

Body

ADVANCE RULING NO. GUJ/GAAR/R/2024/12, Dated 30th May, 2024

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

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/28)

Name and address of the applicant	:	M/s. Dormer Tools India P Ltd., Plot No. 903-904, GIDC, Ankleshwar-393 002
GSTIN of the applicant	:	24AAECP8469P1ZL
Jurisdiction office	:	Center Commissionerate - Vadodara-II Division - Ankleshwar Division- IX Range -II
Date of application	:	24.07.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d), (e), (g)
Date of Personal Hearing	:	27.02.2024
Present for the applicant	:	Shri Mohit Airan, Shri Tejas Ranka, Shri Niraj Doshi and Shri Vishal Sharma

Brief facts:

M/s. Dormer Tools India P Ltd., [for short-applicant'] is a company incorporated under the Companies Act, 2013, having its head office at Pune.

There manufacturing facility in Gujarat, located at 903-904, GIDC, Ankleshwar -393 002, is registered under GST and their GSTIN is 24AAECP84691ZL.

2.The applicant is engaged in the business of manufacture and sale of industrial products. The applicant states that they have employed more than 500 employees and are also registered under the Factories Act, 1948.

3.The applicant further states that they have engaged a canteen service provider [CSP] for preparing and supplying food to their employees. The applicant recovers Rs. 338/- on monthly basis from each employee in respect of the food being prepared and supplied by the CSP.

4.Further, the applicant states that in terms of section 46 of the Factories Act, 1948, since they have employed more than 500 employees, they are mandated to provide canteen for their employees; that they have ultimate control affairs of the factory & would be considered as an 'occupier'; that they have setup a canteen facility having a separately demarcated area in the factory premises pursuant to & in compliance with the Factories Act; that the canteen facility has seating area with tables and chairs, cooking facility with utensils, refrigeration, storage rooms for keeping the cooked food, washrooms and wash basin, etc..

5.The applicant has further contended as follows:

No GST on canteen facility

that the detail of food consumed & details of employee is maintained by the applicant; that based on the record of food consumed, the CSP raises an invoice; that after termination of employment services, the employee is not allowed access to canteen facilities;

that deduction of the nominal amount from employees would become taxable under GST only if such amount qualifies as 'consideration' towards supply as defined u/s 7 of the CGST Act, 2017;

that in terms of Schedule-III, services by an employee to employer in the course of or in relation to his employment, is not treated as a supply of goods/services;

that any consideration by the employer to the employee on account of the activities undertaken under the contract of employment is out of the scope of GST; that an activity undertaken in the course of an employment relationship would be outside the scope of GST;

that in terms of circular no. 172/04/2022-GST dated 6.7.22, it is clarified that any perquisite provided to employees as part of employment contract is not leviable to GST;

that the applicant provides canteen facility in terms of contractual agreement entered between the employer and employee; that the contractual agreement specifically provides for availment of benefits and allowances which includes canteen services to employees;

that in terms of section 7, ibid, the below mentioned criteria plays a crucial role to determine GST implications viz

that there should be a legal intention of both parties to supply & receive the goods;

that it should involve quid-pro-quo;

that the supply of goods or services or both shall be affected by a person in the course of furtherance of business;

that deduction of employees salary towards food availed by employee would constitute a transaction in money between applicant & its employees & would not attain the character of 'consideration';

that there is no reciprocity/quid-pro-quo between applicant and its employees;

that the activity does not fall within the ambit of business as defined u/s 2(17) of CGST Act, 2017;

that unless there is evidence that applicant had intention of undertaking business & earning profit in relation to provision of canteen facilities, it cannot be construed to be in the course of furtherance of business;

ITC of the GST paid by the applicant to CSP

that credit of ITC charged on supply of services would only be allowed when such goods or services or both are used or intended to be used in the course of furtherance of business; that the CSP provides the services to the applicant in the preparation of food and maintenance of canteen premises, for the applicant's employees; that such services are provided in pursuance of applicants obligation to provide such facilities to its employees in the capacity of an occupier of the factory under the Factories Act;

that in terms of circular no. 172/04/2022-GST dated 6.7.22, it is clarified that the proviso at the end of clause (b) of section 17(5), ibid, is applicable to the entire clause 17(5)(b), ibid;

the circular clarifies that ITC on food & beverages, etc., covered u/s 17(5), would not be restricted provided it is obligatory for an employer to provide the same to its employees under the law;

that in respect of the aforementioned issues on which ruling is sought, they wish to rely on the below mentioned case laws/rulings:

[a] Amneal Pharmaceuticals P Ltd [GUJ/GAAR/R/50/2020 dtd 30.7.20]

[b] Bal Mumbai Trust [Commercial suit (I) MP/ 236/2017]

[c] TATA Motors Ltd [Guj/GAAR/R/39/2021 dtd 30.7.2021]

[d] TATA Motors Ltd [GST-ARA-23/2019-20/B-46]

[e] Posco India Pune Processing Centre P Ltd [GST-ARA 36/18-19/B-1 10]

[f] Jotun India P Ltd [2019 (10) TMI 482]

[g] Cinemax India Ltd [SCA 8032/201 1]

[h] Raipur Manufacturing Co [CA 603/1965];

[i] IIT [WP 1768/1973] "

[j] Encure Pharmaceuticals Ltd [GST-ARA-119/2019-20/B-03 dtd 4.1.2022]

[k] SRF Ltd [GUJ/GAAR/R/41/2022 dtd 28.9.22]

[l] Cadila Pharmaceuticals Ltd [GUJ/GAAR/R/2023/14 dtd 31.3.2023]

[m] TATA Autocomp Systems Ltd [GUJ/GAAR/R/2023/23]

The applicant has filed this application for advance ruling to ascertain the GST implication in respect of canteen facility being provided to employees. Vide the aforesaid application, the applicant has raised the following question for advance ruling viz

(i) Whether the deduction of a nominal amount made by the applicant from the salary of the employees who are availing the facility of food provided in the factory premises would be considered as a 'supply of service' by the applicant under the provisions of section 7 of CGST Act, 2017 and GGST Act, 2017?

