


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/07
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/20)

Date:08.03.2021

Name and address of the appellant	:	M/s. Amneal Pharmaceuticals Pvt. Ltd. 882/1-871, Near Hotel Karnavati, Sarkhej Bavla Highway, Village Rajoda, Bavla, Ahmedabad – 382 220 (Gujarat).
GSTIN of the appellant	:	24AAGCA0781K1ZP
Advance Ruling No. and Date	:	GUJ/GAAR/R/50/2020 dated 30.07.2020
Date of appeal	:	18.09.2020
Date of Personal Hearing	:	22.12.2020
Present for the appellant	:	Shri Satyajit D. Naik

The appellant, M/s. Amneal Pharmaceuticals Pvt. Ltd. has more than 500 employees working in its factory. There is a canteen in the factory of the appellant, which is run by a third party i.e. Canteen Service Provider, to provide food to the employees of the appellant. As the appellant has arranged to provide the food to its employees at subsidized rate (and not free of cost), the appellant collects some portion of the total amount of food price to be paid to the ‘Canteen Service Provider’ from the employees, by deducting it from the salary of the employees. The appellant has submitted that it is only facilitating the supply of food to the employees, which is a statutory requirement under the Factories Act, 1948, and is recovering only employee’s share towards actual expenditure incurred in connection with the food supply, without making any profit.

2. In respect of the aforesaid nature of transaction, the appellant filed an application before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’) wherein it raised the following question for advance ruling :-

“ Whether GST is applicable on the amount recovered from employee on account of third party canteen services which is obligatory under Section 46 of the Factories Act, provided by company ?”

3. The GAAR, vide Advance Ruling No. GUJ/GAAR/R/50/2020 dated 30.07.2020 *inter-alia* discussed the meanings of the terms ‘outward supply’, ‘business’ and ‘consideration’, referred to clause 6 of Schedule II of the Central Goods and Services Tax Act, 2017 (herein after referred to the ‘CGST Act, 2017’)

and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017'), and answered the question raised by the appellant in affirmative i.e. it held that Goods and Services Tax is applicable on the amount recovered from employees on account of third party canteen services.

4.1 Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

4.2 The appellant has submitted that it is collecting and paying to third party i.e. Canteen Service Provider, the portion of employee. It has further submitted that as the canteen facility is required to be provided by a company as per section 46 of the Factories Act, 1948, hence this is not the appellant's main object of business. The appellant has contended that this is nothing but a facility provided to employees without making any profit and working as mediator between employees and contractor / Canteen Service Provider, therefore no Goods and Services Tax would be payable by employees to company on the subsidized value of food.

4.3 The appellant has submitted that this activity does not fall within the scope of 'supply' as the same is not in the course or furtherance of its business. It has also submitted that the Canteen Service Provider is charging Goods and Services Tax on supply of food and the appellant is not availing Input Tax Credit, therefore the canteen service provided by the appellant should not be construed as 'service' and no Goods and Services Tax should be payable.

4.4 The appellant has also referred to Sr. No. 19 of Notification No. 25/2012-Service Tax dated 20.06.2012.

FINDINGS :-

5. We have considered the submissions made by the appellant in the appeal filed by them as well as at the time of personal hearing, Ruling given by the GAAR and other evidences available on record.

6. In the present case, as submitted by the appellant, it has provided / arranged a canteen for its employees, which is run by a third party i.e. Canteen Service Provider. The Canteen Service Provider supplies foodstuffs to the employees of the appellant against consideration and pays applicable Goods and Services Tax thereon. However, in respect of the consideration being paid to the Canteen Service Provider, as per the agreed arrangements between the appellant and its employees, part of that consideration / amount is borne by the appellant whereas the remaining part is borne by its employees. The employees' portion of consideration / amount to be paid to the Canteen Service Provider is collected by the appellant and the consolidated amount of consideration (employees' portion as well as appellant's portion) is paid to the Canteen Service Provider by the appellant. The query raised in the present case is limited to the question of

applicability of Goods and Services Tax on collection of employees' portion of consideration by the appellant.

7. It is evident from the aforesaid nature of transaction that the appellant does not supply any goods or services to its employees against the amount collected from the employees. The appellant collects employees' portion of amount and pays the consolidated total amount, which includes appellant's share of amount also, to the Canteen Service Provider towards the foodstuffs provided to employees by the Canteen Service Provider. The appellant neither keeps any margin in this activity of collecting employees' portion of amount nor makes any separate supply to the employees. Furthermore, it is not the appellant who is supplying the foodstuff or canteen service to its employees, but it is a third party who is supplying the foodstuff or canteen service to the employees of the appellant. In our view, as the appellant is not carrying out the said activity of collecting employees' portion of amount to be paid to the Canteen Service Provider, for any consideration, such transactions are without involving any 'supply' from the appellant to its employees and is therefore not leviable to Goods and Services Tax.

8. We observe that the GAAR has ruled that the Goods and Services Tax is applicable on the amount recovered from employees, mainly on the premises that 'the appellant is supplying food to its employees', which would be covered under the definition of the term 'business' under Section 2(17) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017. However, the appellant has asserted before us that it is collecting the portion of employees' share and paying to Canteen Service Provider, a third party, which is nothing but the facility provided to employees, without making any profit and working as mediator between employees and the contractor / Canteen Service Provider. Under these circumstances, we hold that the Goods and Services Tax is not applicable on the activity of collection of employees' portion of amount by the appellant, without making any supply of goods or service by the appellant to its employees.

9. We, therefore, allow the appeal filed by the appellant M/s. Amneal Pharmaceuticals Private Limited and modify the Advance Ruling No. GUJ/GAAR/R/50/2020 dated 30.07.2020 issued by the GAAR, by holding that the Goods and Services Tax is not applicable on the collection, by the appellant, of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider.

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 08.03.2021.