

**AUTHORITY FOR ADVANCE RULING, TAMILNADU**

**DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX**

**5<sup>TH</sup> FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,**

**CHENNAI -600 003.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE  
GOODS AND SERVICES TAX ACT, 2017.**

**Members present are:**

1. Shri T.G.VENKATESH, I.R.S., Additional Commissioner/Member,  
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K.LATHA, M.sc., (Agri) Joint Commissioner (ST)/ Member,  
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

**ORDER No. 20/AAR/2022 Date: 31.05.2022**

GSTIN Number, if any / User id	33AABCK2495F1ZP
Legal Name of Applicant	Kothari Sugars And Chemicals Limited
Registered Address / Address provided while obtaining user id	115-117, Kothari Buildings, Mahathma Gandhi Road, Nungambakkam, Chennai, Tamil Nadu, 600 034.
Details of Application	Form GST ARA - 001 Application Sl.No.07/2022/ARA dated 02.02.2022.
Concerned Officer	Centre: North Commissionerate State: Nungambakkam Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for	
A Category	Factory/Manufacturing
B Description (in brief)	
Issue/s on which advance ruling required	Determination of the liability to pay the tax on any goods or services both.
Question(s) on which advance ruling is required	Whether recovery of nominal amount from the employees for making payment to the third-party service provider, providing food in canteen as mandated in the Factories Act, 1948 would attract tax under GST?

**Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.**

**At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.**

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M/s. Kothari Sugars and Chemicals Limited, 115-117, Kothari Buildings, Mahathma Gandhi Road, Nungambakkam, Chennai, Tamil Nadu, 600 034 (hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33AABCK2495F1ZP. They have sought Advance Ruling on the following question:

'Whether recovery of nominal amount from the employees for making payment to the third-party service provider, providing food in canteen as mandated in the Factories Act, 1948 would attract tax under GST?'

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated to be engaged in the manufacture of sugar, molasses, Denatured ethyl alcohol, and ethyl alcohol. They have stated that they have two manufacturing units located at Kattur and Sathamangalam, wherein around 300 workers have been employed. Section 46 of the Factories Act, 1948, prescribes for the operation and maintenance of canteen for the use of the workers, where more than two hundred and fifty workers are ordinarily employed. Accordingly, they had set up canteen facility at both the units, for the benefit of its employees and workers. Specifically, at the Sathamangalam unit, they have engaged a third party for the purpose of supply of food to the workers in the manufacturing unit. The consideration for provision of such service by the external

service provider is agreed at Rs.113.33. With regard to the Kattur unit, they had appointed a third party to prepare the food at their unit, where the required inputs are procured by them. In this regard, they recover a concessional rate of Rs.35/- from each of the employees for the supply of food in the canteen. The balance cost per meal incurred is borne by them as cost to the employer. In respect of the recoveries made from employees, they are currently discharging GST as an abundant caution.

2.2 On the interpretation of the law, the applicant has stated that since the provision of food in canteen is as per the employment contract and the same is on account of the mandate prescribed in the Factories Act, 1948, it would be covered under Entry 1 in Schedule III of the CGST Act, 2017. The Applicant is of the view that the amount collected from the employees for provision of canteen facility at its Sathamangalam unit, would not be taxed under GST for the following reasons:

- There is no supply between them and the employees and they are not engaged in the business of provision of canteen services.
- The amount received from the employees is in the nature of recovery and not consideration. The recovered amount is directly paid to the third-party vendor without any profit element in their hands.
- The provision of canteen facility is as per the employment contract and therefore covered under Entry 1 of Schedule III of the CGST Act, 2017

Further, Section 46(1) of the Factories Act, 1948 mandates every factory establishment to maintain canteen facility for the use of the workers in the factory. In order to comply with the above-stated statutory obligation, they have established a canteen facility for the benefit of the workers in the factory. They have outsourced the operation of canteen to a third-party vendor and are not engaged in the provision of canteen services. The same is provided to the workers since there is a mandate in the statute and it is an obligation bestowed on them by the Government. In the absence of such obligation, they would not provide such canteen facility to their employees working in the factory.

