

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/19
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/5)

Date: 12.04.2022

Name and address of the applicant	:	M/s. Cadila Healthcare Limited, Zydus Tower, Satellite Cross Roads, Sarkhej Gandhinagar Highway, Ahmedabad - 380015
GSTIN/ User Id of the applicant	:	24AAACC6253G1ZZ
Date of application	:	24/01/22
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(c) (d) (e) and (g)
Date of Personal Hearing	:	22/03/22
Present for the applicant	:	Shri Mitesh Jain, CA

Brief facts:

M/s. Cadila Healthcare Limited., hereinafter referred to as M/s Cadila for the sake of brevity, is engaged in manufacture, supply and distribution of various pharmaceutical products. M/s. Cadila is having 7200 (approx.) employees in their factory & corporate offices and is registered under the provisions of Section 46 of the Factories Act, 1948. As per the said provisions M/s. Cadila submits that it is mandated to provide canteen facility to its employees at the factory and provides canteen facility to its employees at the factory by appointing a Canteen Service Provider to comply with the statutory requirement laid down under the Factories Act. The summary of the type of employees and the nature of recovery of subsidized value is tabulated as follows:

Meals:

Sl. No.	Types of employee	Mode of availing facility	Basis of recovery	Mode of recovery	Book treatment	ITC availment in inward supply	Payment of GST on outward supply
1	Full-time employees	ID card or biometric	On the basis of consumption	Subsidized value deducted from salary on actual consumption and disclosed under the deduction side of the salary pay slip	Deduction is credited to the canteen expense account while the full amount of the invoice issued by the	ITC of the GST paid on the Canteen Service Provider's invoice,	GST is paid on the basis of the number of punches in the system during the

					Canteen Service Provider is booked as expense in the Applicant's Profit & Loss account	is not availed	month on open market value (i.e. the value charged by the canteen service provider)
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2. 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 M/s. Cadila Profit & Loss account without taking the benefit of ITC of the GST paid on the Canteen Service Provider's invoice.

3. M/s. Cadila and Canteen Service Provider have entered into an agreement that M/s. Cadila shall pay full amount to the service provider for the food served during a prescribed period on behalf of the employees and a pre-determined percentage of the amount paid by the M/s. Cadila is recovered from the employees (without any profit) and the balance amount is borne by M/s. Cadila, is being treated as staff welfare expense towards subsidized food served to the employees.

4. M/s Cadilla submitted as follows:

4.1 Merely setting up of a canteen facility for the employees and deduction of nominal cost would not tantamount to Supply under Section 7 of the CGST Act.

Concept of 'Supply' under CGST Act and its applicability thereof:

1.1. Section 9(1) of the CGST Act provides that there shall be levied a tax called the Central Goods and Service Tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding 20% as may be notified by the Government on the recommendation of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

1.2. Basis the above, it is clear that to levy tax on any activity, the activity is required to qualify as a 'Supply' in the first place. The provision of Section 7 of the said Act, which states that:

“(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;

(b) import of services for a consideration whether or not in the course or furtherance of business;

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

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”

1.3. Thus, the term ‘Supply’ includes all forms of supply (goods and/or services) and includes 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.

1.4. The following criteria, *inter alia*, plays a crucial role to determine the GST implications on provision of such a facility:

- There shall be a legal intention of both the parties to the contract to supply and receive the goods or services or both. The absence of such intention would not amount to Supply within a meaning of CGST Act;
- It should involve quid pro quo – viz., the supply transaction requires something in return, which the person supplying will obtain, which may be in monetary terms/ in any other form except in cases of deeming provision as specified in Schedule I; and
- The Supply of goods or services or both shall be affected by a person in the course or furtherance of business.

1.5. M/s. Cadila submitted that supply is from the Canteen Service Provider to the employees and not from the Canteen Service Provider to M/s. Cadila as the food gets consumed only by the employees. Though, the supplier is the Canteen Service Provider and invoice is raised on M/s. Cadila, but the ultimate recipient of such canteen facility is the employee. M/s. Cadila merely allows the Canteen Service Provider to use his demarcated area i.e. canteen area for serving food to the employees and makes payment to the Canteen Service Provider on behalf of the employees for administrative convenience.

