Himachal Pradesh Appellate Authority for Advance Ruling

(Constituted under Section 99 of the Himachal Goods and Services Tax Act, 2017 read with Central Goods and Service Tax Act, 2017)

Block No. 30, SDA Complex, Kasumpti, Shimla, Himachal Pradesh 171009

BEFORE THE BENCH OF

Shri Rajesh Puri, Chief Commissioner, IRS(C&IT), Central Goods and Service Tax Zone, Chandigarh Member, Appellate Authority for Advance Ruling, Himachal Pradesh	Dr. Yunus, Commissioner of State Taxes and Excise, Himachal Pradesh Member, Appellate Authority for Advance Ruling, Himachal Pradesh

HPAAAR ORDER-In-APPEAL No. :- **HP/AAAR/RP-DY/FM/01/2023**

Dated 26 .09.2023

(Passed by Himachal Pradesh State Appellate Authority for Advance Ruling under Section 101(1) of the Himachal Goods and Services Tax Act, 2017 read with Central Goods and Service Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax, Act 2017/Himachal Pradesh Goods & Services lax Act 2017('the Act', in Short), this Order may be amended by the Appellate Authority, so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date or the Order Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the Appellant has been given an opportunity or being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVI of the Act shall be binding only: -

   (a) on the applicant who had sought it in respect or any matter referred to in sub-section (2) of Section 97 for advance ruling:

   (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law,

facts or circumstances supporting the said advance ruling have changed;

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) or Section 101 has been obtained by the Appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act or the rules made there-under shall apply to the Appellant as if such advance ruling has never been made.

1. DETAILS OF THE APPLICANT:

Name and Address of the Appellant	M/s Federal-Mogul Anand Bearings India Limited, Plot No. 5, Sector 2, Tehsil Kasauli, Parwanoo, Solan, H.P.
GSTIN/User id of the Appellant	02AAGCA3784Q1ZA
Advance Ruling Order against which appeal is filed	HP-AAR-21/2021-7865-68 dated 22.03.2023
Date of Filing of Appeal	31.05.2023
Represented By	Sh. Vishal Aggarwal, CA
Jurisdictional Authority-Centre	CGST Commissionerate- Shimla
Jurisdictional Authority-State	ACST&E, Parwanoo Circle-1, District Solan
Whether payment of fees for filing appeal is discharged. If yes, the amount, Challan No. and Date	Yes. Rs 20,000/- made vide Challan No. HDFC23040200015845 dated 18.04.2023.

2. At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are in *pari*

materia and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Himachal Pradesh Goods and Service Tax Act. 2017.

3. The subject appeal was filed under Section 100 (1) of the Himachal Pradesh Goods and Services Tax Act 2017/Central Goods and Services Tax Act, 20 I 7 (hereinafter referred to the Act') by M/s Federal-Mogul Anand Bearings India Limited, Plot No. 5, Sector 2, Tehsil Kasauli, Parwanoo, Solan, H.P. (hereinafter referred to as 'the Appellant'). The Appellant is registered under the GST Act vide GSTIN 02AAGCA3784Q1ZA. The appeal was filed against the Order No. HP-AAR-21/2021-7865-68 dated 22.03.2023 passed by the Himachal Pradesh State Authority for Advance ruling on the Application for Advance ruling filed by the Appellant.

4. The Appellant is stated to be inter alia involved in the business of manufacture, supply and distribution of automotive components used in two/three/four-wheeler automobiles. They have stated that they have a manufacturing units located at Plot No. 5, Sector 2, Tehsil Kasauli, Parwanoo, Solan, H.P, wherein around 380 workers have been employed. As per Section 46 of the Factories Act, 1948, where more than two hundred and fifty workers are ordinarily employed, a canteen has to be provided and maintained by the specified factory for the use of the workers. Accordingly, the Appellant had set up canteen facility at the unit, for the benefit of its employees and workers. The Appellant had filed an application before the Hon'ble Authority for Advance Ruling, seeking clarification on the following questions:

1. "*Whether the subsidized deduction made by the Appellant from the Employees who are availing food in the factory would be considered as a "supply" by the Appellant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Himachal Pradesh Goods and Service Tax Act, 2017.*

a. *In case answer to above is yes,*

(i) *whether GST is applicable on the nominal amount deducted from the salaries of its employees;*

(ii) *Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?*

b. *Whether Input Tax Credit (ITC), on the GST charged by the Canteen Service Provider, would be eligible for availment to the Appellant?"*

4.1 The Original Authority vide Order No. HP-AAR-21/2021-7865-68 dated 22.03.2023 has ruled as follows:

"Question 1: Whether the subsidized deduction made by the Applicant from the Employees who are availing food in the factory would be considered as a "supply" by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Himachal Pradesh Goods and Service Tax Act, 2017.

Answer: Answered in the Affirmative.

Question 2: Whether GST is applicable on the nominal amount deducted from the salaries of its employees?

Answer: Answered in the Affirmative.

Question 3: Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?

Answer: Answered in the Affirmative."

Question 4: Whether Input Tax Credit (ITC) of the GST charged by the Canteen Service Provider would be eligible for availment to the Applicant?

Answer: Answered in the Negative."

5. Aggrieved by the decision of the AAR in the Order No. HP-AAR-21/2021-7865-68 dated 22.03.2023 , the Appellant i.e. M/s Federal-Mogul Anand Bearings India Limited, Plot No. 5, Sector 2, Tehsil Kasauli, Parwanoo, Solan, H.P. preferred the subject appeal. The grounds of appeal, inter alia, are as follows:

(i) That the Appellant is a company incorporated under the Companies Act, 1956 having GST registration number ("GSTIN") 02AAGCA3784Q1ZA and located Plot no. 5, Sector 2, Tehsil Kasauli, Parwanoo, Solan, H.P;

(ii) That the Appellant is *inter-alia* involved in the business of manufacture, supply and distribution of automotive components used in two/three/four-wheeler automobiles; that the Appellant has employed about 380 employees in its factory; that since the Appellant is registered under the provisions of the Factories Act, 1948 (hereinafter referred to as "Factories Act"), it is required to comply with all the obligations and responsibilities cast under the provisions of the Factories Act;

(iii) That the employees employed by the Appellant can be largely categorized into 2 types, i.e. management employees ('Operator level' and 'Above Operator level') and contractual employees. The canteen facility is available to all the employees of the Appellant firm; that in case of management employee – 'Operator level' and 'Above operator level', the standard rate of INR 40 per month and INR 300 per month respectively will be charged regardless of his usage of canteen card. The said amount will be deducted from the salary of management employees –'Operator level' and 'Above operator level' irrespective of use of canteen facility. For the contract employee, the manpower supplier issues a credit note to the Appellant towards the canteen charges.

(iv) That the above deduction is credited to the expense account in which canteen expense is booked while the full amount of the invoice issued by the Canteen Service Provider is booked as expense in the Appellant's Profit & Loss account without taking the benefit of ITC of the GST paid on the Canteen Service Provider's invoice.

(v) That the canteen recovery on subsidized basis made from the Management employees - 'Operator level' and 'Above operator level' is disclosed under the deduction side of the salary pay slip and the subsidized charges towards the canteen facility used by the contractual staff, the Manpower supplier issues a credit note to the Appellant towards the subsidized canteen charges.

(vi) That the Appellant discharges GST on the canteen facility basis the head count of the employees availing canteen facility during the month at an open market value which is determined as under -Management employees - Per plate rate charged by the Canteen Service Provider from the Appellant for the Canteen services (i.e. open market value instead of actual recovery made from the employees) Contractual employees - GST is

paid on the actual recovery from Manpower Supplier towards meals and snacks deemed as open market value.

(vii) That the Appellant is liable to pay to the Canteen Service Provider, for establishing the canteen set-up, who raises GST invoice with tax rate of 5%. The Appellant does not avail ITC of the GST component paid there-under.

(viii) That Section 46 of the Factories Act, 1948 provides that *"in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens, shall be provided and maintained by the 'Occupier' for the use of the workers."* In this regard, the Appellant shall also refer to Section 2(n) of the Factories Act, 1948 which defines the term 'occupier' of a factory to mean *"the person who has ultimate control over the affairs of the factory"*. In the instant case, the Appellant has the ultimate control over the affairs of the factory and hence will be treated as the occupier. Therefore, the Appellant is mandated to provide and maintain canteen for the use of its employees.