2.3 For any transaction to be taxed under GST, the same should fall within the scope of supply as envisaged in Section 7 of the CGST Act, 2017. As per Section 7(1) of the CGST Act, 2017 any transaction to be covered within the scope of supply should satisfy the following conditions- There should be supply of goods or services or both; There should be consideration; It should be in the course or furtherance of

business. In the instant case, there is no aspect of supply between them and the employee in respect of canteen services. They have engaged a third-party vendor for the provision of canteen services and the canteen service is actually provided by the third-party vendor. They merely facilitate the provision of such service by the third-party vendor for the use of the employees. Therefore, there is no scope for supply of services between them and their employees in the instant case. Further, they are engaged in the business of manufacture of sugar, molasses, Denatured ethyl alcohol, and ethyl alcohol and not in the provision of canteen facility. Section 2(17)(b) of the CGST Act, 2017 pertains to any activity which has direct correlation with the activity of business. The provision of canteen facility by them has no nexus with their business i.e., manufacture of sugar, molasses, Denatured ethyl alcohol, and ethyl alcohol. The activity of provision of canteen facility is only on account of obligation bestowed by the Government on them and the same cannot be termed as their business. In this regard, they have placed reliance in the ruling of Advance Ruling Authority

- on an application filed by M/S. JOTUN INDIA PVT. LTD. [2019-TIOL-312-AAR-GST], wherein the Authority has ruled on the recovery of 50% premium for health insurance provided to the employee's parents
- in the case of POSCO INDIA PUNE PROCESSING CENTER PRIVATE LIMITED [2019 (21) G.S.T.L. 351 (A.A.R. - GST)].
- In the case of ION TRADING INDIA PRIVATE LIMITED [2020 (32) G.S.T.L. 608 (A.A.R.-GST-U.P.)] wherein for the provision of parking facility for the employees the Applicant was recovering a nominal amount from the employees

Further, since the requirement to provide canteen facility is a statutory obligation under the Factories Act, they in order to meet the said statutory requirement has appointed a third party to provide the said facility. They do not provide any service nor intends to provide such canteen services and merely facilitates the provision of such service by the third party. Even though the applicability of Advance ruling is restricted to the Applicant and the Jurisdictional Authority vide Section 103 of the CGST Act, 2017, the same has persuasive value even though it does not have precedential value and therefore, the Applicant had referred the rulings of the Advance Ruling Authority above.

2.4 The applicant has further stated that in the instant case, they have engaged a third-party vendor for provision of canteen facility as mandated under Section 46 of

the Factories Act, 1948 and the recoveries made from the employees is paid to the third-party vendor and the balance portion is borne by them as part of their employee cost. They do not retain any profit margin in this activity of collecting employee's portion of canteen charges. This activity carried out by them is mere recovery and does not amount to consideration. They are merely facilitating the provision of canteen facility by engaging a third-party vendor and merely recovers the amount from the employees and pays the same to the third-party vendor who actually provides the canteen services. Thus, the amount received by the Applicant is merely in the nature of recovery and does not amount to consideration. They have placed reliance in the case of

- o TATA MOTORS LIMITED [2020 (41) G.S.T.L. 35 (A.A.R. - GST - MAH.)]
- o BHIMAS HOTELS PVT. LTD. [2017 (3) G.S.T.L. 30 (A.P.)]

