MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.		**AD270122058086A**
GSTIN Number, if any/ User-id		**27AAACF8110B1Z8**
Legal Name of Applicant		**M/s. FERRERO INDIA PVT. LTD.**
Registered Address/Address provided while obtaining user id		World Trade Center, 8th Floor, Tower 3, Kharadi, Pune – 411014.
Details of application		GST-ARA, Application No. 62 Dated 15.02.2022
Concerned officer		**Assistant Commissioner, Division-V- Viman Nagar, Range II, Pune-I, Commissionerate**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Factory/Manufacturing**
B	Description (in brief)	The Applicant has entered into a contract with a third-party outdoor catering service provider for providing cooked food in the canteen area facility in the factory to the employees of Applicant. The outdoor catering service provider is raising its invoices on the Applicant. The Applicant is making recoveries at subsidized rate from its employees for the canteen facility.
Issue(s) on which advance ruling required		➢ determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 62/21-22/24-25B- 172 **Mumbai, dt.** 27/03/2025

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. FERRERO INDIA PVT. LTD.**, the applicant, seeking an advance ruling in respect of the following questions.

1) whether the recoveries made by the Applicant from the employees for providing canteen facility to its employees is taxable under the GST laws?
2) whether the recoveries made by the Applicant from the employees for providing bus transport facilities to its employees is taxable under the provisions of CGST Act?
3) whether the Applicant would be exempted under the Sl. No. 15 of Notification No. 12/2017 – Central Tax (Rate)?
4) Without prejudice, even if GST is payable in respect of aforesaid employee recoveries, what would be the value on which GST is payable?
5) This advance ruling is also sought to ascertain whether the notice pay recoveries made by the Applicant from its employees for not serving the notice period is taxable under the GST laws?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

1.1 Ferrero India Pvt. Ltd. (hereinafter referred to as 'Applicant') is a part of the Ferrero Group engaged in the manufacture and sale of chocolate and confectionary products. The Applicant has established its corporate headquarters in World Trade Center, 8th Floor, Tower 3, Kharadi, Pune – 411014 and operates its manufacturing facility from Plot no. F13, MIDC, Baramati, Pune – 413133 ("Baramati unit"). Accordingly, the Applicant has obtained GST registration in the state of Maharashtra.

1.2 The employees are vital resources to carry out the day-to-day affairs from the factory. Accordingly, in order to carry out its business of supply of its final product and for efficient functioning of business as a whole, the Applicant is required to provide canteen and bus transportation facility to its employees. The canteen and bus transportation facility ensure that employees of the Applicant are able to reach the factory and offices in time for doing their day-to-day work as scheduled and to perform

their work with efficiency. Therefore, the canteen and bus transportation facility are part and parcel of the employment arrangement with the employees.

1.3 The Applicant for the proper and smooth functioning of the business, employs various professionals/ employees for different job profiles. The Applicant follows a diligent recruitment procedure to hire its employees and on careful scrutiny recruits them. At the time of appointment, the Applicant issues an appointment letter (hereinafter referred to as the "Employment Agreement") based on the Long-Term Wage Settlement Agreement to such employees, which inter alia contains various terms and conditions of employment, including remuneration, qualification, allowances, termination, notice period, etc.

1.4 As per the Long-Term Wage Settlement Agreement, the Applicant is recovering certain amounts from its employees for providing the canteen & transportation services to its employees. The same is evident from the salary slips of the employees wherein the express deductions that are recovered by the Applicant on account of food and bus transportation are mentioned. Sample copy of salary slip of employees is enclosed as Appendix 1.

1.5 For the well-being and health of the employees and in accordance with the provision of Factories Act, 1948, the Applicant provides quality food and refreshments to employees at subsidized rates in the company premises.

1.6 The present application is filed in respect of applicability of Goods and Services Tax (hereinafter referred to as "GST") payable on the recoveries made by the Applicant from its employees for providing the canteen and bus transportation to its employees.

Canteen & Bus Transportation.

1.7 The Applicant provides canteen and transportation facility to its employees at the Baramati unit based on the employment terms of the Applicant. Based on the agreed terms between the Applicant and Employees, the Applicant is entitled to make recoveries at subsidized rates for the canteen and bus transportation facility provided by the Applicant at its factory.

The relevant clauses of the Long-Term Wage Settlement Agreement are extracted below:

15. It is agreed by both the parties that canteen facility will be provided to all eligible workmen agents the deduction of Rs. 10/- per day from each workman.

Breakfast, lunch/dinner provided in the canteen will be vegetarian. The Manu will be decided by the existing canteen committee members. All workmen will lift their plates and water glasses after breakfast, lunch/dinner and put the left outs in the garbage bins and will put the plate and glass at the used plate window.

16. Transport Facility:

It is agreed by both the parties that, the transport facility on present routes will be continued by the company and there are no additions in the bus routes. Company will have full rights and absolute authority to decided amendments, alter the present bus routes as deemed fit. Consideration of bus membership will be on the availability of set at the particular bus/bus route. NO workmen can refuse to attended work because of no availability of bus facility.

The existing deduction of Rs. 100/- per month within the perimeter of 10 km. is received with Rs. 200/- and the deduction of Rs. 150/- for above 10 km perimeter is revised with Rs. 30/- pre-month.

1.8 Based on the above clauses of the Agreement, it is clear that the Applicant is providing canteen facility to its employees on subsidized rates. The charges of the meals/snacks will be deducted from the salary of the individual salary of the employee based on his/her level.

1.9 Similarly, the Applicant is providing the transportation facility to the employees at subsidized rates. The charge for providing the said facility is also deducted from the salary of the employee.

1.10 In order to provide the said canteen and bus transportation facility, the Applicant has engaged third party service providers who are in turn providing the said canteen and bus transportation facilities to the Applicant. Since, the said services are provided by the third party service providers to the Applicant, the service providers are raising their invoices with applicable GST to the Applicant. The Applicant is liable to pay the consideration to the third-party service providers for the said canteen and transportation facilities.

Thereafter, the Applicant recovers certain portion (i.e., subsidized amount is deducted from Salary on monthly basis) of the cost of the canteen and bus transportation incurred by the Applicant from its employees.

1.11. The buses involved in the transportation of employees are Non-Air-conditioned (Non-AC) buses and having contract carriage permit. Further, it is important to note that the approved capacity of the bus is more than thirteen passengers.

1.12. Both the facilities i.e., canteen and bus transportation facilities are provided by the Applicant to the employees without any profit motive. In fact, the said facilities are provided at subsidized amount and forms part and parcel of the employment arrangement. The said facilities are provided merely to facilitate better working environment to the employees and does not carry intention to undertake any kind of business activity. The said facilities are towards providing hygienic food and to maintain safety for the employees who work in the shifts as well as to maintain the continuity in manufacturing and research & development work. It is submitted that safety for employees and more particularly female employees is very important. Hence, the Applicant provides the bus transportation facility to ensure the safety of the employees and to provide a better working environment.

Notice Pay Recovery.

1.13. Further, there are various instances where the employees decide to resign and leave the employment without serving the complete notice period. Due to sudden change in the transitioning the job role to new employee (i.e., in cases where notice period is not served), the Applicant suffers consequential losses since every employee is designated with some or the other crucial responsibility.

1.14. In this regard, it is imperative to note that in case the employee does not serve the mandated notice period, in part or in full, the Applicant is entitled to monetary compensation, hereinafter referred to as "Notice Pay Recovery" from the employee's salary payment. In case where the respective employee does not serve the full notice period based upon the company policy as per his / her Grade, the Applicant deducts full salary for the tenure of notice period not served. In case where the employee serves only partial notice period, partial recovery is made. Such amount is deducted by the Applicant as a compensation for breach of the terms of the Employment Agreement by the employees and failure on the part of such employees to serve the Applicant during the notice period.

1.15. Since the said notice pay recovery is to create a deterrent effect and to make good the loss, the Applicant is under bonafide belief that the notice pay recovery so charged and collected by them is in the nature of compensation on account of business loss suffered by the Applicant.

1.16. The following clauses provides the standard terms with regard to serving of notice period:

Notice Period:
Notice period for employees under probation would be 1 month. Post confirmation, the employee will serve notice period applicable to him/her as per the job band given below:

Job Band	Notice Period
Job Band 1 &2	3 Months
Job Band 3 & below	2 Months

In case the employee is unable to serve the full notice period, the organization reserves the right to recover the balance notice period amount. Notice period clause mentioned in this policy supersedes all other previous communications.

1.17. As stated above, the penalties recovered by the Applicants are to create a deterrent effect and to make good the loss, the notice pay recovery so charged and collected by them is in the nature of compensation on account of business loss suffered by the Applicant.

1.18. Under the aforesaid circumstances, the Applicant seeks the present advance ruling to understand whether the canteen and bus transportation recoveries made by the Applicant are taxable under the GST laws and whether the transportation facility provided to the employees in Non-AC buses having contract carriage permit would be exempted from GST? Apart from the taxability, the Applicants also seeks the advance ruling with respect to the valuation of the said recoveries from the employees. The Applicant also wishes to understand the leviability of GST on notice pay recoveries.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

A. **Applicant's Interpretation with respect to the recoveries made from the employees for providing Canteen facilities to its employees are provided in the below grounds which are without prejudice to each other.**

1.1 The employee recoveries for providing canteen facility and also for providing bus transportation service is not covered under the ambit of "supply" under Clause (a) of Section 7 (1) of the CGST Act.