(ix) That as per Section 2(I) of Factories Act 1948 *"worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;"*

(x) That on perusal of the above provisions, undoubtedly the Appellant is obligated and mandated to provide canteen facility to its management employees ('Operator level' and 'Above Operator level'). Additionally, the contractual employees of the Appellant who are employed through a manpower supplier are also considered as 'Worker' as per Section 2(I) of Factories Act (supra). Therefore, the Appellant is obligated to extend the canteen facility to the contractual employees as well.

(xi) That to cater to the above-mentioned obligation laid down under the Factories Act, the Appellant had decided to provide canteen facility to its employees by appointing a third-party Canteen Service Provider.

(xii) That the Appellant 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 by and maintained and the ultimate control of the factory lies with the Appellant.

(xiii) That the mutually agreed roles and responsibilities of the Canteen Service Provider and the Appellant are clearly laid out in the Scope of Work mentioned in the Canteen Service Agreement dated January 1, 2020 (hereinafter referred to as "SOW"). The copy of the Canteen Service Agreement along with the SOW is enclosed as Enclosure 1.

(xiv) That while the food is provided by the Canteen Service Provider to all the employees at the canteen facility set up by the Appellant, considering that it is practically inconvenient to enter in contractual agreement with every employee, the Canteen Service Provider has requested the Appellant and has entered into a contractual arrangement with the Appellant. It is agreed that the Appellant shall contract and pay in full for the food served during a prescribed period on behalf of the employees and a portion of the amount paid by the Appellant is recovered from the employees and the balance amount which is borne by the Appellant, is treated as employee benefit / welfare expenses.

(xv) That for the sake of reiteration, the Appellant would like to submit that such canteen facility is set up by the Appellant out of the mandate laid down by the Factories Act, 1948.

(xvi) That the Appellant had relied on the following rulings by various AARs at the Advance Ruling Authority stage, where it has been commonly held that GST is not leviable on the amount representing employees' portion of the canteen charges, which is collected by the Appellant and paid the canteen service provider:

Gujarat AAAR in the case of Amneal Pharmaceuticals Pvt. Ltd

Karnataka Authority of Advance Ruling in the case of Dakshina Kannada Co-operative Milk Producers Union Ltd;

Maharashtra AAR in the case of Emcure Pharmaceuticals Limited

Judgement of European Court of Justice in the case of R. J. Tolsma Vs Inspecteur der Omzetbelasting Leeuwarden in case C-16/93 (Judgement of the Court, Sixth Chamber)

The above decisions were not considered by the Learned Authorities while passing the impugned order.

(xvii) That the Appellant wish to place reliance on the decision of Andhra Pradesh Advance Ruling Authority in the case of Brandix Apparel India Pvt Ltd (TS-118-AAR(AP)-2023-GST), wherein the authority held that *"GST is not applicable on the amount recovered by the Employer from employees for canteen facility as well as for the transportation facilities provided to them, as the such services do not constitute supply u/s 7 of the CGST Act"*. The Gujarat Advance Ruling Authority in the case of AIA Engineering Limited(GUJ/GAAR/R/2023/12, Dated 31st March, 2023), also ruled that *"GST is not leviable on the amount representing the employee's portion of canteen charges recovered /collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee since it would not be considered as a supply under the provisions of section 7 of the CGST Act.* Further, it was also ruled that *"the Input Tax Credit 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, 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."*

(xviii) That further, the Appellant places reliance on the decision of the Uttar Pradesh Advance Ruling Authority in the case of North Shore Technologies Private Limited (2021 (49) G.S.T.L. 315 (A.A.R. - GST - U.P.), wherein the authority held that *"arranging the transport facility for the employees and recovery from employees towards such transport facility, under the terms of employment contract, cannot be considered as supply of service in the course of furtherance of business.* Providing transport facility to employees is nowhere connected with the business of the applicant". Accordingly, ruled that the subsidized shared transport facility to the

employees in terms of the employment contract through third party vendors would not be construed as "Supply of Service" by the company to its employees;

(xix) That the Appellant places reliance on the decision of the Haryana Authority for Advance Ruling in the case of *RITES Limited* (2022-VIL-283-AAR), where the applicant company charged a nominal amount from its employees for the canteen facility. The authority ruled that *"The payment of the meals is being made by the applicant in bill to the canteen vendor. In this matter, the authority is of view that the transaction/deduction of nominal amount from the salary of the employees at fixed rate is outside the preview of the taxability under the GST Act."*

(xx) That the Appellant places reliance on the decision of the Maharashtra Authority for Advance Ruling in the case of *Syngenta India Limited* (MANU/AR/0008/2022) wherein the authorities held that GST would not be payable on the recoveries made from employees towards providing parental insurance as the same does not amount to supply of service under the GST Laws.

(xxi) That the Appellant places reliance on the decision of the Maharashtra Authority for Advance Ruling in the case of *Integrated Decisions and Systems India Pvt. LTD* (2022 (58) G.S.T.L. 596 (A.A.R. - GST - Mah.). In this case the authorities held that arranging the transport facility for their employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function. Hence part recovery of renting of motor vehicle services/ cab services from employees in respect of the transport facility provided to them would not be treated as "Supply";

(xxii) That similar view has been taken by the Gujarat AAR recently in the case of M/s. SRF Limited vide Advance Ruling No. Guj/GAAR/R/2022/41 dated 28.09.2022 where in, it has been ruled that *"GST is not leviable on the amount representing the employees portion of canteen and transportation charges, which is collected by the applicant and paid to the canteen and bus transport service provider"*. As per the arrangement, part of the Canteen charges is borne by the applicant whereas the remaining part is borne by its employees. The applicant does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges and also do not charge

any markup therein. The applicant is not provider of bus transportation facility to its employees rather it is a receiver of such services. In view of Circular No. 172/04/2022-GST dated 06-07-22, the provision of the services of transportation and canteen facility cannot be considered as supply of goods or services and hence cannot be subjected to GST on the amount deducted/ recovered from the employees.

(xxiii) That the learned authority has claimed that 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. Therefore, the amount collected by the Appellant is a 'Consideration' on which GST is liable to be paid. Further, learned authority has not agreed the contention that the Appellant only collects the nominal amount from employee and pays the same to the third-party vendor and that such amount deducted from employee salary is only a recovery;

(xxiv) That as provided u/s 7 of the Act, the term 'Supply' includes all forms of supply (goods and/or services) and covers agreeing to supply when the supply is for a consideration and is in the course or furtherance of business. The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions. The Appellant submits that 'supply' as defined under Section 7 (stated supra) also provides that it has to be 'made or agreed to be made' for a *consideration*, thus indicating the requirement of an activity to be done on the part of the supplier in order to trigger the event of supply;

(xxv) That as per definition of "consideration" in terms of Section 2(31) of CGST Act, 2017 and Para 2.3. of the Education Guide, (which lists down the salient features of 'activities for a consideration', 'activities without a consideration' and 'payments without activity'), it emerges that an amount cannot be termed as 'consideration' in the absence of a reciprocity between the party who makes the payment and the recipient of the said amount;

(xxvi) That the Appellant has demarcated specific space and established other infrastructure for the canteen as mandated under Factories Act and facilitating food to the employees at subsidized rate. The collection of nominal amounts from the employees would not amount to "Consideration" for supply.