(ii) In case answer to above is yes, whether GST is applicable on the nominal amount to be deducted from the salaries of employees?

(iii) Whether ITC to the extent of cost borne by the applicant is available to the applicant on GST charged by the canteen service provider for providing catering services?

7. Personal hearing was granted on 27.2.2024 wherein Shri Mohit Airan, Shri Tejas Ranka, Shri Niraj Doshi and Shri Vishal Sharma, appeared and reiterated

the facts as stated in the application. The appellant sought time for filing a written submission

8. The applicant thereafter vide his additional submission dated 16.3.2024 wherein inter alia he stated as follows:

that the applicant has entered into a contractual relationship with Sai Pooja Enterprises [CSP] for supply of food to its employees within the factory premises;

that they recover only a partial basic cost of the canteen charges & the GST on the entire canteen bill is borne by the applicant;

that the amount recovered from the employee contains the component of basic cost excluding GST & no additional cost is recovered from the employees;

that they should be allowed to avail the entire ITC on the GST charged by the canteen service provider;

that they wish to rely on the ruling in the case of M/s. Bharat Oman Refineries.

Discussion and findings

9-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.

10. 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.

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

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;

(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; and

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

(d) omitted.

(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 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.

17. Apportionment of credit and blocked credits. [relevant extracts]

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(a)

(aa)

(ab)

(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.

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 (C2 C).

Circular No. 172/04/2022-GST

S. No.	Issue	Clarification
Clarification on various issues of section 17(5) of the CGST Act		
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 clause (b)?	<p>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.</p> <p>After the said substitution, the proviso after subclause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under:</p> <p>"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."</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.	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>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 therefrom 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>
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12.The facts having been enumerated supra we do not intent to repeat the same for the sake of brevity.

13.The first issue to be decided is whether the deduction of a nominal amount made by the applicant from the salary of the employees who are availing the facility of food provided in the factory would be considered as a 'supply' of services by the applicant 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 more than 500 employees who have been provided with canteen facility in terms of section 46 of the Factories Act, 1948. The applicant's primary role is that he provide 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.

14.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 copy of the HR policies for canteen facility to employees wherein it is stated as follows:

Policy Highlights

- a.This policy gives the guidelines for the canteen facilities provided to the Dormer India employees.
- b.Subsidized canteen facility will be provided to all employees of Dormer India as per this policy guidelines.
- c.The cost of the canteen deduction will be based on employee category as permanent employee and contractual employee.
- d.The Canteen Committee will be the administrative in charge of the canteen who will have interactions with the Canteen Manager for the smooth functioning of the canteen service.

Canteen Facility Guidelines:

- a.Canteen facilities will be provided to all Dormer India employees.
- b.The menu for the week will be decided and communicated to the Canteen contractor by the Canteen Committee and the same will be displayed on the boardfor everyone 's knowledge.
- c.This is a subsidized canteen facility and certain amount will be deducted from the salary every month from all employees.
- d.There will be a monthly meeting on the canteen service with the Canteen contractor and Canteen committee. The communication of the meeting outcome will be communicated to the concerned by the committee.
- e.Canteen contractor ensures the quality of the raw material and storage at the proper place with proper housekeeping and pest control measures. FIFO system should be adopted to ensure consumption of raw material in the right manner.
- f.Canteen contractor and maintenance team should have common observation round in the canteen for the equipment's and the facilities provided to the canteen contractor are used properly and maintained as per the guidelines.

g.The canteen committee and in-charge should ensure the medical check and hygiene of the canteen staff regularly.

h.The canteen timetable should be communicated and displayed at the proper location in the canteen."

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

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

Input Tax Credit

16.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 to the extent of cost borne by the applicant. However, in the additional submissions the applicant has stated that they recover only a partial basic cost of the canteen charges & the GST on the entire canteen bill is borne by the applicant; that the amount recovered from the employee contains the component of basic cost excluding GST & no additional cost is recovered from the employees; that they should be allowed to avail the entire ITC on the GST charged by the CSP. 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 more than 500 employees at their factory;

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 to provide canteen facility to its employees;

that circular no. 172/4/2022-GST, 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*.

17.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 employees working at the factory 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.

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 employees in factory is concerned.

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

RULING

1. The deduction of nominal amount made by the applicant from the salary of the employees who are availing the facility of food provided in the factory premises would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.

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

3.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 employees working in their factory, 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. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its permanent employees. but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees

(MILIND KAVATKAR)

(AMIT KUMAR MISHRA)

MEMBER (SGST)

MEMBER (CGST)

Place: Ahmedabad

Date: 30.05.2024

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