1.1.1 In order to analyse the present issue, reference is made to Section 7 (1) of the CGST Act, which defines the term 'supply' as under:

> *7. (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; and*
> *(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*
>
> **...Emphasis Supplied**

1.1.2 Section 7 (1) (a) of CGST Act defines the term 'supply' widely to include all forms of supply of goods or services or both such as sale, transfer, disposal, etc. made or agreed to be made for a consideration in the course or furtherance of business. Therefore, in order to constitute supply under Section 7 (1) (a) of the CGST Act, the following key elements are required to be satisfied:

(a) Supply of goods or/and services;

(b) Consideration;

(c) Course of furtherance of business.

1.1.3 It is clear from the above that in order to constitute supply under Section 7, the supply should be in the course of business or furtherance of business. The term in the "course of business" or "furtherance of business" is not defined under the CGST Act. However, it is pivotal to appreciate that the term "**Business**" has been defined under Section 2 (17) of the CGST Act and reads as under: -

Section 2 (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;

(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) services provided by a race club by way of totalisator or a licence to 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;

... Emphasis Supplied

1.1.4 A bare reading of the above clause (a) provides that the term "business" includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Also, as per clause (b) any activity ancillary or incidental to the activities covered under clause (a) are also treated as business. Further, clause (c) also states that any activity or transaction falling in the above categories would be business whether or not there is volume, frequency, continuity or regularity in transactions. Hence, the above definition provides that business includes any activity in the nature of trade, commerce, manufacture, etc.

1.1.5 The Applicant reiterates that 'supply' can come into existence only when there is any activity done in the course of business or furtherance of business. It is clear from the above discussion that business means any activity in the nature of trade, commerce, manufacture, etc.

1.1.6 It is submitted that the Applicant is engaged in the business of manufacture of chocolate and confectionary products. The entire business activities are aimed towards the manufacture, develop, sales, distribution, promotion of chocolate and confectionary products. The Applicant also submits that while obtaining incorporation of the Applicant as a registered company under the Companies Act, the Memorandum of Association (MOA) also provides that the Applicant would be engaged in manufacture of chocolate and confectionary products. Hence, it is submitted that the Applicant is engaged in business of chocolate and confectionary products.

1.1.7 As stated above, the Applicant is providing canteen facility to the employees at the Baramati unit. It is submitted that as per Section 46 of the Factories Act, 1948, every factory is mandatorily required to provide and maintain canteen in the factory in which more than 250 workers are employed. Therefore, in order to comply with the said mandatory condition, the Applicant is providing and maintaining the canteen at the factory. The Applicant is not engaged in the "business" of providing canteen facility to its employees.

1.1.8 Further, the objective of providing canteen facility at the corporate office is to provide a healthy and workable environment to the employees. The canteen facility is being provided in order to increase the working efficiency of the employees and not to undertake any business activity. The Applicant is also known in the Indian industry as well as international trade and industry as a manufacturer of chocolate and confectionary products. Even in case where the said canteen facility would not be provided by the Applicant, the business of the Applicant of manufacturing of chocolate and confectionary products, would still be continuing.

1.1.9 As mentioned above, the Applicant is involved in the business of the manufacturing and selling of chocolate and confectionary products and providing canteen facilities to its employees is not the business of the Applicant. The canteen facility is provided by a thirdparty service provider for which the third party is raising an invoice to the Applicant and charging GST on the same. Therefore, the canteen services are being provided by the third-party service provider only. The Applicant is merely acting as a conduit to provide the canteen facility.

1.1.10 Therefore, it is submitted that Applicant is not in the business of providing catering facility. Further, providing/ non-providing such canteen facility will not affect the business of Applicant in any way. Hence, the canteen facility cannot be said to be a business activity of the Applicant and hence, the provision of canteen facility to the employees cannot qualify as supply.

1.1.11 The Applicant also submits that the meaning of the term business should be restricted to cover only commercial activities. Any activity which is towards providing any support or service such as helping, aiding or assisting own employees cannot be treated at par with business. In the given case in hand, the provision of canteen facility is merely a facilitator function extended by the Applicant to the employees. Hence, the said activity cannot be equated with business.

1.1.12 In this regard, reliance can be placed in the case of State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966) wherein the Petitioner was engaged in the business of manufacturing and selling cotton textiles. The Petitioner purchased coal for usage in business of cotton textiles. The said coal was later sold by the Petitioner. The Supreme Court held that the Petitioner was not engaged in the business of coal. The operative part of the judgement is extracted below:

"8. It is clear from these cases that to attribute an intention to carry on business of selling goods it is not sufficient that the assessee was carrying on business in some commodity and he disposes of for a price articles discarded, surplus or unserviceable. It was urged, however, on behalf of the State that where a dealer with a view to reduce the cost of production disposed of unserviceable articles used in the manufacture of goods and credits the price received in his accounts,

he must be deemed to have a profit motive, for it would be uneconomical for the business to store unserviceable articles and to survive as an economic unit. But the question is of intention to carry on business of selling any particular class of goods. Undoubtedly from the frequency, volume, continuity and regularity of transactions carried on with a profit motive, an inference that it was intended to carry on business in the commodity may arise. But it does not arise merely because the price received by sale of discarded goods enters the accounts of the trader and may on an overall view enhance his total profit, or indirectly reduce the cost of production of goods in the business of selling in which he is engaged. ***An attempt to realize price by sale of surplus unserviceable or discarded goods does not necessarily lead to an inference that business is intended to be carried on in those goods, and the fact that unserviceable goods are sold and not stored so that badly needed space is available for the business of the assessee also does not lead to inference that business is intended to be carried on in selling those goods.***

14. It appears from the statement furnished that coal of the value of Rs. 16,083/- was sold by the Company under 12 bills in the year 1953-54. Coal is purchased by the Company for the purpose of lighting its furnaces and heating boilers. A part of the coal purchased was sold. The Tribunal merely stated in respect of all the items of goods sold that looking to the volume and frequency of their sale, the Company should be regarded as a dealer in respect of those goods. Unless there is evidence to show that there was an intention to carry on business of selling coal, the mere fact that coal of the value exceeding Rs. 16,000/- was sold will not by itself make the Company a dealer carrying on business in coal. We have no evidence on the record as to what the total quantity of the coal purchased by the Company was, and what percentage thereof was sold. No investigation has been made as to the circumstances in which the coal came to be sold. ***Mere sale of a commodity which a Company requires for the purpose of its business and which has been purchased for use in that business will not justify an inference that a business of selling that commodity was intended, unless there are circumstances existing at the time when the commodity was purchased or which have come into existence later which establish such an intention. It may be pointed out that the burden of proving that the Company was carrying on business of selling coal lay upon the Sales-tax authorities and if they made no investigation and have come to the conclusion merely because of the frequency and the volume of the sales, the inference cannot be sustained."***

...Emphasis Supplied

1.1.13 It is also submitted that as per clause (b) of Section 2 (17), business also includes any activity which is in connection with or incidental or ancillary to the activities covered under clause (a) of Section 2 (17) of the CGST Act. Hence, one may question as to whether the provision of canteen facility can

be said to be in connection with or incidental or ancillary to the principle business of chocolate and confectionary products.

1.1.14 In this regard, the Applicant submits that the connected activities or incidental or ancillary activities cannot be construed to include all activities carried out by the business. Furthermore, as per Black's Law Dictionary (Ninth Edition), "incidental" means dependent upon, subordinate to, arising out of, or otherwise connected with (something else, usually of greater importance). Also, the term "ancillary" is defined in the Black's Law Dictionary (Ninth Edition) as supplementary; subordinate.

1.1.15 The activities which are having direct nexus with the main business can be said to be ancillary or incidental. One of such examples of could be sale of by-products. However, canteen facility is not related to or connected with the principle business of supply of chocolate and confectionary products in that manner. Hence, the same cannot be construed as incidental or ancillary to the main business of the Applicant.