2.5 The Applicant has further stated that they recover nominal amount on monthly basis to ensure use of canteen facility only by authorized persons/employees. Once employee ceases to be in employment with Applicant, he/she is not authorized to use the canteen facility. In other words, employer-employee relationship is must to avail this facility. The remaining portion of the expenditure incurred towards canteen facility is borne by Applicant as part and parcel of cost to company. In this regard, they place reliance in the Press Release issued dated 10.07.2017 wherein the CBIC has clarified that, *supplies by employer to employee in terms of contractual agreement of employment (part of salary/CTC) is not subject to GST. 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).* The above press release makes it clear that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST. The Applicant is of the view that once the provision of canteen facility is part of the employment contract, the same shall be covered under Entry 1 of Schedule III of the CGST Act, 2017 and thereby ousted from the scope of supply. Since the recoveries made from the employees for provision of canteen facility is part and parcel of employment contract, the same should not be liable to tax under GST as it is ousted from the scope of supply. The Applicant has submitted that there is a contrary ruling in the case of CALTECH POLYMERS PVT. LTD. [2018 (12) G.S.T.L. 350 (A.A.R. - GST)], wherein the AAR has ruled that GST is applicable on recoveries made from employees for provision of canteen facility. However, the said ruling was passed on

different set of facts. The said decision was rendered in the context where the space for the canteen is provided by the company inside the factory premises, the cook is employed by the company and is paid monthly salary and vegetables and other items required for preparing the food items are purchased by the company directly from the suppliers, beside others.

3.1 The applicant was addressed to seek their willingness to participate in the hearing in Digital mode and the applicant tendered their willingness. The hearing was held in digital mode on 16.03.2022. Shri. Vikram Kataria, Authorised representative (AR) appeared for the hearing virtually and reiterated the submissions. He stated that the company under CTC basis provided the canteen facility as a part of contractual obligation and as per Factories Act, 1948. He emphasized that the amount collected from the employees is a recovery over and above the salary cost as per their book of accounts and is not a consideration. He referred to the Additional Submissions made by them and the said submission was taken on record. The AR stated that coupon book will be given to the employees and on the basis of redemption of the coupon the charges are recovered. He was asked to furnish the following documents:

- i) The process of issuance of token and costing for recovery;
- ii) Contract of employment(sample); and Salary slip.

3.2 In the additional submissions dated 15.03.2022, the applicant referred to the following decisions of various Advance Ruling Authorities who have held that GST would not be applicable on the nominal amount recovered from employees against the canteen services provided:

- a) BHARAT OMAN REFINERIES LTD. [2021-TIOL-36-AAAR-GST]
- b) DAKSHINA KANNADA CO-OP. MILK PRODUCERS' UNION LIMITED [2021 (55) G.S.T.L. 574 (A.A.R.- GST – KAR.)]
- c) EMCURE PHARMACEUTICALS LTD. [2022-TIOL-10-AAR-GST]
- d) AMNEAL PHARMACEUTICALS PVT. LTD [TS-569-AAAR(GUJ)-2021-GST]

3.3 In furtherance to the hearing held on 16.03.2022, the applicant furnished the sample copies of employment contract and salary slip and the following additional submissions vide their letter dated 21.03.2022:

- The tokens are issued only for visitors in the factory. In respect of employees, the consumption of food is tracked vide ledger entries (each page of the ledger is allocated for each of the employees) which is also annexed along with the

Salary slip of the employee for the purpose of computation of amount to be recovered.

- The costing adopted for recovery from employees per unit of consumption is as under:

Particulars	Actual Cost per unit	Employee Contribution per unit	Management Contribution per unit
Breakfast	27	10	17
Lunch	42	15	27
Dinner	27	10	17
Total	96	35	61

\* In case of consumption of extra vada, the same would be charged at Rs.5/- per unit.

- Accordingly, in case where an employee consumes 15 units in Breakfast the employee contribution for the same would be 150 (i.e., 15 units \* 10 per unit). For instance, in the Canteen recovery sheet enclosed for the month of July 2021, Sl.No. 1 Muthuganapathy had consumed 8 units of breakfast and 1 unit of lunch. Accordingly, the Company had recovered Rs.95/-  $[(8*10) + (1*15)]$ .
- Further, they receive 2 separate invoices from the third-party canteen service provider, one for the Company's contribution and another invoice to the extent of recoveries made from the employees.