(xxvii) That the Appellant places reliance on the decision of the Larger Bench of the Tribunal in case of 'Commissioner of Service tax vs Bhayana Builders P Ltd ' ([2013] 38

taxmann.com 221 (New Delhi - CESTAT) (LB)) wherein it was held that *"consideration" must flow from the service recipient to the service provider and should accrue to the benefit of the service provider and that the amount charged has necessarily to be a consideration for the taxable service provided under the Finance Act* . It was upheld that any amount charged which has no nexus with the taxable service is not a consideration for the service provided and does not become part of the value which is taxable. It should also be remembered that there are marked distinctions between "conditions to a contract" and "consideration for the contract". A service recipient may be required to fulfil certain conditions contained in the contract but that would not mean that compliance with such conditions would form part of the value of taxable services that are provided;

(xxviii) That in the case of *Bhayana Builders Pvt Ltd vs Commissioner of Service Tax, Delhi, referred above* the Larger Bench observed that "Consideration" has its meaning derived from Section 2(d) of Contract Act, 1872 to *mean reasonable equivalent for other valuable benefit passed on by promisor to promise or by transferor to transferee;*

(xxix) The Appellant places reliance on the decision of Hon'ble Bombay High Court in Bai Mamubai Trust & Ors. Vs. Suchitra reported in 2019 (31) GSTL 193 wherein the Hon'ble High Court held that

- A payment which lacks the quality of reciprocity cannot be termed as a 'supply' and would not attract GST.
- Where no reciprocal relationship exists and one party, inter alia, seeks damages or compensation from a Court to make good a said violation (in closest possible monetary terms) it cannot be said that a 'supply' has taken place.
- In the absence of reciprocal enforceable obligations, a 'supply' for 'consideration' does not arise

(xxx) That the Appellant places reliance on the decision of Division Bench of the Madhya Pradesh High Court in the case of *Commissioner of Sales Tax, M.P. v. Hukumchand Mills Ltd.* (1988) 68 S.T.C.378 was considering the question whether food-stuffs and other items served in canteen of a factory sold on non-profit basis at approved prices would constitute sale and it was laid down that as dominant object of running canteen

was rendering services to its employees as a welfare measure, the said activity would not constitute sale

(xxxi) That the Appellant places reliance on the decision in the case of *Woodlands Hotel (P) Ltd. v. The State of Karnataka* (1995) 97 S.T.C. 251 wherein a question had arisen before the Division Bench of the Karnataka High Court as to whether the activity of the employee in supplying food to its workmen and deducting the same from their wages would constitute sale and it was laid down that such an activity would not come within the ambit of sale, and, therefore, the employer was not liable to payment of sales tax under the Karnataka Sales Tax Act.

(xxxii) That the Appellant places reliance on the decision in the case of Bihar Alloy Steels Ltd. and Ors. Vs State of Bihar and Ors, wherein the High Court of Patna Bench (Ranchi Bench) (MANU/BH/0150/1996) held that "dominant object of supplying the electricity to the employees was for rendering services as welfare measure and there was no relationship of seller and buyer between the petitioner-company and its employees, but relationship between them was that of master and servant and if as an incident of relationship master and servant any electricity is supplied to the employees of the petitioner-company to some extent free of charges and thereafter maintenance charge of electricity at the rate of twenty-five paise per unit from the wages of the employees is deducted, the said activity must be treated as part of wages and cannot come within the sweep of sale. Therefore, I have no hesitation in holding that the petitioner-company cannot come within the mischief of Sub-section (4a) of Section 4 of the Act."

(xxxiii) That the Appellant would also like to submit before your good selves, the observation of the Andhra Pradesh High Court under the service tax regime in the case of *M/s. Bhimas Hotels Pvt Ltd versus The Union of India*[2017(3) G.S.T.L 30(A.P), [2017] 103 VST 95 (T & P) vide order dated 23rd March 2017, that any supply of subsidized food to the workers by the management of the company, has to be seen as part of the pay package that the workers have negotiated with the employer.

(xxxiv) That based on the above it is submitted that the nominal amount collected from the employees shall not to be treated as for consideration paid by employees to the Appellant for canteen services provided but only an exercise of recovery undertaken

by employer for payment to canteen contractor, which is only a transaction in money without consideration.

(xxxv) That the Learned Authorities observed that establishing a canteen facility and supply of food in the factory is in the furtherance of business of the Appellant;

(xxxvi) That the Appellant is engaged in the business of manufacture, supply and distribution of automotive components used in two/three/four-wheeler automobiles; that as per the definition of business, as given in Section 2(17) of CGST Act, 2017, business includes, any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity. Any activity or transaction in connection with or incidental or ancillary to trade, commerce, manufacture etc. or any activity or transaction in the nature of trade, commerce or manufacture etc. alone included in the business;

(xxxvii) That the various judicial precedents relied upon by the Appellant has been reiterated here below which the learned authority have failed to consider and appreciate:

a. Cinemax India Limited Vs Union of India (Special Civil Appeal Nos,8032,9661,11032,11111,12933, of 2010 and 707 of 2011 decided on 23.08.2011) wherein, 'furtherance of business' has been pointed out that, it means an act of furthering business, helping forward business, promotion of business, advancement of business or progress of business"

b. Indian Institute of Technology Vs. State of Uttar Pradesh & Ors. [1976(38)STC 428 (All.)] it was held that – (a) the statutory obligation of maintenance of a hostel which involved supply and sale of food was an integral part of the objects of the Institute; and (b) the running of the said hostel could not be treated as the principal activity of the Institute. Consequently, the Institute was held to not be doing business.

c. M/s Jotun India Pvt Ltd [2019 (10) TMI 482] by the Authority for Advance Ruling, Maharashtra, wherein it was held that the recovery of 50% of Parental Health Insurance Premium from employees does not amount to "supply of service" under Section 7 of the CGST Act, as the Assessee was not in the business of providing insurance service.

(xxxviii) That based on the above, the Appellant submits that the activity of establishing canteen facility in the factory and facilitating supply of food is not 'in the course of or for the furtherance of businesses of the Appellant. Such facility is extended to employees only as required under law and as a part of the implied employment contract and consequent relationship which is established by the fact that only the employees are allowed to consume food in the designated canteen facility;

(xxxix) That learned Authority erred in stating that the AARs quoted by the Appellant in the Advance Ruling Application cannot be generalized and apply to other cases and due to the fact pattern of the present case, the said AARs do not have persuasive value, thus, the said AARs are not individually discussed. The relevant extract of para 25 of the impugned order is provided below for the case of reference:

"..... As per the provisions of Advance Ruling, "Advance Ruling extended to one application cannot be generalized and applied to all cases"....
....In the 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"

(xl) Such decisions are listed below:

a. M/s. Emcure Pharmaceuticals Ltd – MH AAR – TS-01-AAR(MAH)-2022-GST – Para 2.13 of the application
b. M/s Jotun India Pvt Ltd [2019 (10) TMI 482]-Para 2.42 of the application

(xli) That the Learned authority accepted the fact that the canteen facility is arranged by the Appellant only pursuant to the requirement under Factories Act. In this background it is established that there is no intention to make the supply of food through canteen by the Appellant but only compliance of law by maintaining the facility of canteen;

(xlii) That the learned authority in para 21 of the impugned order has stated that *"No employment contract has been provided which proves the canteen facility provided as part of employment contract"*. In the regard, the Appellant wishes to submit that the learned authority has grossly erred in understanding the substance of the transaction and has simply ruled that in the absence of the facility of canteen in the employment contract, the said facility is said to be in furtherance of business. This finding by the learned authority is without application of mind and unreasonable. It is a settled

principle in law that the substance survives over the form. In the present case, even though the Appellant does not have an employment contract for provision of canteen facility as such, it is implied that the canteen area is set up for the benefit of the Appellant's employees only and not for any outsiders. As already stated, the Appellant wish to reiterate that the canteen facility is being provided by the Appellant to its employees due to the mandate specified in the Factories Act. Therefore, irrespective of whether the Appellant has separately entered into an employment contract for provision of canteen facility, the same is impliedly said to be a part of the existing employment contracts, Moreso when the deduction of canteen charges is being made from the employees payslip.

(xliii) That the absence of separate contract for supply considered along with the facts that only employees are allowed to consume foods in the canteen and the collection of nominal amounts is effected through pay slip prove the absence of intention to supply food and separates the activity from the business; that it is only the canteen contractor who is supplying the food to the employees and the Appellant is only recipient of such supply on behalf the employees. They have only provided demarcated space and infrastructure necessary for the canteen facility but not participated in preparation of food and supply of the same to the employees. Thus, it cannot be construed that the Appellant is involved in the supply of food through the canteen concerned;

(xliv) That the learned authorities completely ignored the clarification issued by CBIC through its Circular 172/04/2022-GST dated July 06, 2022. In Sl No 5 of the Table appended to Para 2 of this circular, it is clarified that perquisites which are provided by employer to employee pursuant to contractual arrangement will not be subjected to GST. Appellant has shown that by way of restriction of canteen facility to employees and collection of nominal amounts through pay slips, this facility is only pursuant to employment contract and a perquisite and the benefit of this circular needs to be extended to the Appellant; that it is settled law that circulars issued by CBIC are binding on and to be followed by revenue. Hence pursuant to the clarification issued by CBIC through the above-mentioned circular, the activity concerned will be outside the ambit of GST.