1.1.16 In support of the above contention, the Applicant relies on the case of Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd. [1967 (20) STC 287 Mad]. In the given case, the Hon'ble Madras High Court had examined the issue similar provision as below:

"4. The primary requisite of "business" as defined even under Madras Act 15 of 1964 is that it should be a trade or commerce or adventure or concern in the nature of trade or commerce. Presence or absence of profit will not matter. But the activity must be of commercial character and in the course of trade or commerce. ***The second clause in the definition of "business", as it appears to us, is still one invested with commercial character, for the reference is to any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern. Unless the transaction is connected with trade, that is to say, it has something to do with trade or has the incidence or elements of trade or commerce, it will not be within the definition. The words "in connection with or incidental or ancillary to" in the second part of the definition of "business", in our opinion, still preserve or retain the requisite that the transaction should be in the course of business understood in a commercial sense.*** *The intention of Madras Act 15 of 1964 does not appear to be to bring into the tax net a transaction of sale or purchase which is not of a commercial character.*

*5. In this case it is difficult to say that **the assessee has been carrying on business in fair price shop. We have looked into its articles of association and nowhere is there any reference to the carrying on of business in fair price shop. What appears to be probable is that the assessee in order to provide amenity to its workmen has opened the fair price shop so that commodities may be made available to them at fair price. It may be that in fact profit accrues. But that is not what is material. The question is whether the assessee meant to run the fair price shop as a trade or commerce or a commercial activity. We do not find it possible to say that the fair price shop is a commercial activity of the assessee. We hold that the assessee is not carrying on the business of selling commodities in the fair price shop in a trade or commercial sense, and that, therefore, it is not with reference to the fair price shop a dealer within the meaning of the Act."***

...Emphasis Supplied

1.1.17 In the case of Panacea Biotech Limited vs. Commissioner of Trade and Taxes [(2013) 59 VST 524 (Del.)] the issue was related to whether the selling of used cars is ancillary or incidental to the pharmaceutical business of the assessee. The Hon'ble Delhi High Court held that:

*"11. In the present case, the **main business of the petitioner is manufacture and sale of pharmaceutical products** and the vehicles are used by it in the course of business (as written by Respondent No.-2 in the impugned order (Annexure A-1)). This may lead to the inference that proceeds from the sales of such vehicles should have been included in the turnover and must be taxed accordingly. **But the selling of used cars cannot by any stretch of the imagination be characterized as "ancillary" or incidental to the business of a pharmaceutical company.** It is not shown that the cars were of a special character e.g. air-conditioned vehicles especially designed to store and ferry pharmacy products. They were purchased for use of company employees and executives, for office purposes. At the stage of purchase, they suffered sales tax, which the assessee, as buyer, was bound to pay. However, **the assessee never held them for the purpose of sale and purchase, but for using them. After their use, having regard to lapse of time, and their wear and tear, the assessee decided to replace them. These cars were then sold.** Their sales, in a sense are twice removed from the business of the assessee. **They cannot be called "incidental" or "ancillary" to the manufacture and sale of pharmaceutical products, which the assessee is engaged in."***

...Emphasis Supplied

1.1.18 Based on the above cited judgments, the canteen facility provided by the Applicant to its employees cannot be said to be principle or ancillary or incidental business activity of the Applicant. Therefore, one of the essential ingredient i.e., "business" is missing to constitute 'supply' under GST. Thus, it is submitted that the said canteen facility cannot be taxed under GST.

1.1.19 Similarly, the Applicant humbly submits that it cannot be said to be in the business of transportation by providing the transportation facility to the employees at subsidized rate. The Applicant has established and evidenced that it is engaged in the business of manufacturing and sale of chocolate and confectionary products. The Applicant is not engaged in the business of transportation of passengers. The Applicant does not own any vehicles that are used for the transport of its employees nor is it in possession of contract carriage permits for engaging in such transport.

1.1.20 As discussed in the foregoing paragraphs, the factories of the Applicant are located afar from the city of Pune. It is submitted that safety for employees is very important. Hence, the Applicant is providing the bus transportation facility to ensure the safety of the employees and to provide a better working environment. Therefore, it is submitted that the transportation facility is not the business of the Applicant.

1.1.21 It is further submitted that transportation facility provided by the Applicant to its employees is not related to or connected with the principle business of supply of chocolate and confectionary products in that manner. Hence, the activity is not even incidental or ancillary to the main business of the Applicant. Hence the Applicant cannot be asked to pay GST on transport recoveries.

1.2 Without prejudice to the above, the canteen facility and bus transportation facility provided by Applicant is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.

1.2.1 The Applicant also submits that the canteen facility and bus transportation facility provided by the Applicant is specifically excluded from the coverage

of 'supply' under GST as per Clause (a) of Section 7 (2) of the CGST Act which reads as below:

"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"
"SCHEDULE III
[See section 7]
ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES
1. Services by an employee to the employer in the course of or in relation to his employment."

...Emphasis Supplied

1.2.2 Section 7 (2) begins with a non-obstante clause and overrides Section 7 (1) of the CGST Act. A plain reading of above section provides that even in case where any activity may be treated as 'supply' in terms of Section 7 (1), certain activities/ transactions would still be excluded from the scope of 'supply'.

1.2.3 Entry (1) of Schedule-III covers services provided by employee to its employer in the course of employment or in relation to employment. It can be noted that any activity or transaction which is undertaken in the course of employment or in connection with employment has been specifically excluded from the ambit of supply.

1.2.4 The canteen facility is being provided by the Applicant to its employees as a part and parcel of the employment terms. Therefore, the said canteen facility is being clearly an activity which is being undertaken in the course of employment only. The canteen facility has a direct nexus with the employment of the employee with the Applicant. Therefore, by virtue of Section 7 (2) read with Entry (1) of Schedule III, the canteen facility does not amount to supply.

1.2.5 The canteen facility is being provided by the Applicant due to the reason that the persons enjoying the canteen facility are working as "employees" of the Applicant. Further, as already stated above, the canteen facility is being

provided in the factory of the Applicant due to the mandatory requirement as per the Factories Act. Further, the canteen facility is provided not merely due to the statutory requirement, but also to provide a healthy and workable environment to all the employees of the Applicant.

1.2.6 As discussed in the above paragraphs, the Applicant is providing these facilities to the employees due to their agreed terms. The Applicant is recovering the subsidized amount of canteen facility to the employee in terms of the Agreement. Therefore, it is clearly established that the canteen facility is directly in connection with the employment of the employees.

1.2.7 Also, as per the Press release issued by the Ministry of Finance dated 10 July 2017 which states the following:

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

...Emphasis Supplied

1.2.8 Basis the above press release, it is 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 the GST. As mentioned above, the Applicant in the present case is providing canteen facility to its employees as per the Long-Term Wage Settlement Agreement. Further, the amount charged by the Applicant is fully paid to the third-party contractor and no profit or pecuniary benefit is involved in this activity.

Hence, the Applicant is of the view that the provision of canteen facility is excluded from the purview of supply.

1.2.9 The above said position would be equally applicable in case of recoveries from the employees on account of providing the bus transportation facility.

1.2.10 Therefore, the Applicant humbly submits that the canteen facility and bus transportation facility provided by the Applicant to its employees cannot be treated as supply and therefore, GST should not be applicable.

1.3 Without prejudice to the above, it is settled position under GST regime that employee recoveries do not amount to 'supply'.

1.3.1 The Applicant submits that it is a settled legal position that the employee recovery would not qualify as 'supply' under GST and hence, not taxable. The Applicant humbly submits that this Hon'ble Maharashtra Advance Ruling Authority has categorially held that employee recovery would not be treated as supply under GST.

1.3.2 Reliance can be placed in the case of M/s Jotun India Private Limited, [2019-TIOL-312-AAR-GST]. In the case of Jotun, the issue before this Hon'ble Authority was whether the recovery from employee towards health insurance would be treated as supply. The Applicant in the said case was procuring health insurance services from third-party insurance service providers for its employees and the parents of its employees. The Applicant was recovering 50% of the cost incurred by the Applicant towards the parental insurance cost of its employees. This Hon'ble Authority vide its Order No. GST- ARA-19/2019-20/B-108 Mumbai dated 04-10-2019 has ruled that the employee recovery would not be treated as 'supply' since the activity of recovering the amount from employees does not satisfy the conditions of Section 7. The below extract of the Advance Ruling is reproduced for ready reference:

"(3) The issue put forth before us is very limited. We find from the documents of insurance scheme submitted on record that the applicant provides Mediclaim cover to their employees' parents. There are four types of category of scheme wherein sum insured amount for family floater is at Rs. 300000/-and premium amount is fixed as per the number of parents involved therein. The applicant will bear 50% amount for maximum 2 members only and rest of money will be paid by respective employee. It is cashless Mediclaim insurance policy for the lock-in period of 3 years. The

mediclaim insurance policy is made from "The Oriental Insurance Company Ltd". Further we find from the sample copy of insurance policy submitted before us by the applicant that the applicant Intially pays the entire premium along with taxes and then recovers 50% of the premium through salary in one installment in case of staff and in three installments in case of operators as the case may be. ***The Applicant is not in the business of providing insurance coverage. Secondly, to provide parental insurance cover, is not a mandatory requirement under any law for the time being in force and therefore, non-providing parental insurance coverage would not affect its business by any means. Therefore, activity of recovery of 50% of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.***

(4) We have referred to the term "Supply" described under Section 7 and the term "Business" defined in Section 2(17) of the CGST Act, 2017, which are reproduced in applicant's contention above. From the reading of the above definition and section (supra), ***we find that the activity undertaken by the applicant like providing of mediclaim policy for the employees' parent through insurance company neither satisfies conditions of section 7 to be held as "supply of service" nor it is covered under the term "business" of section 2(17) of CGST ACT 2017. Hence, we find that applicant is not rendering any services of health insurance to their employees' parent and hence there is no supply of services in the instant case of transaction between employer and employee.***

(5) Applicant has referred the ARA order in case of M/s POSCO India Pune Processing Center Private Limited (POSCO IPPC) vide Order NO.GST-ARA-36/2018-19/B-110 Mumbai dated 07-09-2018 = 2019- TIOL-25-AAR-GST wherein facts are identical and similar to that of the facts of applicant and ARA has ruled that, "they are not rendering any service of health insurance to their employees and hence, there i$ no supply of services in the instant case". Considering the similar nature of facts and earlier ruling, as referred above, the same ruling is confirmed in this matter also.