3.4 Since the applicant had furnished details pertaining to their Sathamangalam Unit alone, the applicant was requested to furnish the following information vide this office letter dated 05.05.2022

1. Copy of agreement with the third party vendor in respect of Kattur Unit, invoices raised by the service provider, pricing and the recovery made from the employees at Kattur unit along with the employee contract and pay slip of employees of the Kattur unit.
2. Details of number of employees employed at each unit (Sathamangalam unit and Kattur Unit separately) during crushing season and off season along with substantiating documents.
3. Clarification regarding whether canteen services are extended throughout the year in both of their units.

3.5 The applicant vide their letter dated 13.05.2022, submitted the following details in response to the above notice:

- In their Kattur unit they have not engaged any third-party vendor for provision of canteen services and instead have deployed employees/contract labourers for preparation of food. Therefore, there is no agreement or invoice issued by third-party vendors for operation of canteen facility in our Kattur unit. The sample copies of recoveries made from the employees at Kattur unit along with employee contract and payslip attached.
- In respect of pricing adopted for recovery from employees per unit of consumption, the same is as under:

<b>Particulars</b>	<b>Cost recovered from Kattur unit employees Rs.</b>
IDLY	0.60
PONGAL	0.60
POORI	0.60
TEA	1.00
VADAI	0.60
MEALS	7.50
SNACKS	1.00
VARIETY RICE	0.60
PAROTA	1.70

- The details of number of employees employed during crushing season and off season in each of the unit are as follows:

**Kattur Unit** : Number of workers – 147 workers. Number of Contract Labours - 296 labourers. During offseason the approximate strength of employees and Contract workers would be 125 and 150 respectively.

**Sathamangalam Unit** : Number of workers – 166 Workers. Number of Contract Labours – 235 labourers.

During offseason the approximate strength of employees and Contract workers/ labourers would be 100 and 60 respectively.

- Canteen services is operating throughout the year in Kattur and Sathamangalam units.

4. The State Jurisdictional authority who has the administrative jurisdiction over the applicant vide his letter RC.82/2022 dated 28.02.2022, has stated that the applicant has arranged a canteen for the employees, which is run by the third party canteen service provider. As per their arrangement, part of the canteen charges is borne by the applicant whereas the remaining part is borne by the



employees. The said employees' portion canteen charges is collected by the applicant and paid to the Canteen service provider. The applicant submitted that they do not retain with them any profit margin in this activity of collecting employees' portion of canteen charges. This activity carried out by applicant is without consideration. GST, at the hands on the applicant, is not leviable on the amount representing the Employees portion of canteen charges, which is collected by them and paid to the Canteen Service Provider As the third party is not a registered taxable person under TNGST Act'2017, the applicant has to pay under RCM. Further it is submitted there is no legal proceedings of the applicant or case is pending in this office.

5. The Centre Jurisdictional authority has submitted that the Press Release issued dated 10.07.2017 makes it clear that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST. In the instant case, the Applicant is facilitating the provision of canteen facility for the benefit of the employees. Hence, it is felt that as per sl.no. (1) of Schedule III attached to CGST Act, 2017 only services by an employee to the employer in the course of or in relation to his employment are neither a supply of goods nor a supply of services. But in this case services are provided by the employer to the employees and a nominal amount is recovered from the employees for making payment to the third party service provider for providing food in canteen as mandated in the Factories Act, 1948. In view of the above, GST has to be discharged by the employer for the recovered amount.

