GST implications on Canteen Supplies by Employers

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According to the latest clarifications issued by Central Board of Indirect Taxes & Customs (CBIC), a need for understanding the implication of GST on mandatory food facilities within the organisation rises. The section 46 of the Factories Act mandates provision of canteen facility where in more than 250 workers are ordinarily employed. This article attempts to provide an insight on various issues related to GST with respect to canteen facility provided by employer to their workers.

GST implication with respect to output liability and input tax credit will depend upon the factor that whether the facility provided to employees are part of their employment contract or not.

Employers, especially manufacturers, provide canteen facility to workers working under them. Generally, these canteen facilities are arranged by the corporates for their employees which is either run by a third-party vendor and these expenses are borne by the employer or is completely arranged by the employer himself for the benefit and welfare of the employees. In both the cases, that is outsourced canteen or home run canteen, employer incurs various costs on which GST is paid by him. With the clarification issued by CBIC on 6.07.2022 through *Circular No. 172/04/2022-GST* about proviso in clause (b) of sub section (5) of section 17, a need for understanding the implications of GST on Food Facilities within the organisation rises.

Let us understand the practical aspects related to the same in detail.

- ***The First and foremost question which rises in mind is that whether food services provided by employer will be taxable under the CGST Act? Again, what would be the answer in case full amount is recovered or nominal value is recovered or no value is recovered?***

As per the CGST Act, 2017, those transactions which are covered under "supply" will be liable to GST and the scope of supply is defined under Section 7 of the CGST Act, 2017.

As per clause (a) of sub section (1) of section 7 of the CGST Act, 2017, "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".

Also, clause (b) of entry 6 stated under schedule II of the CGST Act, 2017, it categorises the supply of goods being food or any other article for human consumption as supply of service.

So, where any consideration is charged by the employer from employee the said transaction will be covered under supply.

Further, clause (c) of sub-section 1 of section 7 of CGST Act, 2017, reads with entry 2 of schedule I, supply of goods or services or both between related persons or between distinct persons as specified in section 25, made or agreed to be made without a consideration will be considered as supply, when made in the course or furtherance of business and as per explanation to section 15 of the CGST Act, 2017. In this case the person shall be deemed to be a related person if they are employer and employee.

Hence, we can summarise the whole employer to employee services as follows: -

If the goods or services provided by employer to employee are:-	
*- **Part of Salary/CTC***	*As per the Press release this is not subject to GST. Also, as per proviso to entry 2 of schedule I, it is not supply if canteen supply value per year per employee is ₹ 50,000 or less.*
*- **Not part of salary/CTC***	*As per proviso to entry 2 of schedule I, it is not a supply if canteen supply value per year per employee is ₹ 50,000 or less. In case it is more than ₹ 50,000 then the same is taxable.*

Thus, we can say that any goods or services provided by employer to employee will be taxable under GST whether any consideration is charged or not.

However, CBIC issued a press release on 10th of July 2017 to provide clarity on taxation of perquisites provided by the employer to the employees. In the press release it was stated that supply by the employer to the employee in terms of contractual agreement entered between the employer and the employee (part of salary/ CTC), will not be subjected to GST.

Further, as it is immaterial that whether any amount is charged or not as discussed earlier, the above analysis holds good in all cases i.e., *where full amount is recovered or nominal value is recovered or no value is recovered.*

- ***Now the question comes that if food facility given by the employer is not covered under employee's CTC and value of the same is more than ₹ 50,000 per year then it is taxable. But on what value the tax liability will be discharged? Again what would be the answer in case if full amount is recovered or nominal value is recovered or no value is recovered?***

Generally, as per sub section (1) of section 15, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or is payable for the said supply, but this will be the scenario, where the supplier and recipient are not related and the price charged is the sole consideration.

However, as employer and employees are related as per explanation to section 15, transaction value will not be considered as the value of supply of goods or services, hence, the value of supply of goods or services in such case will be derived in accordance with rule 28 of CGST Rules, 2017.

As per Rule 28, of the CGST Rules, 2017

The value of the supply of goods or services or both between related or distinct persons shall be-

1. *Open market value of such supply;*
2. *if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
3. *if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

In the above case second proviso is not applicable since the employees would be unregistered and they will not be able to take input tax credit.