(xlv) That the learned authorities in response to question 'b' of the advance ruling application has ruled that the 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; that, the authorities are in agreement that, there is an obligation cast on the Appellant to provide and maintain canteen facility at the factory premises of the Appellant. Further, the provisions of Section 17(5)(b) of the CGST Act provides for blocked input tax credit and further, it also provides that input tax credit in respect of 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;

(xlvi) That the authorities have observed that, the input tax credit on Goods and Services Tax paid on canteen facility is barred u/s 17(5)(b)(i) of the Central Goods and Services Act, 2017 and hence inadmissible; that the learned authority completely ignored the circular issued by the Board. The Circular No. 172/04/2022-GST dated July 06, 2022, it draws reference of GST council's 28th meeting and press noted dated July 21, 2018, it has clarified that "*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*". 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

(xlvii) That further the Appellant places reliance on the ruling passed by the Appellate Authority for Advance Ruling in the case of *Bajaj Finance Limited* (MANU/AI/0118/2019), it is conceded that the ruling made in the impugned AAAR order is contrary to the interpretation of the legal provision as envisaged by the Board, and since the Board circular is beneficial in nature, the same needed to be applied retrospectively in keeping with the Hon'ble Apex. Court Judgement relied upon by the Appellant; that therefore, the finding of the learned advance ruling authority in the impugned order that Input Tax Credit (ITC) is not admissible even on supplies where it is obligatory for the Appellant to provide the same to its employees as mandated under the Factories Act, 1948 is legally not tenable. Further, the Appellant has a statutory obligation cast under Section 46 of the Factories Act to provide canteen facility to its employees. Hence it is humbly submitted that there is no doubt that the Appellant is entitled to avail ITC on the procurement of food and beverages when the same is made to comply with requirement under law.

(xlviii) That the CBIC recently clarified vide circular no. 172/04/2022-GST dated July 06, 2022, 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"*. Accordingly, it was 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; that circulars / clarifications issued by the board binds all the authorities under the "Act", as has been held by the Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta and others v. Indian Oil Corporation Ltd. and another, MANU/SC/0142/2004 : (2004) 3 SCC 488.

(xlix) That the Appellant wishes to highlight that the decisions highlighted and relied upon by the Appellant in its application have not been considered by the learned authority. Learned authorities have completely ignored the judicial principles highlighted by such decisions and failed to consider and address the related arguments solicited by the Appellant in this order. It is also to be noted that the above reasoning has been given by the Learned authorities for ignoring the decisions of AAR's and AAAR's which approach is contested by the Appellant, they have also failed to address the decisions of Hon'ble High courts which are highlighted by the Appellant; that the learned authority has violated the principle of judicial discipline and thus the impugned order deserves to be set aside;

(l) That the learned authority concluded that GST is applicable on both the amount paid by the Appellant to the canteen service provider and also on the nominal amount recovered from the employees as it is a "Supply". However, the learned authority erred in concluding that Input tax credit (ITC) is not admissible.

(li) The learned authority did not consider Section 17(5)(b)(1) of CGST Act, 2017; that thus, without prejudice to our other arguments and contentions in this appeal, it is submitted that if the activity of recovery of nominal amount from employees towards canteen food is held to be supply taxable under GST, then consequentially the Input tax credit (ITC) with respect to the GST levied on the expenses incurred for the canteen facility including the GST charged by the canteen contractor in their invoice may please be allowed. This follows the natural corollary and legal stance as allowed

by Sec 17(5)(b) of CGST Act as mentioned above and intention of introduction of GST by way of taxing only the value addition at each stage of supply.

6. RECORDS OF HEARING: -

6.1 The case was taken up for hearing on 31.08.2023 at 1500 hrs through video conferencing. Sh. Vishal Aggarwal, CA, appeared on behalf of the applicant and reiterated the contention as made in the written submission.

6.2 During the personal hearing proceedings, Sh. Rajesh Puri, Chief Commissioner, CGST, Chandigarh Zone, Member, AAAR, raised two queries, which were replied by the Learned Counsel.

(i) First query was w.r.t. bills raised by Catering Service provider on the applicant M/s. Federal Mogul Bearings India Limited and amount recovered by them from their employees & contract workers every month. The background of this query was that as per sample bills, more than 50% amount of the bills received from the Canteen Service provider was being recovered from employees. In this background, the Member of Appellate Authority requested the applicant to provide month-wise value of food services provided by M/s. Keerat Hospitality & Catering Services to the applicant M/s. Federal Mogul Bearings India Limited and month-wise recoveries made by the applicant M/s. Federal Mogul Bearings India Limited from their employees & contract workers separately. The above information was sought forthe period Jan., 2023 to July, 2023.

6.3 In response, the Learned Counsel submitted that he will provide the requisite information in 10 days' time, which was provided through mail dated 08.09.2023.

(ii) The second query was whether provisioning of Canteen Service or providing subsidized food is compulsory under relevant laws.

To this query, the Counsel replied that law does not lay down that food is to be supplied on subsidized basis. However, it is being done as a matter of practice. He further added that Factory Rules do provide that food is to be provided at no profit basis. He further stated that Authority for Advance Rulings (AAR) has mentioned that no employment contract has been provided to show that Canteen facility was part of employer-employee contractagreement. He says that this transaction falls under Schedule III Entry I and therefore, AAR is not legally correct in restricting it to the press note. It was also highlighted that the ambit of Entry 1 in Schedule III is wide as it uses the

expression "in the course of or in relation to employment". The Counsel also submitted that additional submissions will also be filed within 10 days' time.

6.4 The Member of Appellate Authority asked the Learned Counsel whether he is disputing the position that their employment contract does not talk about provisioning of Canteen facility, to which the Counsel replied that he has not produced employment contract even before AAR or this Authority. In-fact, he has not gone through the employment contract himself to ascertain whether or not such Canteen facilities are part of employment contract. He said that this is their legal obligation, as Factory Act made it mandatory to provide it to workers who are their workers & employees.

6.5 The Counsel further stated that since in his opinion, it is statutorily mandated, it is immaterial whether it has been mentioned in employment contract or not. The Counsel further stated that recoveries from employees are made through Pay-slips and employees are aware that they are getting food at subsidized rates. This according to Learned Counsel constituted an implied contract. Further, he stated that being a statutory mandate, employeehas a right to receive such benefit from employer.

6.6 Dr. Yunus, Commissioner, State Taxes and Excise, Himachal Pradesh, member, AAAR, raised a query as to wherefrom would the Ld. Counsel draw the inference that the services provided by wayof canteen facility by the Appellant party, are not supplies under the provisions of the GST Act, as Learned Counsel has harped on the issue that provisioning of Canteen Services is mandated under law and so it cannot be considered as supply?

6.7 To this, the Counsel stated that for something to become supply, it is essential to have element of consideration therein. However, since such activity is statutorily mandatory, there is no discretion in supplying Canteen Services and the Service is not for a consideration.

6.8 Further, Sh. Vishal Aggarwal, CA also submitted that he has nothing more to add and the case be decided as per the facts on record and proceedings of personal hearing.

6.9 Further, the Appellant made additional submissions dated 21.08.2023 (received in the office of the Commissioner, (State Taxes & Excise), HP on 06.09.2023), where-in, they inter-alia submitted as under:-

(a) That in addition to the detailed submissions made in para A1 to A11 of their grounds of Appeal filed, the Appellant wishes to submit the following additional arguments:

(b) That the Learned Authority has erred in ruling that GST is applicable on the nominal cost recovered by the Appellant from its employees towards providing canteen facility. The Learned Authority has failed to consider the clarification provided by the CBIC vide Circular No. 172/04/2022-GST dated 6th July, 2022 ('the Circular') wherein it has been clarified that any 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.

(c) The Appellant would also like to draw attention to the agenda and the minutes of the 47th GST Council Meeting, wherein the applicability of the proviso *(supra)* was discussed. The relevant extract from the agenda for the 47th GST Council Meeting is provided below:

"B. Clarification on various issues of section 17(5) of the CGST Act and supply by employer to employees

2.1.....

2.2.....

2.3.1.....

2.3.2. Doubts have also been raised regarding the taxability of various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee.

2.4 Law Committee in its meeting dated 11.04.2022 deliberated on the issue and recommended that the issue may be clarified through a circular that –

i.....

ii.....

iii. 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 [this aspect was earlier made known to the public through press release dated 10.07.2017]"

Relevant extract from the minutes of 47th GST Council Meeting:

"7.23 Clarification on various issues of Section 17(5) of the CGST Act

7.23.1……..

7.23.2……..