6. We have carefully considered all the submissions made by the Applicant and that furnished by the Jurisdictional authorities, both State & Center. The applicant is engaged in the business of manufacture of sugar, molasses, Denatured Ethyl Alcohol, and Ethyl Alcohol. The applicant has stated that they have two manufacturing units located at Kattur and Sathamangalam, wherein around 300 workers have been employed. The Applicant has set up a canteen facility at both the units, for the benefit of its employees and workers. The applicant has sought ruling on the following question:

*Whether recovery of nominal amount from the employees for making payment to the third-party service provider, providing food in canteen as mandated in the Factories Act, 1948 would attract tax under GST?*

The question is in respect of whether they are liable to pay tax on recovery of amount from the employees for making payment to the third-party service provider, providing food in canteen at their manufacturing units. The question is admissible as the same is covered under Section 97(2)(e) of the Act read with Section 95 of the Act.

7.1 It is seen that the Applicant had set up a canteen facility at both the units, for the benefit of its employees and workers. The clarification sought is as to whether GST is liable to be paid on that part of the amount collected from their employees towards provision of food. The contention of the applicant is that

- Since the supply of food in canteen is part of employment contract the same shall be ousted from the scope of supply vide the said entry Entry 1 in Schedule III of the CGST Act, 2017.
- There is no supply between the Applicant and the employees and the Applicant is not engaged in the business of provision of canteen services.
- The amount received from the employees is in the nature of recovery and not consideration. The recovered amount is directly paid to the third-party vendor without any profit element in the hands of the Applicant.

7.2 With regard to Kattur unit, the applicant has stated that the number of workers is 147 and there are 296 contract labourers & during off season the approximate strength of employees and Contract workers would be 125 and 150 respectively. In this Unit, they have deployed employees/contract labourers for preparation of food at their unit, where the required inputs are procured by the applicant. The applicant recovers agreed rate for the food consumed at the concessional rate from each of the employees for the supply of food in the canteen and the balance cost incurred is borne by them as cost to the employer. From the deduction check list for the month of August 2021, it is seen that 52 employees had partaken food and the deductibles have been arrived at. The applicant has stated that since the canteen is run by them and there is no involvement of a third party vendor, there is no agreement or the invoice copy in respect of Kattur unit. The employment contract in respect of the employees at Kattur unit and the pay slips have been furnished. On perusal of the employee appointment order furnished in respect of S/Shri P.K. Gunasekaran, Y.Anandaraj, P. Sekahar & R.Arokiyasamy, it is seen that the Starting Basic Pay is mentioned and it is also stated that they will

be eligible for only those benefits as applicable to others of the cadre. From the pay slips it is seen that there are deductions on account of 'Canteen'.

7.3 The applicant has stated that at the Sathamangalam Unit, the number of workers is 166 and there are 235 contract labourers & during off season the approximate strength of employees and Contract workers would be 100 and 60 respectively. In this Unit, they have engaged a third party for the purpose of supply of food to the workers. The applicant has furnished the copy of the agreement entered into with the service provider, invoice copies raised, ledger copies for calculating the food consumed, employment contract with the employees at Sathamangalam unit and the pay slips of such employees. On perusal of the agreement with the third party vendor it is seen that the vendor has agreed to provide canteen facilities in the canteen of the unit, for a fixed service charge and at mutually agreed prices for the various items as per the menu decided by the canteen committee of the applicant unit. Further the applicant extends a fixed number of commercial gas cylinders for use in the canteen. The vendor accordingly provides the food as per the menu to the persons partaking food at the canteen and raises two invoices one for the service charge & cost borne by the applicant unit and another for the recovery amount to be made as seen from the copies of the Tax Invoice raised on the applicant. From the deduction check list for the month of July 2021, it is seen that 111 employees had partaken food and the deductibles have been arrived at. On perusal of the appointment order issued to Mr. M. Sudhakar as Clerk(Seasonal) dated August 01, 2008 and that issued to Mr. D.Kumar as Welder(Seasonal) dated 01/01/2009, apart from mention of basic salary, conveyance, it is stated that they will not be eligible for any other allowances available to the other employees. From the pay slips enclosed for these employees it is seen that there are deductions on account of 'Canteen'.