1.6. M/s. Cadila cites Ruling of Gujarat AAAR in the matter of Amneal Pharmaceuticals Pvt. Ltd [TS-569-AAAR(GUJ)-2021-GST] wherein it was held that no GST to be levied on third-party canteen charges collected by employer from employee.

1.7. Further, M/s. Cadila places reliance on the following decision of various states Authority of Advance Rulings :

- (i) Dishman Carbogen Amcis Ltd (Advance Ruling No. GUJ/GAAR/R/22/2021) wherein it has been held that GST, at the hands on the applicant, is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider.

- (ii) Dakshina Kannada Co-Operative Milk Producers Union Ltd [2021 (8) TMI 352] wherein it is held that there is no supply of services by employer by paying part consideration of employees' refreshments.
- 1.8. M/s. Cadila cites a judgement of European Court of Justice (ECJ) in the case of *R. J. Tolsma Vs Inspecteur der Omzetbelasting Leeuwarden in case C-16/93 (Judgement of the Court, Sixth Chamber)* wherein it was held that *the Supply of Service effected for consideration within the meaning of that provision does not include an activity consisting in playing music on the public highway for which no remuneration is stipulated, even if musician solicits money and receives sum whose amount is however neither quantified nor quantifiable*. The principle espoused here was that a supply of services is effected for consideration only when the provider of the service and the recipient enter into a legal relationship wherein the provider carries out a service and receives remuneration in return for the said service – which was absent in the public performance on the highway owing to lack of intention. In the present case also; there was no intention of the M/s. Cadila to contract with its employees with respect to the service of food and beverages in its canteen premises – and hence, this basic requirement of qualifying as a supply itself is not satisfied.
- 1.9. M/s. Cadila has submitted that in light of the above judgement, that there must be a legal intention to enter in a contractual relationship with its recipient, which casts roles and responsibility on each of the contractual party, in order to fall under the ambit of Supply under GST. Unless there is an intention to provide a service, the same shall not be treated as Supply within the meaning of Section 7 of the CGST Act.
- 1.10. M/s. Cadila submits that there is no 'Supply' by it in the form of provision of canteen facility to its employees in view of the above.
- 1.11. M/s. Cadila submits that with respect to the definition of supply, as mentioned in Section 7 of the CGST Act, (Supra) it is pertinent to evaluate another element of supply which states that an activity could be considered as a supply only if it is made or agreed to be made for a consideration. Thus, it becomes very critical to analyze the term consideration against the deduction of amount from its employees' salary.
- 1.12. The term consideration defined in Section 2(31) of the CGST Act, 2017 is as follows:
'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.

- 1.13. M/s. Cadila submit that a supply must involve enforceable reciprocal obligations. If something has been used, but there was no agreement for its supply between the relevant parties, any payment subsequently received by the aggrieved party is not consideration for supply. The receipt of payment is not premised on the enforcement of reciprocal obligations between parties and cannot be linked to a supply for the purpose of levying GST. Hence, the deduction in employees' salary made by M/s. Cadila would constitute a mere transaction in money between the M/s. Cadila and its employees.
- 1.14. M/s. Cadila has placed reliance on the judgement of Bombay High Court in the case of Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra [Commercial Suit (I) No. 236 of 2017], has held that for GST to be payable on any payment, there must be the necessary quality of reciprocity to make it a 'supply'.
- 1.15. M/s. Cadila submit that it deducts a pre-determined amount from the employee's salary as a recovery of expenses under employment relationship without any commercial objective. The same is also shown as a deduction in the salary slip provided to the employees. Based on the above interpretation, it can be said that there is no reciprocity of any activity or transaction i.e. when is no express or implied reciprocity i.e. quid-pro-quo, between the Applicant and the employees. Thus, in the absence of an identifiable supply, the activity would not constitute 'consideration' for any supply.
- 1.16. M/s. Cadila has submitted that Section 7 of the CGST Act, (Supra) states that an activity could be considered as a supply only if it is in the course or furtherance of business.
- 1.17. 'Business', defined in Section 2(17) of the CGST Act reads as follows:

"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 incidents 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;*
- (d) *supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- (e) *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- (f) *admission, for a consideration, of persons to any premises;*
- (g) *services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- (h) *[activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]*

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.”