7.23.3 Another issue was whether various perquisites provided by employer to its employees as per contractual agreement, were liable for GST. The Law Committee clarified that any perquisites provided by employer to its employees in accordance with the terms of contract were in lieu of services provided by the employee and as per Schedule III of the CGST Act, the same would not be subjected to GST."

(d) that the food facility provided by the Appellant to its employees would not amount to 'supply' under GST and accordingly GST is not payable on the amount recovered/representing the employees portion of canteen charges which is collected by the Appellant and paid to the canteen service provider.

(e) It is abundantly clear that any services provided by the employer to the employees in terms of the contractual agreement entered into between the employer and employee will not be subjected to GST. As explained in the Appeal memorandum, the Appellant in the present case is providing canteen facility to its employees as per the requirements of the provisions of Factories Act. The deduction of the nominal amount is also established from the pay-slips. Copies of sample pay-slips are attached as Annexure-A. Further, the amount charged by the Appellant is fully paid to the third-party contractor and no profit or pecuniary benefit is involved in this activity. Hence, the provision of canteen facility should be excluded from the purview of supply.

(f) Therefore, the Appellant humbly submits that the canteen facility provided by the Appellant to its employees cannot be treated as supply and therefore, GST is not payable.

(g) That in addition to the detailed submissions made in para C1 to C13 of their grounds of Appeal filed, the Appellant wishes to submit the following additional arguments:

(h) That the Appellant is involved in the business of the manufacture, supply and distribution of automotive components and providing canteen facilities to its employees is not the business of the Appellant. The canteen facility is provided by a third-party canteen service provider for which the third party is raising an invoice on the Appellant with GST. Therefore, the canteen services are being provided by the third-party service provider only. The Appellant is merely acting as a conduit to provide the canteen facility.

(i) The Appellant submitted that it is not in the business of providing canteen facility. Further, providing/ non-providing of such canteen facility will not affect the business of Appellant in any manner. Hence, the canteen facility cannot be said to be a business activity of the Appellant and the provision of canteen facility to the employees cannot qualify as supply.

(j) The Appellant also submits that the business of manufacturing, cooking, packing, supplying food items is strictly regulated in India under the Food Safety and Standard Act, 2006 ("FSSAI Act"). The canteen service provider, being involved in such activities of manufacture of food and the provider of canteen service is complying with the conditions and provisions of FSSAI Act. Accordingly, the canteen service provider has obtained the requisite license under FSSAI Act as a 'food caterer'. A copy of the license is attached as **Annexure-B.**

(k) The Appellant is acting as a mere facilitator in the transaction between the third-party contractor and employees. Therefore, the Appellant does not hold a license to carry out food related business. Had the Appellant been engaged in the business of canteen services, the Appellant would have been required to obtain the requisite registration and undertake necessary compliance under the FSSAI regulations. The relevant provisions under FSSAI Act are extracted below:-

"Section 3(1)(n) "Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients;

Section 3(1)(o) "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;"

(l) From the above, it is evident that the term "food business" means any undertaking involved in the activities related to manufacture, processing, packaging, storage, transportation and in distribution of food. It also provides that a food business operator is a person who carries or owns a food business and is responsible for carrying out the compliance of this Act, rules and regulations made under this Act. The Appellant is not involved in any of the activities mentioned above. The Appellant only enters into the contract with a third-party contractor who provides the food to the employees. The Appellant is only a facilitator in the said transaction.

(m) Further, according to Regulation 2.1 of Food Safety and Standards (Licensing and Registration of Food Businesses), Regulations 2011, all the food business operators in the country will have to be registered. Since, the Appellant is not a food business operator, the Appellant is under no obligation to obtain registration and to carry out compliance of the FSSAI Act and Rules. This also supports the above contention of the Appellant that the Appellant is not engaged in the business of canteen services.

(n) In view of the above, the Appellant's business is neither a "food business" nor the Appellant qualifies as a "food service operator". Therefore, the Appellant cannot be said to be engaged in the business of providing canteen services.

(o) Reliance is placed by the Appellant on the judgment of the Hon'ble Authority for Advance Ruling, Uttar Pradesh in the case of M/s. Shriram Pistons and Rings Limited [2023 (6) TMI 1297], wherein the Hon'ble Authority observed that the activity of provision of canteen facility is not in the course or furtherance of business of the Applicant and therefore, GST is not applicable on the amount deducted/ recovered from the employees.

(p) That in addition to the detailed submissions made in para D1 to D7 of their grounds of Appeal filed before your good office, the Appellant wishes to submit the following additional arguments that ITC should be eligible with regard to the canteen facility provided to the direct and contract employees;

(q) That Section 17(5) of the CGST Act,2017, begins with "*Notwithstanding anything contained in section 16(1)*", to imply that section 17(5) of the CGST Act,2017, would have an overriding effect on section 16(1) of the CGST Act,2017. It is settled law that a clause beginning with 'notwithstanding anything...' appended to a section, with a view to give the enacting part of the section an overriding effect over any other provision or any other provisions of the Act mentioned in the *non obstante clause*.

(r) That the Learned Authority in para 20 of the impugned order has held that the Appellant is not eligible to ITC of the GST paid on manpower supply services that are used for providing canteen facility, as the services of providing canteen facility by the Appellant fall under Sl. No. 7 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 ("rate notification") which attracts GST @ 5% without ITC. In this regard, the Appellant submits that section 17(5) of the CGST Act, 2017 (supra) which is a non-obstante clause, does not impose any restriction on ITC to the Appellant in this case, it is only the rate notification that contains such a restriction. The Appellant submits that the provisions of Section 17(5) of the CGST Act, 2017 will have an overriding effect over Section 16 of the CGST Act, 2017 and the rate notification;

(s) Further, the Appellant would also like to submit that, input tax credit availability should not be restricted only to the extent of GST charged by the service provider in respect of canteen facility provided to its direct employees alone since, the proviso to section 17(5)(b) of the CGST Act,2017 provides that, 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 and in the instant case, the company is providing canteen facility only on the basis of obligation cast under the Factories Act, 1948. As per section 2(l) of the Factories Act, 1948, contract employees are also considered as workers. Under Section 46 of the Factories Act, 1948 a canteen shall be provided and maintained by the 'occupier' for the use of the workers (which includes contract employees). Thus, contract employees who are recognized as workers under the Factories Act, are also employees in the context of the proviso which allows ITC for a statutory obligation;

(t) That on conjoint reading of the provisions of the section 17(5) CGST Act,2017 and Factories Act,1948 extracted above, it appears that, the provisions of the CGST law does not restrict the eligibility of ITC. Further, the input tax credit shall be available where it is obligatory for the Appellant to provide the same to its employees, including contract employees;

(u) That the Appellant submits that the Learned authority *vide* para 24 of the impugned order has erred in ruling that ITC of GST paid on canteen service would not be available to the Appellant as these are blocked credits under Section 17(5)(b)(i) of the CGST Act, 2017;

(v) That the Appellant submits that the Learned authority has completely ignored the clarification issued by the CBIC *vide* Circular 172/04/2022-GST dated July 06, 2022,

which makes it amply clear that ITC should be available where it is obligatory for an employer to provide the services to the employees under the provisions of any law. The circular clarifies that the proviso at the end of Section 17(5)(b) is applicable to the entire clause (b) of Section 17(5) of the CGST Act, 2017.

(w) The Appellant would also like to draw attention to the agenda and the minutes of the 47th GST Council Meeting, wherein the applicability of the proviso *(supra)* was discussed. The relevant extract from the agenda for the 47th GST Council Meeting is provided below:

"B. Clarification on various issues of section 17(5) of the CGST Act and supply by employer to employees

2.1……..

2.2……..

2.3.1 In the context of section 17(5) of the CGST Act, various doubts have been raised by the field

formations as to -

i. 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)?

ii. ……..

2.3.2. ……

2.4 Law Committee in its meeting dated 11.04.2022 deliberated on the issue and recommended that the issue may be clarified through a circular that –

i. proviso after sub-clause (iii) of section 17(5)(b) of CGST Act is applicable for all sub-clauses (i), (ii) & (iii) of section 17(5)(b);

ii……

iii……."

Relevant extract from the minutes of 47th GST Council Meeting:

"7.23 Clarification on various issues of Section 17(5) of the CGST Act

7.23.1 The second issue pertained to interpretations of Section 17(5). In this regard, one of the issues was whether proviso at the end of Section 17(5)(b) of the CGST Act is applicable to entire clause (b) or only to sub-clause (iii) of clause (b). The Law Committee clarified that the proviso after sub clause (iii) of Section 17(5)(b) is applicable to all the sub clauses under clause (b) of Section 17(5).