(6) In view of detailed discussions above, we find that the recovery of 50% of Parental Health Insurance Premium from employees does not amounts to "supply of service" under Section 7 of the Central Goods and Service Tax Act, 2017.

...Emphasis Supplied

1.3.3 The Applicant also invites your kind attention to the Advance Ruling in the case of M/s POSCO India Pune Processing Centre Private Limited [2019 (2) TMI 63]. In the said case, this Hon'ble Authority was examining similar issue whether the recovery of 50% parental insurance premium amount from the employees would be treated as supply or not in order to avail Input Tax Credit of input services. This Hon'ble Authority vide Order No. GST- ARA- 36/2018-19/B-110

Mumbai dated 07-09-2018, has ruled that the employee recovery would not amount to supply. The relevant extract is reproduced as below:

"We find that the applicant is paying the premium towards mediclaim taken for their employees and the parents of such employees. Against such payments made they are recovering 50% from their employees ***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.*** *In fact what is happening in this case is that since the applicant is recovering 50% of the premium paid on mediclaim from their employees, they want to treat the same as rendering of insurance output service to their employees and therefore they are contending that they are entitled to 100% input tax credit on the insurance premium paid to the insurance company in terms of Section 17(5)(b)(iii) of the CGST Act, 2017, mentioned above. They have already submitted that they are primarily engaged in distribution of steel coils and also perform low value-added processing function in respect of some of the traded goods based on customer's requirements. The applicant has brought nothing on records to show that they are an Insurance Company and registered with such authorities. Hence it appears that the applicant is creating this fiction of providing health insurance to their employees only to avail 100% ITC of payments made to the insurance companies.*

Hence, we find that they are not rendering any services of health insurance to their employees and hence there is no supply of services in the instant case. *Since there is no supply, we do not find the need to answer the second part of this question. In view of detailed discussions above, we find that the Applicant cannot claim input tax credit of GST charged by the insurance company."*

...Emphasis Supplied

1.3.4 Similarly, reliance can also be placed on the advance ruling in the case of M/s. Tata Motors Ltd. [2020 (9) TMI 352] wherein the applicant had sought a ruling as to whether GST is applicable on nominal amount recovered from employees for usage of employee bus transportation facility in non-AC buses. In the given case, this Hon'ble Authority vide its Order No. GST- ARA- 23/2019-20/B-46 Mumbai dated 25-08-2020 categorically held that the recovery of part amount of transport costs from the employees, would not amount to 'supply'. Relevant extract of the ruling is reproduced below:

"5.3 The second question raised by the applicant is whether GST is applicable on nominal amount recovered by Applicants from their employees for usage of employee bus transportation facility in non-air-conditioned bus.

5.3.1 Applicant has submitted that they issue pass only to their employees, so that the transportation facility can be used by such employees, for which nominal amount is recovered on monthly basis. They have also submitted that once, employee ceases to be in employment with Applicant, he/she is not authorized to use the transportation facility. In other words, employer-employee relationship is must to avail this facility.

5.3.2 In the subject case we find that the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services in the instant case. The applicant's contentions that they are eligible for exemption from GST under SI. No. 15 (b) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 in respect of nominal amounts of recoveries made from their employees to wards bus transportation service, is not correct. The exemption under the said notification is available only when the supply is taxable in the first place. In the subject case, the transaction between the applicant & their employees, due to "Employer-Employee" relation as stated by the applicant in their submissions, is not a supply under GST Act.

5.3.3 To answer the second question we now refer to Schedule III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services As per clause 1 of the said Schedule-III, Services by an employee to the employer in the course of or in relation to his employment shall he treated neither as a supply of goods nor a supply of services.

5.3.4 Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion that GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case."

...Emphasis supplied

1.3.5 Reliance is also placed on the recent decision of the recent decision of this Hon'ble Authority in **In Re: Emcure Pharmaceuticals Limited [2022-VIL-04-AAR]** wherein the following observations were made in relation to canteen and transport recoveries:

"5.3.3 In terms of Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act), for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business. We find that, the applicant is engaged in the business of developing, manufacturing and marketing a broad range of pharmaceutical products from its various manufacturing units, Research and Development Centres and branch offices. The employees are vital resources to carry out the day to day affairs of the Applicant Company. Accordingly, in order to carry out its business of output supply mentioned above, the Applicant is providing canteen facility to its employees. The provision of canteen facility to the employees is a welfare measure, also mandated by the Factories Act and is not at all connected to the functioning of their business of

developing, manufacturing and marketing pharmaceutical products. Further, the said activity is not a factor which will take the applicant's business activity forward.

5.3.4 We also find that the applicant is not supplying any canteen service to its employees in the instant case. Further, the said canteen facility services are also not the output service of the applicant since it ***is not in the business of providing canteen service. Rather****, we find that, this canteen facility is provided to employees by the third-party vendors and not by the applicant. Therefore, in the subject case, the applicant is not providing any canteen facility to its employees, in fact the applicant is a receiver of such services.*

5.3.6 Since the provision of canteen facility by the applicant to its employees is not a transaction made in the course or furtherance of business, and since in terms of Section 7 of the CGST Act, 2017, for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business, we find that the canteen services provided by the applicant to its employees cannot be considered as a "supply" under the relevant provisions of the CGST Act, 2017 and therefore the applicant is not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates.

...

5.4.8 Accordingly, we are of view that for the applicant, arranging bus transportation facility for their employees is definitely not an activity which is incidental or ancillary to the activity of developing, manufacturing and marketing of pharmaceutical products, nor can it be called an activity done in the course of or in furtherance of developing, manufacturing and marketing of pharmaceutical products as it is not integrally connected to the business in such a way that without this, the business will not function. Hence, it is held that, GST would not be payable on the recoveries made from the employees towards providing bus transportation facility.

5.4.8 Accordingly, we are of view that for the applicant, arranging bus transportation facility for their employees is definitely not an activity which is incidental or ancillary to the activity of developing, manufacturing and marketing of pharmaceutical products, nor can it be called an activity done in the course of or in furtherance of developing, manufacturing and marketing of pharmaceutical products as it is not integrally connected to the business in such a way that without this, the business will not function. Hence, it is held that, GST would not be payable on the recoveries made from the employees towards providing bus transportation facility."

1.3.6 Further reliance is also placed on the recent decision of the Gujarat AAR in In Re: M/s Tata Motors Ltd. [2021 (8) TMI 735 - Authority for Advance Ruling, Gujarat] 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."

...Emphasis Supplied

1.3.7 The understanding of the Applicant is supported by the aforesaid rulings that the Applicant is not involved in the business of providing canteen facility. The Applicant has no intention to carry out the canteen business and the Applicant is only a facilitator in the transaction between the employee and the third-party canteen service provider. Therefore, in light of the above case laws, the Applicant submits that the canteen recovery from its employees would not amount to supply.

1.3.8 Hence, the Applicant submits that the provision of canteen facility by the Applicant to its employees through the third-party service providers cannot be said to be canteen services provided by the Applicant. Therefore, the said activity does not qualify as service and hence, GST is not applicable on the same.

B. Applicant's Interpretation with respect to the recoveries made from the employees for providing Bus Transportation facilities to its employees are provided in the below grounds which are without prejudice to each other.

1.1 The employee recoveries for providing bus transportation facility is not covered under the ambit of "supply" under Clause (a) of Section 7 (1) of the CGST Act.

1.1.1 The Applicant is procuring bus transportation facility from a third-party bus transportation service provider for transportation of its employees in non-AC buses. Accordingly, the said service provider issues tax invoice with applicable GST to the Applicant. The Applicant is using the said bus transportation facility for transportation of its employees from place of work to home and back. Therefore, the Applicant recovers subsidized amount for the said transportation facility from its employees.

1.1.2 As discussed above, the Applicant is a company involved in the business of manufacturing and marketing of chocolate and confectionary products globally. Accordingly, the employees of the Applicant are engaged in developing, manufacturing and marketing of these chocolate and confectionary products. It is already submitted that the Applicant is engaged in the business of chocolate and confectionary products in Ground 3.1 above. The submissions of the Applicant made above equally apply in

the case of Bus Transportation facility provided to the employees. Therefore, it is submitted that the Applicant is not engaged in the business of bus transportation and accordingly, the said facility provided by the Applicant to its employees does not amount to supply under the GST regulations.

1.2 Without prejudice to the above, the bus transportation facility provided by Applicant is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.