1.18. M/s. Cadila states that considering the nature of activities and transactions undertaken by them does not fall within the definition of business from Sr. No. (c) to (i) above.

1.19. The Black Law’s dictionary provides the below definitions for the activities in Sr no (a):

a. Trade – *“The business of buying and selling or bartering goods or services; A transaction or swap; A business or industry occupation; a craft or profession.”*

b. Commerce – *“The exchange of goods and services, esp. on a large-scale involving transportation between cities, states, and nations.”*

c. Manufacture - *“A thing that is made or built by a human being (or by a machine), as distinguished from something that is a product of nature. Manufacturers are one of the statutory categories of inventions that can be patented. Examples of manufactures are chairs and tires.”*

d. Profession - *“A vocation requiring advanced education and training. Collectively, the members of such vocation.”*

e. Vocation - *“A person’s regular calling or business; one’s occupation or profession.”*

f. Adventure - *“A commercial undertaking that has an element of risk; a venture. Cf. Joint venture; A Voyage involving financial and insurable risk, as to a shipment of goods.”*

g. Wager - *“Money or other consideration risked on an uncertain event; a bet or gamble. A promise to pay money or other consideration on the occurrence of an uncertain event. See wagering contract under Contract.”*

1.20. It cites 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 the term ‘furtherance of business’ has been pointed out as:

“The meaning of ‘furtherance’, as per Black’s Law Dictionary, 6th Edition, 11th reprint, 1997, is act of furthering, help forward, promotion, advancement or progress. Furtherance of business will, thus mean, act of furthering business, helping forward business, promotion of business, advancement of business or progress of business.”

1.21. In the Australian Concise Oxford Dictionary (1997) defines the phrase ‘in the course of’ as ‘during’ and the word ‘furtherance’ as to mean ‘furthering or being furthered; the advancement of a scheme etc.’

1.22. M/s Cadilla cites *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.*

1.23. M/s. Cadila has submitted that in the light of the above canteen services cannot be treated as ancillary to their business activity. Firstly, canteen services are provided only to the employees of the Company as per the internal employment policy applicable to the

employees. Hence, if canteen can be termed as expenses for use in the course of business than a business activity itself, then the same cannot be termed as 'supply' to be taxed under GST.

1.24. M/s. Cadila submits that the Canteen Service Provider is required to adhere to all the applicable provisions of such Act since they are engaged in the provision of manufacturing, selling and handling food and not the Applicant. Therefore, the activity of setting up the canteen facility and subsequent deduction of nominal value would not tantamount to Supply under Section 7 of the CGST Act.

1.25. Notwithstanding anything mentioned above, the Applicant wishes to draw attention towards Schedule III of the CGST Act which provides the activities or transactions which shall be treated neither as a Supply of Goods nor a Supply of Services. One of the activities mentions therein is:

(1) Services by an employee to the employer in the course of or in relation to his employment.

1.26. M/s. Cadila cites Press release issued on 10 July 2017 by CBIC, wherein the GST implications on the services of Employer and Employee has been clarified. Para 3 of the said circular provides that:

"It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows there from that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C)."

1.27. M/s. Cadila submitted that considering the press release dated 10th July 2017, common facilities provided commonly to employees would not be subject to GST as they cannot be considered as gifts:

1. Telephone / mobile services
2. Internet services
3. Education reimbursement for employees' children
4. Transport facilities
5. Membership of gym, health club etc.
6. Subscription to journals
7. Canteen facility etc.

1.28. Further, it is submitted that in the present facts there is no independent contract, which exists between the M/s. Cadila and the employee for setting up of the canteen facility. The canteen facility at the factory is being undertaken on account of the legal obligation casted

upon M/s. Cadila for its employees only, and hence the same must be considered as a part of employment arrangement.