7.23.2.....

7.23.3....."

(x) That Clause (b) of Section 17(5) of the CGST Act, 2017 restricts ITC on outdoor catering. It is therefore clear from the Circular that although Section 17(5)(b) restricts ITC on outdoor catering, ITC would still be available if it is obligatory for the Appellant to provide the canteen services to its employees under any law for the time being in force;

(y) That in view of the aforesaid, the second proviso is applicable to the entire Section 17(5)(b) of the CGST Act. In the instant case, it is obligatory for the Appellant to have canteen in its factory in terms of Section 46 of the Factories Act due to more than 250 workers. Therefore, the Appellant has engaged canteen service provider to provide canteen service to fulfill its obligation under the Factories Act. Accordingly, the Appellant should be eligible to avail ITC of GST paid against the invoice raised by the canteen service provider and such credit should not be subject to the rigor of Section 17(5)(b)(i) of the CGST Act;

(z) That it is settled law that circulars issued by CBIC are binding on and to be followed by revenue. Hence pursuant to the clarification issued by CBIC through the above-mentioned circular, it is evident that the recovery of nominal cost from the employees will be outside the ambit of GST. Further, the ITC of GST paid by the Appellant towards canteen service would be available to the Appellant considering the mandatory obligation to provide canteen facility in terms of the Factories Act.

7. DISCUSSIONS AND FINDINGS

7.1 We have carefully considered all the material on record and the relevant provisions of

Law. The Appellant is before this Authority seeking to set aside/modify the ruling passed by the AAR and hold that recovery of nominal amount from the employees for making payment to the third-party service provider, providing food in canteen, as mandated in the Factories Act, 1948, would not attract tax under GST being not a "supply".

7.2 The Appellant has set up a canteen facility for the benefit of its employees and contract workers, at their manufacturing unit located at Plot No. 5, Sector 2, Tehsil Kasauli, Parwanoo, Solan, H.P. As per facts on record, there are 380 workers/ employees in the factory (at the time of filing application for obtaining Advance ruling). The Appellant is calling its own employees as 'management employees', where as he is calling contract workers as 'contract employees'. For the sake of clarity and gravity, we would use the expression 'employees' for the management employees, as engaged by the Appellant and 'contract workers' for the persons supplied by the contractor.The Appellant states that they are providing canteen facility through the contractor namely M/s Keerat Hospitality & Catering Service, Parwanoo, Distt. Solan (HP) and paying on monthly basis to such contractor based on actual eatables. In this background the Appellant has filed the appeal against the order passed by the Advance Ruling Authority.

8. At the outset, it is observed that the Appellant is asking questions which are quite ambiguous. Vide question (1) (para 4 above refers) they are asking whether deduction of amount by the Appellant from the salary of employees is supply or not and consequently such deductions is leviable to GST or not? The similar question is asked with respect to the recovery made from the manpower supplier in the case of contractual workers. We observe that the collection of money is never supply and, therefore, can never be leviable to GST. This is clearly borne out of Section 2(52) of the CGST Act, 2017 which while defining goods excludes "money" from its purview. Similarly, definition of services is defined in Section 2(102) of the CGST Act, 2017 excludes "money" from its purview. Clearly, deduction of amount from the salary or recovery of some amount from manpower supplier (in case of contractual worker) will be a transaction in money, accordingly, it is not the transaction relating to supply of goods and services, and hence, not liable to GST.

8.1 It seems that the Appellant wanted to raise the question, as to whether, supply of food on subsidised rate to its employees/contractual workers, is liable to payment of GST or otherwise? We would answer this query in subsequent paras. Further, the second major issue, which has been raised by the Appellant, is whether, they are eligible to claim input tax credit,

of the GST charged, by the canteen service provider, to the Appellant, for making supply of food? This would also be dealt in subsequent paras.

8.2 We find that to answer the queries raised by the Appellant, it is necessary to first decide as to whether supply of food at subsidised rate to employees and/or contractual workers is supply within the meaning of Section 7 of the CGST Act or the not? And if yes, whether such supply attracts GST or not?

8.3 With this intention we quote the relevant provisions of Section 7 of the CGST Act, as under:-

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;

(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.

8.4 From the reading of clause (a) and (aa) above, it is clear that the definition of supply is inclusive definition and it includes all forms of supply of goods or services for a consideration in the course of "Furtherance of Business". The Appellant is arguing that supply of food is not made for consideration and is not in the course of furtherance of business. We would examine the pleas in this regard.

9. We find that the Appellant has stated that they are recovering nominal amount from their employees (including contractual workers) for food provided which cannot considered as 'Consideration'. The Appellant has relied upon the Education Guide of Service Tax and some judgements to say that consideration is present only if there is an element of reciprocity between the service provider and the person making the payment. The Appellant has accepted that they are charging some amount from their employees as well as contractual workers. Vide Appellant email dated 08.09.2023, it is informed that canteen service provider has charged about Rs.45.43 lakhs towards supply of food, Rs.1.14 lakhs towards CGST and Rs.1.14 lakhs towards SGST during the period January, 2023 to July, 2023. In other words the total money paid to the canteen service provider for the period January, 2023 to June, 2023 totals to about Rs. 47.70 lakhs. Against this payment it is claimed that the Appellant

has recovered Rs.1.58 lakhs from the employees and Rs. 0.95 lakh from manpower supplier, who is supplying them contract workers. Therefore, consideration is present in the transaction.

9.1 Coming to legal position, it is seen that the consideration is defined in Section 2(31) is as under:

"(31) — "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;"

9.2 The reading of definition of 'consideration' as quoted above, makes it clear that the quantum of consideration is immaterial for the purpose of GST law and, therefore, even if an amount of 5% (as claimed in the appeal) of the total cost paid to the canteen service provider, is recovered from the employees/contractual workers, still it remains a 'consideration' within the meaning of word 'consideration' as defined above.

9.3 The second argument of the Appellant is that there is no element of reciprocity between the service provider and the person making the payment. For this proposition, they are relying upon Education Guide of Service Tax. It is an accepted case that the amount is deducted/ charged from the employees/contract workers, for supply of subsidised food and therefore, the element of consideration is self evident. In other words it is not a case where amount is deducted/ collected without any supply in return. Though, the supply is made at concessional price, still there is direct connection between the supply of food and money recovered/ charged from employees/manpower contractor. Moreover, there are no free lunches in the world except in case of gift and donations. The supply of food to workers is neither a gift nor a donation. So consideration, monetary or otherwise, is self evident.

9.4 Further, we also find that the Appellant has also relied upon some judgments passed by Hon'ble High Courts, wherein, it has been held that supply of food stuff in factory, for canteen, does not constitute sale, as dominant object of running such canteen is rendering services to its employee as welfare measure; that the Hon'ble Courts have held that supply of food to employees in a canteen, is not liable to sales tax. We find that even these contentions of Appellant and the case laws cited by them, hold that the 'supply of food to factory workers is rendering of service and but since GST is chargeable both on supply of goods and services and therefore, this is immaterial whether such supply of foods is considered as sale or service as GST is leviable on both types of transactions of goods whether sale or service. The case laws cited by the Appellant hold that the supply of food to its employees is service, therefore even accepting his contention; GST is leviable for supply of food.

9.5 Further, we find that the Appellant has also contended that supply of subsidised food should be seen a part of pay package negotiated with the workers. We would discuss this plea in later paras.

10. We also observe that the Appellant has argued that he is in the business of manufacture and supply of automotive components and supply of food is not his business, rather, it is their obligation under the provisions of the Factories Act, 1948. The Appellant has quoted few case laws, which elaborate the meaning of expression "Furtherance of Business". However, since the CGST Act itself defines the expression 'business' under section 2(17) of the CGST Act, 2017, therefore, there is no need to look any further to gather the meaning of term business as considered in different cases/ provisions of law. The definition of 'business' as given in Section 2(17) of the CGST Act, 2017 is as under:-

"(17) "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 incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;"

10.1 It is an accepted fact that the Appellant is not carrying out supply of food as his principle activity. No doubt his principle activity remains as manufacture and supply of

automotive components. Therefore, it needs to be seen whether the activity of supply of food, falls under clause (b) of definition of business, as extracted above?

