

# APPLICABILITY OF GST ON RECOVERIES FROM EMPLOYEES

Central Board of Indirect Taxes and Customs (CBIC) has issued circulars to clarify various issues with respect to applicability of GST and admissibility of ITC as recommended by GST Council in the 47th meeting held on 28th and 29th June, 2022.

One of the important area where CBIC has clarified applicability of GST is recoveries from employees and ITC on facilities provided to employees.

## A) Notice Pay Recovery

CBIC, vide circular No. 178/10/2022-GST DT.3rd August 2022 has clarified the issue as per the following.

### ***Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period***

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.



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GST officers and audit parties were demanding GST on notice pay recovery under the category "service of agreeing to tolerate an act or a situation". In view of the said clarification, now GST is not payable on the notice pay recovery.

### **B) Perquisites provided by employer to employee as per contractual agreement:-**

Generally following facilities are provided to employees by employer. Generally some / nominal amount is recovered from employees and paid to contractor, if such facilities are provided through contractor.

- i) Canteen facility / Supply of Food.
- ii) Transportation from residence to workplace and workplace to residence.
- iii) Telephone / mobile.
- iv) Mediclaim insurance etc....

In this connection CBIC, vide circular No. 172/04/2022-GST Dt. 6<sup>th</sup> July 2022 has clarified the following.

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.

Same view has been taken in following decisions by

Advance Ruling Authority:-

Tata Motors Ltd. In re (2021) 88 GST 546 (AAR Gujrat)

Dishman Carbogen Amics Ltd. In re (2021) 88 GST 629(AAR-Gujrat)

Emcure Pharmaceutical Ltd. ; In re (2022) 134 Taxmann.com 74(AAR-Mah.)

Tata Motors Ltd. In re (2020) 119 Taxmann.com 106 (AAR-Maharashtra)

Integrated Decision and Systems (2022) 58 (GSTL) 596 (AAR-GST)

In view of the above clarification and decisions by advance ruling authority, in my opinion, GST is not payable on the amounts recovered from employees towards canteen facilities, transportation facilities, health insurance etc., if such facilities are provided as fringe benefits in relation to employment.

### **C) ITC on facilities provided to employees.**

Input Tax Credit is not available on various supplies specified under Sec 17(5) of the CGST Act, 2017. As per Sec 17(5)(b) of the CGST Act, ITC shall not be available on the following.

Sec 17(5) :- Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or (aa) except when used for the purposes specified therein, life insurance or health insurance :

(ii) membership of a club, health and fitness centre;

(iii) travel benefits extended to employees on



*vacation such as leave or home travel concession.*

*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.*

A doubt was raised as to whether the proviso is applicable to the entire Section 17(5)(b) of CGST Act, 2017. In this connection, CBIC, vide circular No.172/04/2022-GST DT. 6<sup>th</sup> July 2022 has clarified the following.

Question No.3 :- Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?

Clarification by CBIC :- 1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under:

“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.”

2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified “that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.”

3. Accordingly, 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.

In view of the above clarification, ITC shall be available on food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft life insurance or health insurance, membership of a club, health and fitness centre; travel benefits extended to employees on vacation such as leave or home travel concession, **where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.**

Therefore, in my opinion, ITC on canteen services provided in factory would be admissible.

#### **D) Leasing of Motor Vehicles, Laptops etc.. to employees.**

As regards leasing of motor vehicles, CBIC, vide circular No. 172/04/2022-GST Dt. 6<sup>th</sup> July 2022 has clarified as per the following.

Question No.4 :- Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?

Clarification by CBIC :- 1. Sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act provides that ITC shall not be available in respect of following supply of goods or services or both—

“(i) *food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **leasing, renting or hiring of motor vehicles, vessels or aircraft** referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*

*Provided that the input tax credit in respect of such goods or services or both shall be available where an*



*inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply”*

2. It is clarified that “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 **refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items**. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST

*Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.*

In view of the above clarification, in my opinion ITC on leasing of motor vehicles, vessels and aircrafts shall not be available. However, ITC can be availed on leasing of equipment such as laptops, handsets for mobile, etc..

By issuing these clarifications, CBIC has removed confusion on applicability of GST on recoveries from employees and availability of Input Tax Credit on various activities related to employees.

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