1.2.1 The Applicant submits that the submission made by the Applicant in respect of canteen recovery in Ground-3.2 equally applies so far as the bus transportation is concerned. Therefore, it is humbly submitted that the bus transportation facility is specifically excluded from the purview of 'supply' in terms of Section 7 (2) (a) read with Schedule-III to the CGST Act.

1.3 Without prejudice to the above, it is settled position under GST regime that employee recoveries do not amount to 'supply'.

1.3.1 The Applicant submits that the submission made by the Applicant in respect of canteen recovery in Ground-3.3 equally applies so far as the bus transportation is concerned. Therefore, it is humbly submitted that the recovery towards bus transportation facility does not amount to 'supply' in light with the advance rulings pronounced by this Hon'ble Authority.

1.3.2 Further reliance in this regard, is placed on the advance ruling in the case of M/s. Tata Motors Ltd. (supra) wherein the applicant had sought a ruling as to whether GST is applicable on nominal amount recovered from employees for usage of employee bus transportation facility in non-AC buses. In the given case, this Hon'ble Authority vide its Order No. GST- ARA- 23/2019-20/B-46 Mumbai dated 25-08-2020 categorically held that the recovery of part amount of transport costs from the employees, would not amount to 'supply'. Relevant extract of the ruling is reproduced below:

"5.3 The second question raised by the applicant is whether GST is applicable on nominal amount recovered by Applicants from their employees for usage of employee bus transportation facility in non-air-conditioned bus.

5.3.1 Applicant has submitted that they issue pass only to their employees, so that the transportation facility can be used by such employees, for which nominal amount is recovered on monthly basis. They have also submitted that once, employee ceases to be in employment with Applicant, he/she is not authorized to use the transportation facility. In other words, employer-employee relationship is must to avail this facility.

5.3.2 In the subject case we find that the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services in the instant case. The applicant's contentions that they are eligible for exemption from GST under Sl. No. 15 (b) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 in respect of nominal amounts of recoveries made from their employees to wards bus transportation service, is not correct. The exemption under the said notification is available only when the supply is taxable in the first place. In the subject case, the transaction between the applicant & their employees, due to "Employer-Employee" relation as stated by the applicant in their submissions, is not a supply under GST Act.

5.3.3 To answer the second question we now refer to Schedule III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services As per clause 1 of the said Schedule-III, Services by an employee to the employer in the course of or in relation to his employment shall he treated neither as a supply of goods nor a supply of services.

5.3.4 Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion that GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case."

...Emphasis supplied

1.3.3 In view of the above, it is submitted that there should not be any GST implications on the recoveries made from the employees for providing the bus transportation facility as a part of employment contract.

C. **Applicant's Interpretation with respect to the applicability of exemption from GST in respect of provision of Non-AC bus transportation facility to its employees.**

1.1 The Applicant reiterates that the bus transportation facility provided by the Applicant to its employees are undertaken via Non-Air-conditioned (Non-AC) buses.

1.2 The Applicant submits that the transportation of employees by the Applicant through usage of Non-AC buses would merit classification under the Tariff 9964 as "Passenger Transportation Services". It is submitted that the Annexure for Scheme of classification of services appended to Notification 11/2017-Central

Tax (Rate) provides the manner for classification of services. The relevant extract of the same is reproduced below:

Sl. No.	*Chapter, Section, Heading or Group*	*Service Code (Tariff)*	*Service Description*
89	*Heading 9964*		*Passenger Transportation Service*
	Group 99641		*Local transport and sightseeing transportation services of passengers*
		996411	*Local land transport services of passengers by railways, metro, monorail, bus, tramway, autos, three wheelers, scooters and other motor vehicles*

1.3 It is submitted that the local transportation services of passengers through buses are covered under Tariff 996411. Therefore, the local passenger transportation facility within the city in the given case in hand, if classified as service would merit classification under the Tariff 996411 only. Further, the Explanatory Notes issued by the CBIC also provides that the services provided by bus within city limits would be very well classified under Tariff 996411. The Explanatory Notes also provides that the renter defines the travel routes in case of passenger transportation services. In the given case, the said conditions are satisfied. Hence, without prejudice to above submission, in case the bus employee recovery qualifies as supply of service, the said service would be classified under Tariff 9964 only.

1.4 Therefore, without prejudice to the above submissions, even in case where the bus transportation facility provided by the Applicant to its employees amount to supply, the said services would be exempted by virtue of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (hereinafter referred to as 'Exemption Notification').

1.5 The Applicant further submits that as per Sl. No. 15 (b) of the Exemption Notification, "Non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire" is exempt from GST. The relevant part is reproduced below:

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate Percent)	Condition
15	Heading 9964	Transport of passengers, with or without accompanied belongings, by – (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; **(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or** (c) stage carriage other than airconditioned stage carriage	Nil	Nil

1.6 From the above table, it is clear that, passenger transportation services via non airconditioned contract carriage, other than radio taxi is used for transportation of passenger is exempted from GST. The Applicant submits that the buses engaged in the transportation of employees are Non-AC buses. It is further submitted that the buses involved in the given case on hand is not a radio-taxi. The Applicant also submits that the abuses engaged by Applicant in the given case are registered as 'contract carriage'. The contract carriage permit of the said buses are attached with this application.

1.7 In view of the above discussion, the services of transportation of the employees of the Applicant through Non-AC buses would be treated as passenger transportation service classified under Tariff 9964. Further, as per Sl. No. 15 (b) of the Exemption Notification, the Non-AC buses being a Non-AC contract carriage would be covered under the exemption from GST.

1.8 Thus, it is humbly submitted that even in case where the bus transportation facility amounts to service, the said supply of service by the Applicant to its employees would be exempted from GST.

D. **Without prejudice to the above, even if GST is payable by the Applicant on the canteen recoveries made, the Applicant is liable to pay the GST only on the amount of recoveries made towards providing the canteen facility.**

1.1 Without prejudice to the above, it is humbly submitted that even if it is assumed that the Applicant is liable to discharge the GST on the canteen recoveries made, the Applicant is liable to discharge the GST only on the amount of recoveries made on providing the canteen facility.

1.2 In this regard, reliance can be placed on press release issued by Ministry of Finance dated 10th July 2017, wherein it is clearly stated that GST will not be applicable in case free housing is provided to the employees in terms of the contract between the employer and employee and the same is part and parcel of the cost to company. In other words, GST will not applicable, in case, any free facility provided by the employer to its employee as per the contract entered into between them and when the same is treated as cost to company. For better understanding, the relevant part of said press release is reproduced below:

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

1.3 Based on the above understanding, it is submitted that, in case, a certain pre-decided amount of recoveries is made by the employer for providing certain facilities to its employees and rest of the non-recovered amount is treated as cost to the company, the GST will be applicable only on the recoveries made and not on the full amount charged by the supplier for providing the facility the employee.

E. **Applicant's Interpretation with respect to the notice pay recoveries made from the employees for not serving the notice period, are provided in the below grounds which are without prejudice to each other.**

1.1 Without prejudice to the above, the notice pay recovery by Applicant is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.

1.1.1 The Applicant also submits that the notice pay recovery is specifically excluded from the coverage of 'supply' under GST as per Clause (a) of Section 7 (2) of the CGST Act which reads as below:

> *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"*
> *"SCHEDULE III*
> *ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES*
> ***1. Services by an employee to the employer in the course of or in relation to his employment."***

1.1.2 Section 7 (2) begins with a non-obstante clause and overrides Section 7 (1) of the CGST Act. A plain reading of above section provides that even in case where any activity may be treated as 'supply' in terms of Section 7 (1), certain activities/ transactions would still be excluded from the scope of 'supply'.

1.1.3 Entry (1) of Schedule-III covers services provided by employee to its employer in the course of employment or in relation to employment. It can be noted that the any activity or transaction which is undertaken in the course of employment or in connection with employment has been specifically excluded from the ambit of supply.

1.5.5 In light of the above, it is submitted that no GST should be levied on notice pay recoveries made from the employees by the Applicant.

<u>Conclusion:</u>

In view of the above submission, in the present case:

1 The canteen facility provided by the Applicant to its employees would not amount to 'supply' under GST;

2 The bus transportation facility provided by the Applicant to its employees would not amount to 'supply' under GST;

3 Without prejudice to above, even in case where bus transportation facility amounts to supply of service, the same would be exempted under GST.

4 Without prejudice to the above, if at all GST is payable, the same would be payable on the amount recovered from the employees and not on the value charged by the service provider to the Applicant.

5 The notice pay recoveries made from exiting employees by the Applicant would not amount to 'supply' under GST.

03. **CONTENTION – AS PER THE CONCERNED OFFICER:**

Officer Submission Dated: 07.04.2022

Please refer to your letter dated 09.03.2022 on the above cited subject and email dated 10.03.2022 as referred above. The reply of CGST Pune-I Commissionerate, Pune for the questions requiring Advance Ruling is as follows:

Questions requiring Advance Ruling

Q.1 Whether the recoveries made by the Applicant from the employees for providing canteen facility to its employees is taxable under GST laws?

Ans: Yes, it is taxable supply of service under GST law as it is a supply by the Applicant to its employees and such supply is not covered by S.No. 1 under schedule III of CGST Act, 2017 which only excludes the following from GST purview: "Services by an employee to the employer in the course of or in relation to his employment.