10.2 The term '*incidental*' has been defined in various dictionaries as under:

Oxford Dictionary – *the happening as part of something more important.*

Cambridge Dictionary – *less important than the thing something is connected with or part of.*

Dictionary.com - *happening or likely to happen in an unplanned or subordinate conjunction with something else.*

10.3 Similarly word '*ancillary*' has been defined as under:

Oxford Dictionary – *provide necessary support to the main work or activities of an organisation.*

- *In addition to something else but not as important.*

Cambridge Dictionary: *providing support or help.*

Dictionary.com – *supporting, secondary, subsidiary*

10.4 The reading of all above definitions clarifies that any activity, which supports the main activity or necessary to carry out the principle activity, is an activity or transaction in connection with or incidental to or ancillary to the principle activity. The Appellants has pleaded that he is providing food in compliance to the provisions of the Factories Act, 1948 and therefore, even going by his own pleading, supply of food is in connection with and ancillary to his main activity of manufacture and supply of automotive components.

10.5 Further, in terms of Section 2(17) (c), as mentioned in para 10 above, the volume of transaction is immaterial for the purpose of coverage under "Business", therefore, even if supply of food is quite insignificant activity in terms of volume of transaction, still in terms of clause (c) of the aforesaid section ibid, the activity of supply of food, is a supply within the meaning of supply under Section 7 of the CGST Act, 2017. In other words, clause (b) and (c) of definition of business covers the activity of supply of foods, within the definition of "business"

10.6 The Appellants has also cited the few rulings passed by the Advance Ruling Authority in respect of some other parties holding that GST is not leviable on the amount collected from the employees towards canteen charges. Though, there is no denying that these rulings have some persuasive value, however, these rulings are not binding on this Authority and this Authority differs from the rulings pronouncement by the AAR/AAAR in similar cases favouring the Appellant. It is also a fact that some of AAR/ AAAR rulings have also held that GST is leviable on subsidised food supplied by the taxpayers to their workers. The Appellant has ignored these rulings for the obvious reason. Since, we have a different appreciation of law and, therefore, we are not persuaded to adopt the view that supply of subsidised food to the employees/contractual workers is not leviable to GST.

11. The next line of argument which has been adopted by the Appellant is supply of food at subsidised rate is not liable to GST in terms of Circular No. 172/04/2022-GST dated 06.07.2022 of CBIC, the relevant extract of the said circular is reproduced hereunder for case of reference:

S. No.	Issue	Clarification
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?*	*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.* *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.

11.1 Before proceeding further in the matter, it is necessary to understand the logic and law behind the aforesaid clarification. As is rightly observed in the clarification, the services by the employer to the employee, in the course of employment, are out of the purview of GST. Naturally, an employer pays some compensation either in monetary (money) form or otherwise (kind) to the employee. Therefore, perks provided by the employer to its employees, as a part of compensation for the services rendered, is not an independent supply but is in connection with or in relation to the employer-employee relationship. Accordingly, the CBIC in its circular ibid, has mandated that perks provided in terms of contractual agreement, are not supply under GST. In other words, the circular ibid has mandated that if any perk is provided to the employee, in terms of contractual agreement, then such perks are outside the purview of GST.

11.2 The AAR in its ruling has held that there is not contractual agreement between the Appellant and the employees/ contract workers for providing subsidised food and, therefore, benefit of the circular cannot be extended to the Appellant. The Appellant during the course of hearing has adopted the argument that since it is statutory mandated in the Factories Act that canteen facilities is to be established in the factory, therefore it is immaterial whether such clause is mentioned in the contractual contract or not. He further stated that there is an implied contract between the Appellant and the employees, and the employees are aware that they would be getting the food at subsidised rate. Since under the law, employees have right to receive benefit, therefore absence of this clause in the employment agreement cannot be the basis for denial of benefit of above circular in his case.

11.3 We are of the opinion that Employment Agreement lists out the compensation which is agreed to be granted by the employer to the employees towards their services. If any perk is mentioned in the employment contract, then it becomes binding for the employer to provide the same to the employees, otherwise such an employer can be sued in the court of law for the breach of condition of employment contract. Therefore, anything provided beyond the employment contract, is a part of sweet will or largesse on the part of employer and cannot be insisted upon by an employee. Viewed from this angle, a perk, which is not specified in the

employee contract, is not in lieu of services, supplied by the employer to the employee but the largesse or matter of good will on part of such employer. Therefore, absence of mention about supply of subsidised food, in employment contract, cannot be equated with perk mentioned in the employment contract as talked about in above referred CBIC circular.

11.4 The Appellant has also harped upon the fact that Factories Act, 1948 mandates supply of food to the employees. In this regard, the relevant provisions of Section 48 of the Factories Act, 1948 are produced 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 therefore:

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen:

[(dd) the items o/ 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). "

11.5 From the reading of above provisions of Section 46 of the Factories Act, 1948, it is clear that in a factory where more than 250 workers are ordinarily employed, there provisions for canteen is a must, however, it does not provide for any provision for exemption from levy of any taxes. In fact tax in the case of supply of food/beverages is leviable in terms of the provisions of the GST Law; and is not covered by any exemption, at all. Even logically speaking, provisions of the Factories Act, cannot provide any mandate on the issue of leviability or otherwise, of GST, a question which needs to be determined within four corners of the GST Law. Further, the said consideration for supply of food/beverages, although at the subsidised rate, also does not qualify as the perquisite to extend the benefit of non-levy of GST in terms of the above cited Circular dated: 06.07.2022, as already discussed above.

11.6 Further, we find that Rule 68 of the Himachal Pradesh Factories Rules, 1950, also envisages as under:-

"68. Prices to be charged- (1) Food, drink and other items served in the canteen shall be sold on a non- profit basis and the prices charged shall be subject to the approval of the Canteen Managing Committee.

(2) The charge per portion of food stuff, beverages and any other item served in the canteen shall be conspicuously displayed in the canteen.

**(3) Where the canteens are managed by a co-operative society of the workers, a nominal profit not exceeding 5% may be charged by such society."*

11.7 We find that although the above quoted Rule 68 of the Himachal Pradesh Factories Rules, 1950 does provide that food is to be provided at no profit basis, but, it is clear that though supply of food is mandatory but the Factories Act or the Rules do not mandate supply of food at subsidised rate or food without taxes. Therefore, the supply of food even at subsidised cost, is a supply within the meaning of Section 7 of the CGST Act, 2017 [value of such supplies to be determined under Section 15 of the CGST Act, 2017 read with provisions of Chapter IV of the CGST Rules, 2017] and do not qualify as perk as considered in terms above Circular dated 06.07.2022 ibid.

11.8 The Appellant has relied upon the above mentioned Circular dated 06.07.2022 and, to strengthen his claim, has also further stressed that it is settled law that circulars issued by CBIC are binding on and to be followed by revenue. But, the fact of the matter is that, since the Appellant had no explicit contractual agreement with regard to the canteen facility, the same cannot be equated to perquisites mentioned in the said Circular. Hence, even as per the Circular ibid, and cited by the Appellant, the canteen facility goes out of the purview of 'perquisites' as the canteen facility was not provided in terms of contract between the employer and employee.

12. Now, coming to the other issue which is to be decided here is, whether input tax credit (ITC) is available to the Appellant on GST charged by the service provider on the canteen facility provided to employees working in the factory or otherwise?

12.1 Before deliberating on this issue, it would be prudent to refer to the Section 17(5) (b) of CGST Act, 2017, which pertains to blocking of ITC:

"Section 17(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:-

(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."*

(emphasis supplied)

12.2 The reading of the above provision makes it clear that provisions of blocked credit under Section 17(5)(b), inter-alia on food and beverages, do not apply only where, it is obligatory for an employer to provide goods and services or both to the employee under any law for the time being in force. Since, the proviso carves out an exception to the Rules/ Provisions, a strict interpretation is required to be adopted for examining its applicability. Since the contract workers are not employees of the Appellant, therefore, the benefit of the above proviso will not be applicable in respect of contract workers but will be limited only with respect to the employees.

12.3 We observe that the above Section 17(5) (b) was amended on 01.02.2019. The same was resultant of the 28th meeting of the GST Council held on 21st July, 2018. The Press Note issued on the recommendations made during above meeting stated that the scope of input tax credit is being widened and it would now be 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. The Appellant submitted that they are a manufacturing unit and that there are 380 workers/employees in the factory (at the time of filing application for obtaining Advance ruling); that in accordance with Section 46 of the Factories Act, 1948, it is obligatory on them to provide canteen facilities within the factory premises.

