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GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.

NATION TAX MARKET

ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2024/09
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/06)

Date 30 .12.2024

Name and address of the appellant	:	**Appellant** The Assistant Commissioner, CGST, Ahmedabad North Commissionerate, 2nd Floor, Gokuldham Arcade, Sarkhej-Sanand Road, Ahmedabad-382210. **Respondent** M/s. Emcure Pharmaceuticals Ltd., SM-14, 15 and 16/1, GIDC Sanand Industrial Estate, Taluka Bol and Charal, Sanand, Ahmedabad, Gujarat 382 110.
GSTIN of the respondent Jurisdiction Office	:	24AAACE4574C1Z1 Center Commissionerate : Ahmedabad North Division-III - SANAND, Range – V
Advance Ruling No. and Date	:	GUJ/GAAR/R/2022/22 dated 12.4.2022.
Date of appeal	:	20.05.2022
Date of Personal Hearing	:	15.10.2024
Present for the appellant	:	None for the appellant. Shri Harsh Adhyaru, Authorized Signatory for the respondent.

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by The Assistant Commissioner, CGST, Ahmedabad North Commissionerate (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/2022/22 dated 12.4.2022. The

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appeal is filed in terms of the authorization under Rule 106(3)(a) of the CGST Rules, 2017.

3. Briefly, the facts are enumerated below for ease of reference:

- The respondent [M/s. Emcure Pharmaceuticals Ltd], provides canteen & bus transportation facility to its employees as a part and parcel of the agreement with the employees; that it is also based on their HR policy;
- the canteen facility is provided at a subsidized rate;
- transportation facility is provided with no cost to employees;
- that the bus used are non airconditioned, having seating capacity of more than 13 seats;
- canteen facility is provided in terms of section 46 of the Factories Act, 1948.

4. In view of the foregoing facts, the appellant had sought Advance Ruling on the below mentioned question

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

2 Whether the free of cost bus transport facilities provided by the Applicant to its employees is taxable under the GST laws?

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 Sl. No. 15 of Notification No. 12/2017 – Central Tax (Rate) dated 28 June 2017?

4 Whether input tax credit is admissible to the Applicant for the GST charged/paid to the vendors on procurement of such services in terms of Sec 16 of CGST Act, as the same are used in relation to furtherance of business? If yes, would the same be restricted to the portion of cost borne by the Applicant?

5. Consequent to hearing M/s. Emcure Pharmaceuticals Ltd., the Gujarat Authority for Advance Ruling [GAAR], recorded the following findings *viz*

- that M/s. Emcure arranged a canteen service provider [CSP];
- that part of the canteen charges is borne by M/s. Emcure whereas the remaining part is borne by its employees;
- the employees portion of canteen charges is collected by M/s. Emcure & paid to the CSP;
- M/s. Emcure has arranged free of cost transportation facility to its employees in non-AC buses which is provided by third party vendor as part of its HR policy & this facility is as per their agreement with the employees;
- GAAR is not inclined to hold the activities provided by M/s. Emcure to its employees to be activities made in the course of furtherance of business to deem it as 'supply'
- that the proviso to section 17(5)(b)(iii) is not connected to this sub-clause of section 17(5)(b)(i) & cannot be read into it;

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- that ITC on motor vehicles for transportation of persons having approved seating capacity of more than 13 persons is not blocked under section 17(5) of the CGST Act, 2017.

6. The GAAR, vide the impugned ruling dated 12.4.2022, held as follows:

> 1. GST, at the hands of M/s Emcure, is not leviable on the amount representing the employees portion of canteen charges, which is collected by M/s Emcure and paid to the Canteen service provider
> 2. GST, at the hands of M/s Emcure, is not leviable on free bus transportation facility provided to its employees.
> 3. ITC on GST paid on canteen facility is blocked credit under Section 17 (5)(b)(i) CGST Act and inadmissible to M/s Emcure.
> 4. ITC on GST paid on hiring of Bus, having approved seating capacity of more than 13 persons used for transportation of passengers, is admissible.

7. Aggrieved by the aforesaid advance ruling, the appellant [Revenue] is before us, raising the following contentions, *viz*

- that GAAR erroneously granted benefit of exemption of GST on free bus transport provided by M/s. Emcure;
- that on one hand GAAR held that GST is not leviable on Emcure on free bus transportation while on the other hand it was held that ITC on GST paid on hiring bus, is admissible;
- that in terms of section 16(2)(c), ibid, ITC is not entitled unless the tax charged in respect of such supply has actually been paid;
- ITC is admissible only when GST at appropriate rate is paid by M/s. Emcure to third party service providers;
- that since the respondent does not recover any amount from its employees for bus transportation, there is no employer-employee relationship;
- that the portion of the ruling which states that GST at the hands of M/s. Emcure is not leviable on free bus transportation facility provided to its employees, is erroneous.