Q.2 Whether the recoveries made by the Applicant from the employees for providing bus Transport facility to its employees is taxable under the provisions of CGST Act?

Ans: Yes, it is taxable supply of service under GST law as it is a supply by the Applicant to its employees and such supply is not covered by S.No. 1 under schedule III of CGST Act, 2017 which only excludes the following from GST purview: "Services by an employee to the employer in the course of or in relation to his employment.

Q.3 Without prejudice, even if GST is applicable in respect of employee recovery towards bus Transportation facility, whether the Applicant would be exempted under the SI. No. 15 of Notification No. 12/2017-Central Tax (Rate)?

Ans: No, the Applicant would not be exempted under the SI. No. 15 of Notification No. 2017- Central Tax (Rate)

Q.4 Without prejudice, even if GST is payable in respect of aforesaid employee recoveries what would be the value on which GST is payable?

Ans: The value is the total consideration recovered by the Applicant i.e. total amount recovered by the Applicant from its employees for providing bus facility and canteen facility to them.

Q.5 Whether the notice pay recoveries made by the Applicant from its employees for not serving the notice period is taxable under the GST laws?

Ans: Yes, it is taxable supply of service under GST law as it is a supply by the Applicant to its employees and such supply is not covered by S.No. 1 under schedule III of

CGST Act, 2017 which only excludes the following from GST purview: "Services by an employee to the employer in the course of or in relation to his employment. Further, the requisite information of the taxpayer as per our records is as follows:

Sr. No	Description	Remarks
1	Registration No. of Central Excise or Service Tax or both as applicable.	Central Excise Registration Number AAAACF8110BST001 dated 28.04.2013
		Service Tax Registration Number AAAACF8110BST001 dated 28.04.2005
2	Period of Registration in case of Para (1) above	For Central Excise Registration-from 01.10.2013 to 01.07.2017
		For Service Tax Registration-from 28.04.2005 to 01.207.2017
3	Registered Address for Central Excise of Service Tax or both as applicable	For Central Excise Registration address - Plot No. F-13, and Plot No. C 10/1, Baramati Industrial Area, Tandulwadi, Baramati, Pune, Maharashtra-413133.
4(a)		For Service Tax Registration address- 201-204, Pentagaon Tower, Ferrero India Pvt. Ltd., Magarpatta City, Pune, Maharashtra-411028.
		1. Chocolate and other Food Preparations containing Cocoa-others - HSN Code-18069090 2. Chocolate and other Food Preparations containing Cocoa-others: Spreads Containing Cocoa - HSN Code- 18069030 3. Sugar Confectionary (including white Chocolate), Not Containing Cocoa-other-HSN code-17049090 4. Bread, Pastry, cakes, Biscuits and other Bakers Wares, Whether or not containing cocoa, Communion Wafers, Empty cachets of a kind suitable for Pharmaceutical use, Sealing Wafers, Rice Paper and similar Products-sweet Biscuits, Waffles and Wafers-Coated with Chocolate or Containing Chocolate -HSN code- 19053211 5. Chocolate and other food preparations containing cocoa -HSN Code-18069010
4(b)	Rate of Central Excise duty as applicable.	12.5%, 6%

4(c)	Details of benefit of notification of central Excise if any availed.	Notification No. 49/2008 CE (NT) dated 24.12.2008.
(5)(a)	Classification of Service/ Services as applicable	1. Manpower Supply under RCM. 2. GTA under RCM 3. Legal Consultancy Services under RCM. 4. Rent a cab under RCM. 5. Works Contract Services under RCM 6. Taxable services - other than the 119 listed under RCM
(5)(b)	Rate/ Rates of Services Tax as applicable to services provided	14.5%
(5)(c)	Details of benefits of Notification of services tax if any availed.	No
(6)	Copies of Advance Ruling Application/orders If any obtained by applicant under the provisions of Central Excise, Service Tax and Sales Tax and their present status in case of your company / related company or sister concern.	No
(7)	Copy of show cause notices/ adjudication order in respect of Central Excise of S. Tax if any issued during Last Five years, in company or sister concern.	No
(8)	Cases of violation of Central Excise/Services Tax if	No

	any booked during last five years	
(9)	Whether any proceeding is pending before any authority on said subject matter otherwise.	No

04. HEARING

Preliminary hearing in the matter was held on 05.04.2022. Mr. Arpit Chaturvedi & Mr. Vikas Gattani, Head of Tax ware appeared, and requested for admission of the application. Jurisdictional Officer Smt. Seema Gajbhiye, Superintendent, also appeared.

The application was admitted and called for final e-hearing on 18.12.2024. Mr. Sandeep Sachdeva, C.A., has appeared made oral and written submissions. Jurisdictional Officer is not available, but has made written submission. Case is heard.

5. OBSERVATIONS AND FINDINGS:

5.1 Taxation of recovery of canteen services and transportation services made from employees

5.1.1 We have carefully considered all the material on record and the relevant provisions of Law. The Applicant is before this authority for seeking clarification as to whether the recoveries made by the Applicant from the employees for providing canteen facility and transportation service to its employees is taxable under the GST laws.

(1) M/s. Ferrero India Pvt. Ltd. (hereinafter referred to as 'Applicant') is a Company incorporated under the provisions of the Companies Act, 1956. The Applicant is a part of the Ferrero Group engaged in the manufacture and sale of chocolate and confectionary products. The Applicant has established its corporate headquarters in World Trade Center, 8th Floor, Tower 3, Kharadi, Pune – 411014 and operates its manufacturing facility from Plot no. F13, MIDC, Baramati, Pune – 413133.

(2) We observe that, in order to comply with the obligation under Factories Act 1948, Applicant provides canteen facility to all the workers through a third-party Canteen Service Provider.

(3) As per the 'Long-Term Wage Settlement Agreement', with the employees, the Applicant is recovering certain amounts from its employees for providing the canteen & transportation services to its employees. The same is evident from the salary slips of the employees wherein the express deductions that are recovered by the Applicant on account of food and bus transportation are mentioned.

(4) In order to provide the said canteen and bus transportation facility, the Applicant has engaged third party service providers who are providing the said canteen and bus transportation facilities to the Applicant. Since, the said services are provided by the third party service providers to the Applicant, the service providers are raising their invoices with applicable GST to the Applicant. The Applicant pays the consideration to the third-party service providers for the said canteen and transportation facilities. Thereafter, the Applicant recovers certain portion (i.e., subsidized amount is deducted from salary of the employees on monthly basis) of the cost of the canteen and bus transportation incurred by the Applicant from its employees.

(5) Applicant has contended that the recovery of amounts from employees for canteen services or transportation services to employees do not fall under 'supply' as per section 7 as supply of these services are not in the course or furtherance of 'business'. Further, they have also taken a view 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 the GST.

(6) Various grounds raised by the Applicant to contend that the recovery of amounts from the employees for providing canteen and transportation services are discussed as below.

5.1.2 Whether supply of canteen and transportation services provided to employees is in the course or furtherance of business.

(1) We observe that the Applicant has argued that he is in the business of manufacture and supply of chocolate and confectionary products and supply of canteen or transportation services is not his business. The Applicant has

taken view that supply of 'canteen services' or 'transportation services' cannot be regarded as 'in the course or furtherance of business'. CGST Act, 2017 defines the expression 'business' under section 2(17) of the CGST Act, 2017. 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

.....

.....

This is an inclusive definition wherein various aspects have been listed in the clauses that would be included in 'business'. Clause '(a)' of this definition mentions various activities like trade, commerce, manufacture, profession, vocation, adventure, wages or any other similar activity. Thus, this clause covers these activities or any other similar activities. The last phrase 'whether or not it is for a pecuniary benefit' widens the scope of business to include non-profit activities. Clause (b) mentions that any activity or transactions in connection with or incidental or ancillary to activities mentioned in (a) would also be included in 'business'. Clause '(c)' provides that there would not be requirement of volume, frequency, or regularity of such transactions.

(2) It is an accepted fact that the Applicant is not carrying out supply of canteen services as his principal activity. No doubt his principal activity remains as manufacture & supplier of chocolates and confectionary products which is covered by clause 'a' of above definition. Let's see whether the activity of supply of canteen services, falls under the definition of business, as extracted above. Clause (b) mentions that any activity or transaction incidental or ancillary to principal activity would also be included in 'business'.

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.

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

The reading of all above definitions clarify that any activity, which supports the main activity or necessary to carry out the principal activity, is an activity or transaction in connection with or incidental to or ancillary to the principal activity. The activity of providing food in canteen and transportation services to its workers who are pivotal to his principal activity can definitely be said to be in connection with or incidental or ancillary to his main activity of manufacture and supply of chocolates and confectionary.

(3) Further, in terms of Section 2(17) (c), as mentioned in para (1) 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, the activity of supply of canteen and transportation services, falls within the definition of "business".

(4) Thus, as discussed above, the activity of supply of canteen services and transportation services provided to the employees falls under the definition of 'business' as these activities are in connection with or incidental or ancillary to the principal activity of the taxpayer as explained above.