- 1.29. M/s. Cadila submits that Schedule III read with Section 7(2) of the CGST Act specifies that any services provided by an employee to the employer in the course of or in relation to his employment shall be neither a supply of goods nor supply of services. In short, the consideration paid by the employer to the employee as part of the employment policy shall be out of the scope of levy of GST.
- 1.30. Further, it is submitted by M/s. Cadila that as the facility of canteen is provided due to the existing 'Employer-Employee' relationship, an employee is not allowed to use the canteen facility once the 'Employer-Employee' relationship ceases i.e. when the employment is terminated. This makes it evident that 'Employer-Employee' relationship is a pre-requisite to avail the canteen facility.
- 1.31. M/s. Cadila has placed reliance on the following Ruling issued by various Hon'ble Authority :

(i) [GST-ARA -23/2019-20/B-46 dated 25 August 2020], wherein it was held that since the Applicant (i.e. Tata Motors) had not been supplying any services to its employees, in view of the provisions of Schedule-III; GST was not applicable on the nominal amounts recovered by the said Applicant from its employees for providing transportation facilities (with the same being applicable to canteen facility). It was further observed that the Applicant, in its capacity of being the employer was the recipient of the service and employees were the users of such services. This Hon'ble AAR held that by virtue of Clause 1 of Schedule-III to CGST Act 2017, GST was not applicable to the nominal amount recovered by the applicants from their employees.

(ii) Maharashtra AAR in case of M/s The TATA Power Company Limited (NO.GST-ARA-99/2019-20/B-92) wherein the authority has held that amounts recovered towards Top-up and parental insurance premium from the employees, does not amount to a supply of any service under section 7 of the Central Goods & Service Tax Act, 2017.

(iii) In case of Posco India Pune Processing Center Private Limited [GST-ARA-36/2018-19/B-110 dated 7 September 2018], wherein the Applicant was paying the premium towards mediclaim taken for their employees and the parents of such employees against such payments made they were recovering 50% from their employees. The AAR Maharashtra held that there is no way that the 50% amount recovered can be treated as amounts received for services rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents. Such recovery of 50% premium amounts by the applicant from their employees cannot be supply of services under the GST laws.

(iv) In case of *In Re: 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 CGST Act, as the Assessee was not in the business of providing insurance service.

1.32. M/s. Cadila submitted that if such services are covered by the employment policy, then they are not to be considered as supply. They refer to Section 7(2) of the CGST Act which overrides section 7(1) of CGST, thus makes it amply clear that any transactions which are provided by the employee to employer in the course/relation to the employment shall be out of the scope of GST. Once the activity comes under Schedule III, then anything which contradicts or withstands this clause shall be ineffective or inoperative qua this clause.

“Section 7(2) - Notwithstanding anything contained in sub-section (1),–

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services”.

1.33 M/s. Cadila submitted that the canteen facility provided to its employees upon which they are deducting the nominal value, cannot be regarded as supply under the GST law. Therefore, GST cannot be levied on such activity.

Question on which Advance Ruling sought:

5. Whether the subsidized deduction made by the Applicant from the employees who are availing food in the factory/corporate office would be considered as a supply by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Gujarat Goods and Service Tax Act, 2017.

- a. In case answer to above is yes, whether GST is applicable on the amount deducted from the salaries of its employees?
- b. In case answer to above is no; GST is applicable on which portion i.e. amount paid by the Applicant to the Canteen Service Provider or only on the amount recovered from the employees?

Personal Hearing:

6. Virtual hearing granted on 22-3-22 was attended by Shri Mitesh Jain and he reiterated the submission. Shri Jain submitted that the two questions mentioned in Exhibit-1 be considered for pronouncing the Ruling.

Revenue's Submission:

7. Revenue has neither submitted its comments nor appeared for hearing.

FINDINGS:

8. We find that M/s Cadila has arranged a canteen for its employees, which is run by a Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by M/s. Cadila whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by M/s. Cadila and paid to the Canteen Service Provider. M/s. Cadila submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. We are not inclined to accord this canteen service facility provided by M/s Cadila to its employees to be an activity made in the course or furtherance of business to deem it a Supply by M/s Cadila to its employees.

We pass the Ruling:

RULING

GST, at the hands of the M/s Cadila, is not leviable on the amount representing the employees portion of canteen charges, which is collected by M/s Cadila and paid to the Canteen service provider.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad

Date: 12.04.2022