement<sup>6</sup> wherein the test for establishing the employer-employee relationship has been laid down, which does not pass in the instant case. Further, the supply of food by the

applicant to the contractual workers covers under the definition of business<sup>7</sup> as a transaction incidental or ancillary to the main business. Further, even if the applicant does not claim profit on the supply of food, it covers under the definition of 'supplier' and since the applicant recovers the cost of food, it will be treated as consideration which is liable to GST.

- **Admissibility of ITC of GST paid on food supplied to employees:** The AAR relied on the circular and held that ITC is available to the applicant on the food supplied to the employees as it is mandatory to provide such facility as per the provisions of Factories Act, 1948.
- **Non-admissibility of ITC of GST paid on food supplied to contractual workers:** The AAR stated that as per the provisions of the CLRA<sup>8</sup>, the contractor shall provide the canteen facility to the labour employed by the contractor. Thus, it is not obligatory for the applicant to provide canteen facilities to the contractual workers. Therefore, the applicant is not eligible for ITC on the food supplied to the contractual worker and, is blocked credit<sup>9</sup>.

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<sup>4</sup> Section 16 read with section 17(5) of CGST Act 2017

<sup>5</sup> GUJ/GAAR/R/20220/38 dated 10 August 2022

<sup>6</sup> in case of Balwant Rai Saluja

<sup>7</sup> under clause (D) of Section 2(17)

<sup>8</sup> Contract Labour (Regulation and Abolition) Act 1970

<sup>9</sup> Section 17(5) of CGST Act 2017.

## Our comments

The taxability of amount recovered for canteen facility from employees has been a litigative matter since introduction of GST. Recently, the CBIC has provided much awaited clarity through a circular which clarified that perquisites provided by the employer to employees in terms of employment contract will not attract GST. Further, the circular also clarified the issue related to interpretation of provisions of blocked credit<sup>10</sup>, and accordingly, it may be understood that wherever it is obligatory for the employer to provide canteen facility to its employees, ITC would be eligible. In the present ruling, the employer has recovered a partial amount from its employees. The Gujarat AAR stated that such recovery is not liable to GST. However, the circular provides that only the perquisites (not recovery) will not subject to GST if provided by the employer to its employees in terms of contractual agreement.

Further, in the present ruling, the AAR has differentiated the taxability of amount recovered from the employees and the contractual workers. The AAR has emphasised upon the employer-employee relationship, which is not present in case of the applicant and the contractual workers. However, in case of Musashi Auto Parts India Private Limited, the applicant provides canteen facility to its employees including contract-based employees also. In this respect, the Haryana Appellate Authority for Advance Ruling (AAAR)<sup>11</sup> found that the services are uniformly available to all the employees and are not restricted to any class of employees. Accordingly, the AAAR held that such canteen facility to employees is not a taxable activity.

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<sup>10</sup> proviso after sub-clause (iii) of clause (b) of section 17(5) of the CGST Act is applicable to the whole of clause (b)

<sup>11</sup> HAAAR/2020-21/06 dated 25 Sept 2020

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