5.1.3 Whether there is supply of canteen services and transportation services from the Applicant to the employees

(1) Fundamentally, the subject issue pertains to the transaction between the Applicant and employees, i.e., with respect to the canteen services and transportation services (herein after both services are referred as 'these services') as being supplied by the Applicant to employees for a consideration, although at subsidized rates. The Applicant pays the total consideration for the supply of these services to the canteen service provider and transport bus provider respectively and the Applicant in turn supplies these services to their employees.

(2) It is an undisputed fact that the money consideration charged, although at subsidized prices, for the supply of these services to their employees is being collected by the Applicant.

(3) Therefore, it is evident on record that there are two distinct and totally different transactions in the event of supply of canteen services to the employees of the Applicant. They are: -

i) Supply of these services by the respective service provider to the Applicant (employer); and

ii) Supply of these services by the Applicant (employer) to their employees.

(4) In respect of the first transaction, the respective service providers have been supplying these services to the Applicant (employer) for which the said service provider receives consideration from the Applicant on which the Applicant has been paying GST at the applicable rates to these service providers.

(5) Similarly, in the second transaction, the Applicant (employer) is supplying these services to their employees for which the Applicant is receiving consideration, although at the subsidized rate, from their employees. The respective service provider invoices the appellant for the entire services. He charges the consideration along with GST thereon. There is no privity of contract between these service providers and the employees. It is the Appellant (employer) which is providing these services to the employees. Applicant deducts certain amount from salary of the employees against this

supply. Applicant makes only part of the recovery and balance cost is borne him. Hence, the criteria of 'business', 'consideration' are met in the transaction of supply of these services by Applicant to the employees. Thus, there is supply of canteen services and transportation services from the Applicant to the employees, u/s. 7 (1) of CGST Act, 2017.

5.1.4 Taxability of Supply of Canteen services and transportation services to the employees

(1) Another contention of the Applicant is that the perquisites forming part of employment contract were excluded from GST. As per the Circular no. 172/04/2022-GST dated 06.07.2022 of CBIC, the relevant extract of the said circular is reproduced hereunder for ease 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 supple 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 therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided

		in terms of the contract between the employer and employee.

Thus, it is derived from Entry 1 of Schedule III that "services by an employee to employer in the course of or in relation to his employment" shall be neither supply of goods nor supply of services. It could be seen here that Entry 1 of Schedule III basically deals with 'services by an employee to employer', and not the other way round. Only as a corollary, the 'services by the employer to the employee', especially when provided in the form of perquisites, has been discussed in the CBIC Circular No. 172/04/2022 - GST dated 06.07.2022 in its para 2 mentioned above. From the above, it could be inferred that perquisites in terms of a contractual agreement between the employer and employee are not to be subjected to GST.

(2) It may be seen that in order to place any service provided by the employer to employee outside the ambit of GST, the same should be in the form of a perquisite. Though the term 'perquisite' has not been defined under the provisions of GST, the same is discussed under the Income Tax Act, where it has been stated in Section 17(2) as follows: -

"perquisite" includes-

(i) the value of rent-free accommodation provided to the assessee by his employer;

(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

(iii) ----------

.....

....."

(3) As per Income Tax Act, 1961, perquisite is defined to be the value of free benefit or facility given by the employer to his employees. The collection from the employees of whatever value, is not covered under 'perquisite'. It could be inferred from the above, that any service rendered free of charge, or, any service rendered on a concessional basis shall qualify as a perquisite. But, it is to be noted

that only the value/portion to the extent of concession offered by the employer is to be treated as a perquisite and not the remaining portion/value that has been charged by the employer. Applying the said analogy to the instant case, in respect of the canteen and transportation services provided by the applicant to its employees, it becomes clear that the exemption provided in Entry 1 of Schedule III to the CGST Act, 2017 applies only to the concession part extended to the employees and not on the value charged to the employees. Thus, the recoveries made from the employees for canteen and transportation services are liable to levy of tax.

5.1.5 The Applicant has presented following arguments in support of his stand

(1) The Applicant relies on the case of Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd. [1967 (20) STC 287 Mad]. M/s Thirumagal Mills Ltd. is a spinning mill manufacturing cotton yarn. The issue relates to taxation of a fair price shop run by the assessee for the benefit of its employees. This case pertains to the interpretation of provisions of the Madras General Sales Tax Act, 1959. Under the said Act, liability to pay tax was upon the 'dealer'. The Tribunal held that the assessee is not a dealer in respect of the turnover related to fair price shop. Hon'ble High Court confirmed this decision holding that the assessee is not dealer with reference to the transactions of fair price shop. The facts and the provisions of the law for which the said decision was pronounced are completely different than the current case.

The Applicant further relies on the decision in case of Panacea Biotech Limited vs. Commissioner of Trade and Taxes [(2013) 59 VST 524 (Del.)]. This judgment is in respect of the provisions of Delhi Sales Tax Act, 1975, wherein taxability mainly depended upon whether the person is 'dealer' as per the provisions of the said Act. In the said case when the cars were purchased, they were taxable at the first point i.e. w.e.f. 29.03.1996 to 02.09.2001, therefore, purchases were made after payment of Tax. When the tax is paid at the first point, subsequent sales are not to be taxed in view of provisions of the section 5 of Delhi Sales Tax Act, 1975. However, till the time cars were to be sold as used cars, they were included in the notification on which tax was to be paid at last point. No

protection was provided in respect of cars which were purchased under first point regime and were sold during the last point regime from levy of tax. Thus, the fact and provisions of law in that case are different than the current case. Applicant has further quoted judgement in case of M/s Raipur Mfg Co. Vs State of Gujarat (CA No.603 of 1966). However, the facts in this case and the provisions of law involved are completely different.

(2) In this regard, we notice that the applicant has further placed reliance on the ruling of Gujarat AAR in RE: Emcure Pharmaceuticals Limited [2022-VIL-231-AAR], the ruling of Maharashtra AAR in RE: Tata Motors Limited in [2021-TIOL-197-AAR-GST - 2020-VIL-257-AAR], the Maharashtra AAR in a ruling in RE: Posco India Pune Processing Centre Pvt Ltd (Order dated 07.09.2018), Authority for Advance Ruling, Maharashtra in M/s Jotun India Pvt Ltd (Order dated 4.10.2019), We would like to place on record that an advance ruling pronounced by the Authority or the Appellate Authority shall be binding only on the applicant who had sought it, and the concerned officer or the jurisdictional officer in respect of the applicant. Further, this authority has placed reliance on Rulings in case of Himachal Pradesh AAAR dated 26.09.2023 in case of M/s Federal-Mogul Anand Bearings India Limited, Tamil Nadu AAAR dated 05.05.2023 in case of M/s Kothari Sugars and Chemicals Limited and Tamil Nadu AAR dated 20.12.2023 in case of M/s Faiveley Transport Rail Technologies India Private Limited.

(3) If incidental of ancillary supply of goods or services such as canteen or transportation services by the employer to employee were to not fall under 'business', it would not be necessary to provide respite to 'supplies by employer to employees given as perquisite' from falling under 'supply' by taking recourse to schedule III. That is, if a transaction or activity is not a supply u/s 7(1) of CGST Act, then there would not be necessity to place such a transaction u/s 7(2)(a) for deeming it to be neither supply of goods nor supply of services. Hence, as discussed in Para 5.1.2 and 5.1.3, Applicant's activity of supply of canteen and transportation services falls u/s 7(1) of CGST Act, 2017. As discussed in Para 5.1.4, only the perquisites i.e., free supplies, in terms of a contractual agreement

between the employer and employee are not to be subjected to GST as these are in lieu of the services provided by employee to the employer in relation to his employment. Hence, the recoveries made from the employees are liable to levy of tax as it is consideration against canteen services and transportation services provided by the Applicant to the employees. This also answers the question related to the value which is to be subjected to tax. It is only the recovery made from employees which is to be subjected to GST as perquisite part as explained above is not liable to tax.

5.2 Value in respect of which canteen and transportation services are taxable

As explained in above paras, supply of canteen services and transportation services to the employees would in normal course constitute to be the supply of services u/s 7 (1) of GST Act 2017. However, it is now clarified by the CBIC circular No. 172/04/2022/GST dated 6th July 2022 that perquisite provided to the employees in view of the Contractual Agreement would not be subjected to GST. It is clarified that such perquisite are in lieu of the services provided by the employees to the employer in the course of or in relation to his employment, and should not be subjected to GST.

Supplies of any services would not be subjected to GST only under the following circumstances.

1. Such services are exempt under the notification number 12/ 2017, CT(R) dated 28/06/2017.
2. Such a transaction in services is a non-GST supply.
3. Such services are not supply as per provisions in section 7 of CGST Act, 2017

The supply of canteen and transportation services in the nature of perquisite by the employer to the employee would not have respite from two aspects mentioned at Sr.No.1 and 2 above as the said supply is neither exempted nor a Non-GST supply. Hence, it needs to be analysed if such services can be called as supply u/s 7.