7.4 Thus, it is seen that the applicant provides canteen facility in both the units and follows different modus in running the canteen facility at their units at Kattur and Sathamangalam. The common factor seen is that the applicant while extending the canteen facility, is providing meals/food at concessional rates, i.e., no meal is extended free and specified amount in respect of the food consumed by the employee are collected by the applicant against such consumption of food. Also it is seen that consuming food at the canteen facility made available by the applicant in their premises is not mandatory because the deductions sheet reveals that only a

limited number of employees have consumed food at the canteens & also the consumption is limited to certain items/breakfast/lunch, etc, while the number of workers and labourers employed at the units are at large. With the above facts, the question sought on the liability to pay GST on the amount collected by the employees is taken up

8.1 The applicant contends that the provision of food in canteen is as per the employment contract and the same is on account of the mandate prescribed in the Factories Act, 1948 therefore the same would be covered under Entry 1 in Schedule III of the CGST Act, 2017. As per Sl.No (1) of Schedule III attached to the CGST Act, 2017 only services by an employee to the employer in the course of or in relation to his employment are neither a supply of goods nor a supply of service. But in this case supplies are provided by the employer to the employees for a consideration, though nominal. Further CBIC vide the Press Release issued dated 10.07.2017 having description " GST on gifts", has clarified 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 nor supply of services). It follows that supply by the employer to the employee in terms of contractual agreement of employment (part of salary/CTC) is not subject to GST. The above press release makes it clear that any benefit provided to the employees as part of employment contract would not be subjected to tax under GST. In the instant case, the Canteen facility is provided by the applicant in both their units in accordance with the mandate under the Factories Act, 1948. The applicant collects a nominal amount fixed as employee cost in respect of the food consumed by such employee. Therefore, the contention that the activity of supply of food for a nominal charge by them is neither a supply of goods nor a supply of service is not legally tenable.

8.2 The next contention of the applicant is that there is no supply between the Applicant and the employees and the Applicant is not engaged in the business of provision of canteen services but has established the canteen as required under the Factories Act. Factories Act 1948 on providing the facility of Canteen, states as follows:

46. Canteens. (1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for--

- (a) the date by which such canteen shall be provided;
- (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- (c) the foodstuffs to be served therein and the charges which may be made therefor;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- 1\*[(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;]
- (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

From the above provision, it is seen that the Act mandates establishing a canteen when more than two hundred and fifty workers are 'ordinarily' employed in a factory and as per sub-clause (2)(dd) above, certain expenditure are to be borne by the employer. In the case at hand, in both the units, abiding by the above provisions, since the number of workers and contract labourers ordinarily employed exceeds 250 in number, the applicant has established the canteen. Managing committee for the canteen are present in the units as seen from the agreement entered into with the third party vendor and the submissions of the applicant and the menu along with the cost are decided by the said committee. The cost to be borne by the applicant as per the above provisions are borne by the applicant and the employee cost are arrived. The term "**business**" is defined in Section 2(17) of the GST Act 2017 as:

"business" includes:

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidents or ancillary to sub-clause (a); .

In the case at hand establishing a canteen facility in the units is an activity incident to the running of their business. Factory Act, above mandates establishing

canteen, bearing certain mandatory costs in running of the canteen by the employer in as much as the number of workers 'ordinarily employed' (workers & contract labourers) are above 250 per unit, which is the case in hand as per their submissions. Accordingly, the applicant has established the canteen in their premises and bears certain running cost while collecting the nominal rate as fixed by the Managing Committee, which is an activity in furtherance of their business.

**'outward supply'**, is defined in Section 2(83) of the CGST Act, 2017, as below:

'Outward Supply' in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business".

