

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

J. RAGINI, B.A., B.L.,
K.NANCY, B.COM., B.L. (HONS.),
M.S.HARSHA PRABHU, L.L.M.
K.VIGNESHKUMAR, B.Sc., L.L.B.

CONSULTANTS:

GST,
CUSTOMS,
FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. QUERIST:

M/s. Turbo Energy Private Limited,
'Stoneacre',
No.67, Chamiers Road,
Chennai – 600 028.

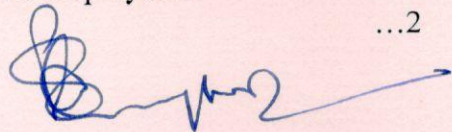
2. FACTS:

- 2.1 Querist provides canteen facilities to its employees and also to contract labourers who are supplied by contractors under manpower supply arrangements. Apart from that, job workers who work in the querist's premises also get supplies from canteen. The food supplied to company's salaried staff as well as trainees and also to other contract labourers and job workers is at subsidized rates. A small portion is recovered for food supplied through the canteen from the salaries of employees/ staff/ trainees on the rolls of the querist. However, in respect of others, such as, contract labourers they receive food tokens by paying charges at subsidized rates. It is reported that apart from the above supplies, occasionally there may be visitors or vendors who avail the services in the canteen but no amounts are recovered from them.
- 2.2 It is reported that as of now, the contractor who is managing the canteen is supplying the food and charging 5% GST without availing input tax credit with regard to the materials and services used in providing the service. The querist also is discharging GST at 5% in terms of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended.
- 2.3 Recently, the Authority for Advance Ruling in Gujarat has provided a ruling to the effect that in respect of services provided by canteen by an employer to the employees, GST will not be applicable for the reason that these will get qualified under 'perquisites' as per the contractual arrangement by the company/ employer has with its employees. This non-applicability of tax payment depends upon the contractual arrangement in each case.

3. QUERY:

In the light of the above, querist would like to know whether when food is supplied as a perquisite to its employees, still they need to charge GST for the charges collected by the company from the employees.

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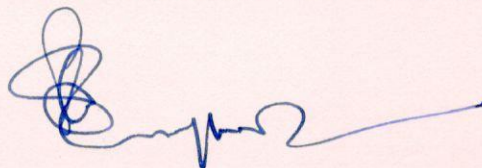
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4. OPINION:

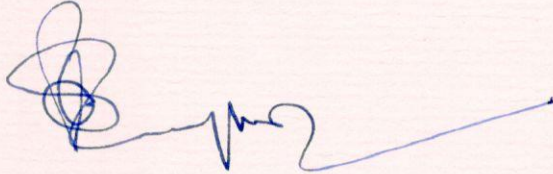
- 4.1 It is noticed that the Authority for Advance Ruling in Gujarat in the case of SRF Limited has provided a ruling after considering various decisions on the subject, to the effect that supply of services as perquisites by an employer to the employees will not be within the purview of GST. This is based on the CBIC's clarification in terms of Circular 172/04/2022-GST dated 06.07.2022. A copy of the ruling as well as the relevant Board's Circular are attached as Annexures-A and B to this opinion. On the issue of perquisites provided by the employer to the employees as per the contractual agreement the following is stated in the above circular.

“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.”

- 4.2 Therefore, in the light of this clarification issued now, if the services in the canteen are provided to the employees as per the contractual agreement the employer has with them, then such services will not constitute “supply” attracting GST. Accordingly, there may not be any need to pay GST on the amounts recovered from the employees for providing the services. In the advance ruling given by the Authority for Advance Ruling in Gujarat it was specifically pointed out that whatever amount is recovered from the employee is given to the caterer in full and there is no profit margin held back by the company. According to this Ruling when such is the situation and only a portion of the cost is recovered from the employee and paid to the caterer and when such services are provided as per the contractual arrangement, there will not be any liability to pay GST. Therefore, if the terms of employment provide for ‘supply of food’ as one of the ‘perquisites’ then there will not be any tax liability.
- 4.3 However, in the case of others i.e., contract labourers and job workers where certain amounts are collected by the querist for providing food, that will not be in the same category as that of employees. As such, in respect of such services where charges are collected from others, the querist need to pay GST, as such facilities will amount to ‘supply of services’ attracting GST. It may be noted that in terms of Section 15 of CGST Act 2017, the value of



supply of such services will be the transaction value i.e. the price actually paid or payable for such supply. The contract labourers and job workers will not come within the scope of 'related persons' as specified in Section 15 of the above Act and accordingly, in these cases the transaction value can be adopted for payment of GST.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

S. MURUGAPPAN

sm/ss

Disclaimer:- The above opinion is provided based on the information and documents made available to us by the queriest and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.