12.4 We also observe that that **Circular No. 172/04/2022-GST dated 06.07.2022** has been

issued, by the CBIC, wherein clarifications on various issue pertaining to GST have been provided. In the above Circular, at S. No.3 of Para 2, clarification has been provided on the issue as to whether the proviso at the end of clause (b) of Section 17(5) of CGST Act, is applicable to the entire clause (b) or only to sub-clause (iii) of clause (b). It has been clarified by the Board that vide the CGST (Amendment Act), 2018, clause (b) of Section 17(5) was substituted with effect from 01.02.2019 on the **recommendation of GST Council's 28th meeting** and accordingly, the proviso after sub-clause (iii) of Section 17(5)(b) of CGST Act, is applicable to whole clause (b) of Section 17(5). The relevant portion of above clarification is reproduced below:

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)?	1. Vide the Central Goods and Services Tax (Amendment Act), 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 1-2-2019. 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 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."* 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 sub-section (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 21-7-2018. 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."* 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.

12.5 In view of above legal position clarified by CBIC, as second proviso to Section 17(5)(b) inserted vide CGST Amendment Act, 2018, effective from 1.2.2019, is applicable to the whole of clause (b) of sub-section (5) of Section 17 of the CGST Act, 2017, therefore, we find that Input Tax Credit will be available to the Appellant in respect of food & beverages as canteen facility, is obligatorily to be provided under the Factories Act, 1948, to its **employees** working in the factory. Input Tax Credit will be available in respect of such services provided by canteen facility to its **direct employees** but not in respect of other type of workers including contract employees/workers, visitors etc.

12.6 The issue which is flowing out of para 12.5 above is, whether ITC available on GST charged by the canteen service provider, on canteen facility provided to its employees working in their factory, will be restricted to the extent of cost borne by the Appellant or not? For answering this question, we intend to rely upon the judgment of Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Nagpu Versus Ultratech Cement Ltd., [2010 (260) E.L.T. 369 (Bom.)] wherein it was held as under:-

" 39. The Larger Bench of CESTAT in the case of GTC Industries Ltd. (supra) has also observed that the credit of service tax would be allowable to a manufacturer even in cases where the cost of the food is borne by the worker(see last para). That part of the observation made by the Larger Bench cannot be upheld, because, once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer."

12.7 The ratio laid down in the said case is also applicable to the present case where part of cost for providing canteen services is recovered by the Appellant from its employees. We find that the ITC on GST charged by the canteen service provider will be available only to the extent of cost borne by the Appellant, for providing the canteen services only to its direct employees.

12.8 However, this is not the end of the issue, and in this particular case, matter needs to be examined further in the light of fact of the present case and various Tax Notifications.

12.9 As per the provisions of the Factories Act, 1948 as extracted in Para 11.4, the Appellant has the legal responsibilities to provide & maintain the canteen. The Appellant has accordingly, instead of maintaining the canteen himself, has engaged another person (hereinafter called as Canteen Contractor), who is providing canteen services to the workers of the Appellant on behalf of the said Appellant. The service so provided is righty classifiable

as "Restaurant Service" as already clarified under Circular No. 164/20/2021/GST dated 06.10.2021 where-under, vide Point No. 3 & 4. it has been clarified that cooking & supply of food will only be covered under Restaurant Service and in case there is no cooking but only supply of food then GST rate as applicable on supply of Goods would be attracted. In other words, if the cooking of food & supply of the same food is made as a single transaction, then the said transaction is the Restaurant Service. The Restaurant Service attracts 5% of GST in terms of entry no.7 (ii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 which was amended by the Notification No. 20/2019-C.T. (Rate) dated 30.09.2019, effective from 01.10.2019.

12.10 From the facts of the case, it is clear that Canteen Contractor is providing Restaurant Service to the Appellant which is chargeable to GST @5% rate in terms of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended, without availment of ITC. Under explanation to the aforesaid entry, it has been clarified that the concessional rate is mandatory rate and availing the normal rate of tax will not apply and that is the reason the amended Notification No. 20/2019-C.T. (Rate) dated 30.09.2019 has been issued exercising power under Section 16(1) and Section 148 of the CGST Act, 2017, so as to come out of the provisions of permitting availment of ITC. In other words, a Taxpayer providing Restaurant Service has no option of taking ITC and providing Restaurant Service at normal rate.

12.11 Accordingly, the canteen service provider is providing the service to the workers of the Appellant on behalf the said Appellant and paying Tax at specified rate of 5% in terms of the Notification ibid. The Appellant is also recipient of service when viewed in terms of definition of recipient of service, as defined in Section 2(93)(a) of the CGST Act, 2017, which is reproduced below:-

"(93) "recipient" of supply of goods or services or both, means —

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;"

12.12 So in the instant case, the flow of the transaction is that the Canteen Contractor is providing service to the Appellant, which is classifiable as Restaurant Service and the Appellant himself is also providing same service to its worker as mandated in the Factories Act, 1948 i.e. he is also providing a Restaurant Service to its worker. As already mentioned in para 12.10, the Restaurant Service compulsorily attracts rate of 5% without ITC in a non-specified premises and the Appellant's premises is not a specified premises in terms of

Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. Therefore, though the Section 17(5) of the CGST Act, 2017 does not debar availment of ITC in entirety, however, in the present case availment of ITC is debarred in terms of provisions of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019.

12.13 There is another way of looking at the transactions, that, had the Appellant not engaged any Canteen Contractor but decided to run the canteen himself, as mandated in the Factories Act, 1948, then also he had to compulsorily pay 5% of GST without availment of any ITC in terms of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 supra. Therefore, just by engaging, a Canteen Contractor, he can't be allowed to adopt an interpretation for availing ITC which is not available to him in a case of direct supply of Service.

13. In view of the foregoing facts, circumstances and provisions of the GST law, we hold that there is no case to differ from the decision of the Authority for Advance Ruling of Himachal Pradesh, issued, vide HP-AAR-21/2021-7865-68 dated 22.03.2023, albeit for different reasons.

14. Accordingly, we pass the following order:

RULING

Question 1: Whether the subsidized deduction made by the Appellant from the Employees who are availing food in the factory would be considered as a "supply" by the Appellant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Himachal Pradesh Goods and Service Tax Act, 2017? And;

Question 2: Whether GST is applicable on the nominal amount deducted from the salaries of its employees? And;

Question 3: Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?

Answer: **Supply of food to the employees and contract workers is a supply under the provisions of Section 7 of the CGST Act, 2017 and the Himachal Pradesh Factories Rules, 1950 and accordingly, it is leviable to the GST.**

Question 4: Whether Input Tax Credit (ITC) of the GST charged by the Canteen Service Provider would be eligible for availment to the Appellant?

Answer : Input Tax Credit will not be available to the Appellant on GST charged by the canteen service provider, in terms of provisions of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019, as discussed above.

(Rajesh Puri), IRS(C&IT)
Member
Chief Commissioner,
Central Goods and Service Tax Zone,
Chandigarh

(Dr Yunus), IAS
Member
Commissioner,
State Taxes and Excise
Himachal Pradesh

Place: - Chandigarh

Copy to (Regd AD/Speed Post/Email):- No. HPST&E/AAAR/RP-DY/FM/01-2023-26851 Dt. 26-09-2023

M/s Federal-Mogul Anand Bearings India Limited,
Plot No. 5, Sector 2, Tehsil Kasauli,
Parwanoo, Solan, H.P.
GSTIN 02AAGCA3784Q1ZA

No. HPST&E/AAAR/RP-DY/FM/01-2023-26852-858 Dt. 26-09-2023

Copy for information and necessary action to: -

1. The Member, GST, CBIC, North Block, New Delhi-110001.
2. The Special Secretary, Goods and Services Tax Council, 5th Floor, Tower-II, Jeevan Bharti Building, Connaught Place, New Delhi- 110001.
3. The Chief Commissioner, Central Goods and Service Tax Zone, Chandigarh.
4. The Commissioner, State Taxes & Excise, Shimla.
5. The Pr. Commissioner, CGST Commissionerate, Shimla.
6. The AC, ST&E, Parwanoo Circle-1, District Solan, HP.
7. The Master/Guard File- 2023-24.

Registrar, Appellate Authority for Advance Ruling,
Himachal Pradesh

IT Cell