Thus supply made by a taxable person in the course or furtherance of business is an 'Outward supply'. It has been brought out above, that establishing canteen is in the furtherance of business of the applicant and supply of food to the employees when the same is not contractually agreed, is not an allowance as a part of the employment. Thus, the provision of food in the canteen for a nominal cost is a 'Supply' for the purposes of GST. Schedule II to the CGST Act, 2017 describes the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service:

"Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is-for cash, deferred payment or other valuable consideration."

Therefore, the supply of food is a 'Supply of Service'.

8.3 The final contention made by the applicant is that the amount received from the employees is in the nature of recovery and not consideration as the recovered amount is directly paid to the third-party vendor without any profit element in the hands of the Applicant. As stated supra, the running of canteen in the units of the applicant is in the course of furtherance of business. The applicant has chosen to run the canteen through a third party vendor in one of its units, while in other unit, the same is run by the applicant themselves. It is also clear that in running of such canteens, the employer, i.e., the applicant is mandated to bear certain costs. The contention that the applicant only collects the employee cost and pay

the third party vendor & that such employee cost is only a recovery is not acceptable. Provision of canteen facility and bearing certain costs in running of canteen are mandated on the part of the employer as per the Factories Act. Accordingly, such canteens are provided. It has been established that the supply of food in the canteens are 'Supply of Service' by the applicant. 'Consideration' is defined in Section 2(31) of the CGST Act 2017 as:

'Consideration' in relation to the supply of goods or services or both includes,-

- a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government

In the case at hand, the applicant supplies food to their employees at a nominal cost, and the same is the consideration for such supply made by the applicant on which GST is liable to be paid. The recovery of cost from the salary as deferred payment do not alter the fact of the service provided and the person providing the said supply. The third party vendor has entered into agreement with the applicant for running of canteen in their sathamangalam unit and is paid service charges which is a supply made by the third-party-vendor to the applicant. The supply of food by the employer, i.e, the applicant to their employees is composite supply of food held as 'Supply of service' as per Schedule-II of the GST Act and the amount collected by the applicant is a 'Consideration' on which GST is liable to be paid

8.4 To sum up, in the case at hand, the applicant has established canteen facilities as mandated under Section 46 of the Factories Act, 1948 and supplies food at a nominal cost either directly or through third-party-vendor. The supply of food by the applicant is 'Supply of Service' by the applicant to their employees as the same is not a part of the employment contract and the canteen facility is provided as mandated under Factories Act. The nominal cost, which is recovered from the salary as deferred payment is 'consideration' for the supply and GST is liable to be paid.

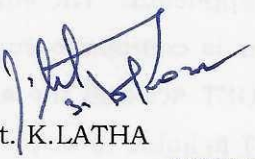
9.1 The applicant has referred to the rulings of various advance ruling authorities and appellate authorities, wherein it is held that the collection of employees share and paying to canteen service provider without profit is not a supply. Prima-facie,

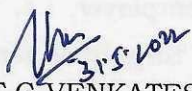
Advance Ruling extended to one applicant cannot be generalized and applied to all cases. Furthermore, in the case at hand, as brought out in the para supra, the applicant who runs factory units, wherein more than 250 workers are ordinarily employed is mandated to provide the canteen facility in the premises and bear certain costs & the provision of food at nominal rate and recovery of such nominal rate is not mentioned in the employee agreement/letter furnished before us, which shows that provision of food is not as per the employment contract. In view of the stated factual matrix of the case, we find the case laws relied upon by the applicant do not have even persuasive values to this case and therefore not elaborated individually.

### RULING

**Question 1:** Whether recovery of nominal amount from the employees for making payment to the third-party service provider, providing food in canteen as mandated in the Factories Act, 1948 would attract tax under GST?

**Answer:** Answered in the Affirmative, for the reasons stated in Para 8 above

  
Smt. K.LATHA  
(Member SGST)

  
Shri T.G.VENKATESH  
(Member CGST)



To  
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//BY RPAD//

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2. The Principal Secretary/Commissioner of Commercial Taxes,  
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