The activity of provision of canteen and transportation services to the employees are in the course of business (as detailed in paras above). Consideration is absent or nominal. As per Section 7(1)(c), 'the activities specified in Schedule I, made

or agreed to be made without consideration' have been defined to be included in 'Supply'. Serial Number 2 of Schedule 1 reads as below.

*' 2. Supply of goods or services or both **between related persons** or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. '.*

Further, Explanation to Section 15 reads as below.

Explanation. – For the purposes of this Act,-- (a) persons shall be deemed to be –related persons

if-- (i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

.....

As per 'a(iii)', employer and employee are deemed to be related persons for the purposes of this Act. This means any transaction between employer and employee will not come out of 'supply' for the reason of not having consideration. However, respite to such transactions has come through Schedule 3. Section 7(2)(a) states that, notwithstanding anything in sub-section (1), activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services. Serial Number 1 of Schedule III is as below.

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

This entry includes only the services by an employee to the employer. However, it has been clarified by the above referred Circular that 'as corollary to this provision, the perquisite given to the employees in view of the contractual agreement are in lieu of services given by the employee to the employer and should not be subjected to GST'. As the supply of perquisite by the employer to the employee would not have respite from above two aspects mentioned at Sr.No.1 and 2 above as the said supply is neither exempted nor a Non-GST supply, it would be appropriate to interpret that the perquisite given to the employees in view of the contractual agreement are in lieu of services given by the employee to the employer and would not be subjected to GST by deeming it to be part of Schedule III as a corollary to entry at Sr.No.1 of Schedule III for cohesive interpretation.

The value of the outward supply of canteen and transportation service can be considered as having two parts. First part is the amount of recovery that is made from the employees, and second part is balance value of the services provided by the employer as perquisite which is in the lieu of the services provided by employees to the employer. The entire balance value of the services for which no amount is charged is the perquisite provided by the employer to the employees. As this part is in lieu of services of the employees to the employer which fall under schedule 3, the perquisite part is not taxable, as a corollary, deeming it to be falling in the said entry of schedule 3. Hence, though the employer and employee are related parties, the value on which tax is a liable to be paid is only the recovered amount from the employee as the remaining part of the value is the perquisite provided by the employer which is not liable to tax as discussed above.

5.3 **Whether the Applicant would be exempted under the Sl. No. 15 of Notification No. 12/2017 – Central Tax (Rate)**

5.3.1 The Applicant has submitted that they have agreement with M/s. Om Jay Facility Pvt. Ltd. for providing non-air-conditioned buses having seating capacity of 40 or 50. The buses are provided alongwith the drivers. M/s. Om Jay Facility Pvt Ltd has raised tax invoices to the Applicant charging 12% GST to the Applicant. Applicant has further used these buses for providing transport services to its employees.

5.3.2 The applicant submits that the services of employees to and from factory by non-air-conditioned buses will be covered under "transportation of passengers by non-air-conditioned contact carriages" which is exempted from payment of tax as per Sl. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017.

5.3.3 The Sl. No. 15 of Notification No. 12/2017-Central Tax (Rate) dated 28.6.2017 reads as under:

15	Heading 9964	Transport of passengers, with or without accompanied belongings, by- (a) air, embarking from or terminating in an airport located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air-conditioned stage carriage.	Nil	Nil

5.3.4 We observe that, as per clause (b) of above Sl. No. 15 of Notification No. 12/2017-Central Tax (Rate), dated 28.6.2017, the services of transportation of passengers, with or without accompanied belongings, by non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire is exempt from GST.

In Para 2(t) of Notification No. 12/2017-Central Tax (Rate), dated 28.6.2017, the term Contract Carriage has been defined as under:

(t) "contract carriage" has the same meaning as assigned to it in clause (7) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

In clause (7) of Section 2 of the Motor Vehicles Act, 1988. the contract carriage has been defined as under :

"(7) 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another; and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxicab; and

(ii) a motor-cab notwithstanding that separate fares are charged for its passengers;"

As per the above definition, Regional Transport Authority imposes certain conditions on the contract carriage permit holder for carrying contract carriage. Section 74 of the Motor Vehicles Act, 1988 is produced as below.

74. Grant of contract carriage permit. –

(1) Subject to the provisions of sub-section (3), a Regional Transport Authority may, on an application made to it under section 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely: –

(i) that the vehicles shall be used only in a specified area or on a specified route or routes;

(ii) that except in accordance with specified conditions, no contract of hiring, other than anextension or modification of a subsisting contract, may be entered into outside the specified area;

(iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicles, either generally or on specified occasions or at specified times and seasons;

(iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;

(v) that, in the case of motor cabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;

(vi) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceedingspecified maximum shall be charged;

(vii) that, in the case of motor cabs, a special weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;

(viii) that, in the case of motor cabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;

(ix) that the Regional Transport Authority may, after giving notice of not less than one month, –

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;

(xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused;

(xiii) any other conditions which may be prescribed.

It is to be noted that the contract carriage permit holder is responsible for the operation of vehicles as per the conditions imposed in section 74 of the Motor Vehicles Act, 1988. In this case, the applicant is not the contract carriage permit holder and thus not bound by the conditions mentioned in the section 74 of the Motor Vehicles Act, 1988.

As per the above definition of contract carriage, the passenger or passengers for hire or reward are to be engaged under a contract with them by a person with a holder of a permit of contract carriage. In this case, holder of a permit does not have any privity of contract with the passengers i.e. employees of the Applicant. Applicant has rented the buses from M/s. Om Jay Facility Pvt. Ltd. This transaction is in the nature of rent -a-cab service. M/s. Om Jay Facility Pvt. Ltd. is charging his services of providing transport buses for carrying the employees @12% (6% SGST and 6% CGST). These invoices are raised to M/s. Ferrero India Pvt. Ltd. These services are in the nature of renting of services of transport vehicles with operators. Here, the transport service provider provides buses to M/s. Ferrero India Pvt. Ltd. and charges them based on the fixed charges plus the additional Kms run by these buses. Cost of fuel is included in these charges and the buses provided are along with the drivers. It is for M/s. Ferrero India Pvt. Ltd. to decide as to how these buses are to be used. Thus, these

services squarely fall under SAC 9966 as rented services of transport vehicles. In case of MAH AAR-M/s. Shailesh Ramsundar Pande and RAJ AAR in case of M/s. Pawan Putra travels, the services provided by the transport service providers to the companies or organization for transportation of its employees have been held to be renting services to the company.

Let's further analyse the compliance to conditions for a contract carriage as provided in clause (7) of section 2 of Motor Vehicles Act, 1988. We observe that

1. M/s. Ferrero India Pvt. Ltd. is not a holder of permit for contract carriage,
2. It is not charging passengers i.e. employees on a time basis.
3. It does not provide service to employees from one point to another. It is plying buses through various routes so as to pick up other employees.

Thus, it is difficult to infer that the Applicant is providing contract carriage service to its employees.

Further, the hire or charter services are excluded from the said entry 15(b) of Notification No. 12/2017 CT(R) dated 28.06.2017. In view of aforesaid discussion, the transportation services provided by the Applicant to its employees are not covered by entry 15(b) of the Notification No. 12/2017 CT(R) dated 28.06.2027. The services provided by M/s. Ferrero India Pvt. Ltd. squarely fall under transport of passengers under SAC 9964 and taxable at 5% without ITC or 12% with ITC (If ITC is not blocked by other provisions) under entry No. 8 (vi) of Not. No. 11/2017 CT(R) dated 28.06.2017 as amended from time to time.

5.4 **Whether the notice pay recoveries made by the Applicant from its employees for not serving the notice period is taxable under the GST laws**

It is now clarified by the CBIC circular No. 178/10/2022-GST dated 3rd August 2022 that the notice pay recoveries are not taxable. The relevant para of the said Circular is produced as below.

"Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the

organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation." In view of this clarification, notice pay recoveries made from the employees are not liable to levy of tax under CGST Act, 2017.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the question is answered thus –

Question 1: whether the recoveries made by the Applicant from the employees for providing canteen facility to its employees is taxable under the GST laws?

Answer: - Answered in the Affirmative

Question 2: Whether the recoveries made by the Applicant from the employees for providing bus transport facilities to its employees is taxable under the provisions of CGST Act?

Answer: - Answered in the Affirmative

Question 3: Whether the Applicant would be exempted under the Sl. No. 15 of Notification No. 12/2017 – Central Tax (Rate)?

Answer: - Answered in the Negative

Question 4: Without prejudice, even if GST is payable in respect of aforesaid employee recoveries, what would be the value on which GST is payable?

Answer: - Value on which GST is payable is the actual amount of recoveries made from the employees.

Question 5: This advance ruling is also sought to ascertain whether the notice pay recoveries made by the Applicant from its employees for not serving the notice period is taxable under the GST laws?

Answer: - Answered in the Negative

MEMBER ADVANCE RULING AUTHORITY * MAHARASHTRA STATE, MUMBAI *

D.P. GOJAMGUNDE
(MEMBER)

PRIYA JADHAV
(MEMBER)

PLACE - Mumbai
DATE - 27/03/2025

Copy to: -

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.