Thus, the open market value, will be the value of supply.

It is immaterial whether the employer is charging from the employees at such amount which is equal to his cost or plus margin or at concessional rate the applicable value for GST shall be the open market value as per Rule 28. Hence, an employer shall

ensure that tax is discharged at open market value.

- ***Now, let us understand at what rate the liability on food facility will be discharged: -***

In terms of Notification No 20/2019-CT (R) dated 30th Sep, 2019, restaurant services are taxed at the rate of 5%. As per the notification restaurant services are defined as follows:

Restaurant service "means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied"

Canteen food supplies are meant for human consumption. Hence, the same is classified under Restaurant services. Same is taxable at 5%. However, one of the conditions prescribed under this entry is that input tax charged on goods or services shall not be taken.

Therefore, an employer discharging tax under this entry shall ensure that input tax credit on canteen expenses has not been availed.

> **"Canteen food supplies are meant for human consumption. Hence, the same is classified under Restaurant services. Same is taxable at 5%."**

Also, one needs to go through explanation 4 of the notification. Explanation 4 of notification specifies that –

(a) *Credit of input tax charged on goods or services used exclusively in supplying this food service has not been taken; and*

(b) *Credit of input tax charged on goods or services used partly for supplying food service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of food service is an exempt supply and attracts provisions of sub section (2) of section 17 of the CGST Act, 2017 and the rules made thereunder.*

- **ITC Availability**

As per the clarification received from CBIC in Circular No. 172/04/2022, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act. It implies that input tax credit in respect of such goods or services or both which are blocked under clause (b) of sub-section (5) of section 17 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 incurred. Hence, if canteen facility is required to be provided under obligation of any act like Section 46 of the Factories Act, 1948, then credit on providing such facility shall be available to the employer.

However, as discussed above in the section of rate applicability, the condition for charging GST at the rate of 5% is not to take input tax credit on goods or services used exclusively in supplying this food service. Moreover, common credit like credit on admin expenses, etc. which is used partly for

> **"The condition for charging GST at the rate of 5% is not to take input tax credit on goods or services used exclusively in supplying this food service."**

- Now let's summarise the whole scenario in different cases:-

Particulars	If canteen recovery is a part of employment contract (CTC)	If canteen recovery is NOT a part of employment contract (CTC)
GST Taxability on recovery	No (However, employer will be required to evaluate the implications from direct tax perspective)*	Yes
Rate of GST	Not Applicable	5%
Input availability	Yes (Yes, if facility is required to be maintained under law otherwise no)	No (Moreover, common ITC needs to be reversed)

*The value of perquisites will be determined as per sub-section (2) of section 17 of the Income Tax Act and value of free or subsidised food for employees will be taxable in the following manner-

supplying food service and partly for effecting other taxable supplies eligible for input tax credits, needs to be reversed as if supply of food service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the CGST Act, 2017 and the rules made there under.

Hence, even when it appears that the scope of input tax credit has been widened and it would now be made available in respect of goods or services that are obligatory for an employer to provide to its employees under any law for the time being in force, input tax credit with respect to canteen would not be available when canteen facility is provided to employees not as a part of employment contract as in such case employer needs to discharge his output tax liability as per *Notification No. 20/2019 dated 30th September 2019* at concessional rate of 5% which restricts claim of input tax credit.

The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced

by the amount, if any, paid or recovered from the employee for such benefit or amenity:

Provided that nothing contained in this clause shall apply to free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints. To the extent the value thereof in either case does not exceed fifty rupees per meal or to tea or snacks provided during working hours or to free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.

Provided further *that the exemption provided in the first proviso in respect of free food and non-alcoholic beverage provided by such employer through paid voucher shall not apply to an employee, being an assessee, who has exercised option under sub-section (5) of section 115BAC.*

Conclusion

It is evident from the above analysis that food facility to employees if not forming part of their salary would bring a cost burden on the assessee as Goods and Service Tax charged on goods or services or both used in supplying such services will not be available to the assessee and additionally employer would be liable to pay output tax on market value of food supplied to employees at the rate of 5%.