8. The respondent has also filed his cross objection, wherein he has raised the following averments *viz*

- ruling was sought as to whether free of cost bus transportation facility, provided by Emcure to its employees is taxable; that Emcure had received the services from third party service providers on which GST was levied;
- that the ruling nowhere specifies GST exemption for bus transporter who is the third party service provider;
- that Emcure as an applicant cannot seek ruling on behalf of others ie third party bus transporter service provider;
- that GAAAR has already held that recovery from employee would not tantamount to supply;
- that the arrangement of free bus transportation facility to employees by the respondent, free of cost would not amount to supply under GST.

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9. Personal hearing in the matter was held on 15.10.2024, wherein none appeared for the Revenue. However, Shri Harsh Adhyaru, Authorized Signatory appeared on behalf of the respondent. He also filed a written submission raising the following grounds:

- Review Order No. 6/2022-23 dated 19.5.2022 is mainly for the GST on bus transportation facility provided by the respondent to the employees & the specific para of the grounds of appeal mention that the facility provided by the respondent to the employee is free hence, the service provider will be exempted from GST which seems to be incorrect interpretation;
- That they had not sought advance ruling for GST exemption by the service providers engaged in bus transportation of the employees;
- that the service providers levy GST;
- that this facility is provided free of cost;
- that the advance ruling is only to the extent of levy of GST by Emcure in this case not for levy of GST by the service providers;
- that as recipient of the services from third party for bus transportation, GST has been charged by the service provider and paid by the respondent, for which they had not sought exemption of GST.

FINDINGS

9. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

10. This a departmental appeal wherein the main issue raised is that the in the impugned ruling at para 15 (2) that GST at the hands of M/s. Emcure is not leviable on free bus transportation facility provided to its employee is erroneous & ambiguous. The departmental appeal has further averred that on one hand the GAAR held that GST at the hand of M/s. Emcure is not leviable on free bus transportation & on the other hand held that ITC on GST paid on hiring of bus is admissible. The next ground is that ITC would only be admissible to M/s. Emcure when GST at the appropriate rate is paid by them to third party service providers.

11. The departmental appeal thereafter goes on to state that since the respondent does not recover any amount from its employees for providing free bus transportation facility there is no employer-employee relationship; that the respondent is liable to pay GST to the third party service providers on free bus

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transportation facility provided by M/s., Emcure to its employees; that to substantiate this averment they have relied on the press release issued by the Ministry of Finance dated 10.07.2017; that if the 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.

12. On going through the impugned ruling, we find that the respondent has arranged free of cost transportation facility to its employees in non -AC bus, which is provided by a third party vendor, as a part of its HR policy and as per employment agreement. These facts are not in dispute. This issue stands clarified by the clarification issued vide circular no. 172/4/2022-GST dated 6.7.2022, the relevant portion of which is extracted below for ease of understanding

Perquisites provided by employer to the employees as per contractual agreement		
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 supply 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.

13. Thus, the perquisite of providing free bus transportation by the respondent to their employee in terms of contractual agreement entered into between the respondent and their employee are in lieu of the services provided

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by emploee to the employer in relation to his employment and will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. We therefore concur with the view of the GAAR in so far as it holds that M/s. Emcure [respondent] is not liable to pay GST on free bus transportation facility provided to its employees.

14. The service provider of transportation service to M/. Emcure, is discharging GST which is confirmed by the respondent even in his written submission. The respondent to substantiate this has also attached few GST bills of independent service provider for reference.

15. We also concur with the finding and ruling of the GAAR, which has held that ITC on motor vehicle for transportation of persons having approved seating capacity of more than 13 persons, not being blocked u/s 17(5)(b)(i), ibid, can be availed by the respondent.

15. In view of the above findings, we reject the departmental appeal filed by The Assistant Commissioner, CGST, Ahmedabad North Commissionerate against Advance Ruling No. GUJ/GAAR/R/2022/22 dated 12.4.2022 of the Gujarat Authority for Advance Ruling.

(Rajeev Topno)
Member (SGST)

(B V Siva Naga Kumari)
Member (CGST)

Place: Ahmedabad
Date: 30.12.2024