DILEMMA ON GST ON BENEFITS GIVEN BY EMPLOYER TO EMPLOYEE

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Goods and Service Tax Act, 2017, the most revolutionary indirect tax reform, brings many challenges along with it. One such issue is whether GST is leviable on services provided by the employer to its employee. In the GST regime, for any transaction to come under the purview of GST, it must be a supply under Section 7 of **Central Goods and Services Tax Act, 2017**, and such supply should be in furtherance of business. However, Schedule III provides for goods and services which cannot be called supply under the ambit of GST Law. One such restriction is provided in Entry I of Schedule III, wherein services provided by an employee to the employer in the course of or in relation to his employment is outside the scope of the definition of 'supply' as provided under Section 7 of CGST Act, 2017. It is pertinent to note here that the said entry of schedule III, includes services provided by an employee to its employer and not vice versa, and thus services provided by the employer to its employee can come under the realm of 'supply' under Section 7 and thus chargeable to GST. Therefore, the major issue of contention is whether a particular transaction is arising out of a 'master-servant' relationship or in an independent capacity.

The benefits provided to employees by the employer can arise out of two situations. In the first situation, benefits are provided to employees free of cost i.e., without any deduction from emoluments provided to an employee. In such a case where benefits are provided free of cost in addition to salary, such shall be constituted to be the benefits provided purely out of a master-servant relationship and therefore outside the purview of GST. Such understanding also finds its support from **Press Release dt. 10.07.2017**, wherein, it is stated that the supply of services 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. The Press Release further stipulates that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST. Thus, it can be deduced that the said press release aims to protect the contractual relationship of employer-employee, provided such cost is part and parcel of the cost- to-Company.

In the second situation, benefits are provided to an employee for a consideration. The main that issue arises here is whether benefits provided against nominal consideration is outside the purview of the 'master-servant' relationship and thus chargeable under GST or not. There are conflicting rulings addressing the same issue and deciding upon the GST Liability.

In a recent ruling of **M/s Tata Motors Limited [Advance Ruling No. GST-ARA- 23/2019-20/B-46 dt. 25.08.2020],** it was held that provision of bus facilities by the employer to the employee at a nominal price is provided only in the capacity of an employee and thus not liable to GST by the virtue of Entry I under Schedule III of the Act. It was contended by the applicant that the applicant was not the service provider but the service recipient of bus services provided by the vendor and the services were used by its employees. It was further added that such payment for receipt of service was only till the moment there was an employer-employee agreement and once such agreement was extinguished, there would be no provision of the service. Moreover, only a nominal amount was being recovered from the employees. Hence, the said transaction should be outside

the purview of the GST. The said ruling was decided in favor of the applicant. The said ruling is binding on the Applicant. This ruling is business friendly as it reduces the compliance obligations among other benefits to the businesses.

However, the **AAAR Kerala in the ruling of M/s Caltech Polymers Pvt. Ltd. [Order No. CT/7726/2018-C3 dt. 25.09.2018],** has held that Food expenses recovered from employees for canteen services will attract GST. It was contended by the applicant that the said services were provided in accordance with the provisions of the Factories Act, 1948. According to Section 46 of the Factories Act, 1948, any factory employing more than 250 workers is required to provide canteen facility to its employees. Thus, the provision of service in this case was not only contractual but out of statutory requirements as well. Further, in this case as well, as happened in case of Tata Motors ltd., the amount was recovered without any profit margin. However, the AAAR rejected the contention and held that despite the absence of any profit, the activity of supplying food to the employees and charging a price for the same from the employees would surely come within the definition of 'supply' as provided in Section 7 (1)(a) of CGST ACT, 2017. Further, since the appellant recovered cost of food items from the employees, the 'consideration' as defined under Section 2 (31) of CGST Act, 2017 was present. Hence, the said ruling is contradictory to the ruling as given in Tata Motors.

It is to be noted that rulings by AAR are not binding on anyone else other than the applicant.

Another issue that ascends from this is at on what amount GST, if applicable, should be charged. Should it be charged on the nominal amount paid by the employee or such amount also include an amount payable by the employer to the vendor for the provision of service to the employee. It is relevant to note that as per the explanation to Section 15 of CGST Act, 2017, employer and employee comes within the ambit of related parties. Therefore, the valuation of services provided by the employer to its employee shall be governed by Rule 28 of **CGST Rules, 2017**. Rule 28 provides for the value of the supply of goods or services or both between related parties to be followed sequentially. It leads to three broad situations, wherein, services provided to employees can be valued. In the first situation, the value of goods or services shall be the open market value of such supply. It means where there is nominal charging of services from the employee; a component of cost of services as borne by the employer shall also be included for valuation purposes under GST along with a reasonable profit margin. If such open market value is not available, the supply of goods or services shall be the value of goods or services of like kind and quality. It means the value as charged by the other entities for providing such canteen or transportation services shall define the value of goods or services for GST applicability. Further, where the valuation of goods and services cannot be done under the above-mentioned method, the resort can be made to Rule 30. It states good and services shall be valued at one hundred and ten percent of the cost of production or cost of provision of such goods and services as the case may be. This means that the cost at which the employer is procuring those services plus other related cost and then adding a margin of 10 percent over and above it. Hence, the employer will have to pay GST out of his own pocket on such value arrived. Therefore, such GST paid is an additional cost to the Company. Such additional costs may discourage companies to provide benefits to their employees.

It is high time that the clarity as to chargeability of GST on services provided by an employer to its employee, along with the amount on which it should be chargeable, is made clear so that business can plan their transactions accordingly.

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