

GST Implications on Canteen Facility Provided to Employees



This is to apprise you about a recent decision of Gujarat Authority for Advance Ruling ('AAR') in the case of **Tata Motors Limited, 2021-VIL-316-AAR**. The AAR was dealing with Goods and Services Tax ('GST') implications on canteen facility provided to employees.

A. FACTS

- The Applicant is providing canteen facility to its employees to comply with the Factories Act, 1948. For this, the Applicant avails the services of a canteen contractor for a consideration.
- The Applicant recovers a nominal subsidised amount from each employee on monthly basis and pay the same to the canteen contractor.
- Thus, in simple words, part of amount paid to the canteen contractor is cost to the Applicant and for another part the Applicant is collecting from the employee and paying to the canteen contractor.
- Applicant relied on *Press Release dated July 10, 2017*, to state that canteen facility provided to employees is not a supply under GST Laws.
- In this regard, the Applicant sought an advance ruling on the following questions:
 - Whether ITC available on GST charged by service provider on canteen facility?
 - Whether GST is applicable on nominal amount recovered from employees for use of canteen facility?

B. AAR ORDER

- The AAR observed that sub-clause (i) of Section 17(5)(b) of the Central Goods and Services Tax Act, 2017 ('CGST Act') which blocks Input Tax Credit ('ITC') on foods and beverages is independent. The proviso to Section 17(5)(b)(iii) is not applicable to food and beverages.

- The reason provided by AAR is that the said sub-clause of Section 17(5)(b) ends with colon: and is followed by a proviso and this proviso ends with a semicolon. Thus, the AAR held that ITC is not admissible.
- Further, the AAR held that GST is not leviable on the amount representing employee portion of canteen charges which is collected by the applicant and paid to the canteen contractor.

C. GABA & CO. | REMARKS

- *On the ITC part, it seems from the reading of the ruling that, the certain legal aspects were neither argued nor considered by the AAR. In GST Council Meeting, it was specifically discussed that the proviso is also applicable to Food and Beverages supplied by an employer in compliance with the obligation of a law.*
- *Therefore, the AAR has not gone into the rationale and reasoning given by the law makers but into the hyper-technical interpretation of colon and semi-colon.*
- *Secondly, given the facts of this particular ruling, it was not explained how the canteen contractor bills for its services. In fact, for this part, the AAR has not discussed any legal provision to conclude that GST is not applicable.*
- *In our view, however, the GST levy on canteen recoveries will be attracted unless a taxpayer designs the transaction in a favourable way **in written as well as the actual execution.***

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