



Case Study Series – GST Advance Ruling

Crux of the case:

Taxability & Admissibility of ITC on canteen services to be mandatorily provided as per the Factories Act?

Authority	Haryana Appellate Authority for Advance Ruling
Legal name of Applicant/Appellant	Musashi Auto Parts India Private Limited
Details of Order	HAAAR/2020-21/06

Facts of the case

- The appellant employs around 2400 full-time employees and is providing canteen facilities in its manufacturing facility as mandated by the Factories Act, 1948.
- A nominal amount is recovered from the employees in respect of the canteen facility.
- The amount recovered does not have a commercial objective, but is primarily aimed at avoiding food wastage and to maintain discipline.

Appellant's view:

- As per the provisions of the Factories Act, 1948, it is mandatory to provide food facility where the number of employees exceeds 250.
- All employees do not avail this facility, only those who pay the nominal amount can avail this facility.

As per the common proviso to section 17(5) of the CGST Act, 2017 which states that “provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”, we can infer that, something mandatorily done in furtherance of business is allowable for ITC.

Discussion and Findings:

- The canteen services are provided on a NOT-FOR PROFIT basis and the same has been mandated by the Factories Act.
- They are also uniformly available to all the employees. These canteen services are, therefore available to the employees essentially as a facility in the course of their employment akin to uniform, safe-environment and first aid. Therefore, the provision of canteen services provided to employees is **not a taxable activity** chargeable to GST.

- The Authority after careful reading of section 17(5) comes to the conclusion that the proviso quoted by the appellant is not a common proviso but is infact applicable only to point no (iii) of section 17(5)(b) namely “travel benefits extended to employees on vacation such as leave or home travel concession”.
- The benefit of the proviso is not applicable to canteen services/supply of food and beverage which is point no (i) of section 17(5)(b).

Accordingly, ITC is not admissible to the applicant in respect of the canteen services provided.

Order:

- **“Whether company is eligible to take ITC on GST charged by vendor for canteen services availed by it for its employees”?**
 - **No, company is not eligible to ITC on the GST charged by vendor, for canteen services availed by it and provided to its employees.**

Key Takeaways:

- It has to be noted that the benefit of proviso is applicable only to point (iii) of the section 17(5)(b) of the CGST Act, 2017 rather than to the entirety of section 17(5)(b).
- CBIC has to clarify the applicability of the proviso’s in order to avoid any future confusions in this regard.