EMPLOYEE - EMPLOYER TRANSACTIONS – RECENT ADVANCE RULING

CMA M. M. Mishra
Sr. Manager (Finance), National Aluminium Company

"Employees who believe that management is concerned about them as a whole person – not just an employee – are more productive, more satisfied, more fulfilled. Satisfied employees mean satisfied customers, which leads to profitability."

said **Anne M. Mulcahy,** *former CEO of Xerox Corporation.*

But the decision of the Kerala Advance Ruling Authority in its order No. CT/531118-C3 DATED 26/03/2018is quite contrary to the above concept which wrongly assumes that the employee is getting benefited out of subsidized lunch instead of the employer. Let us analyze this ruling:

M/s. Caltech Polymers Pvt. Ltd., Malappuram has preferred an application for Advance Ruling on whether recovery of food expenses from employees for the canteen service provided by the company comes under the definition of outward supplies and are taxable under Goods& Service Tax.

It was ruled that such canteen service is supply under Sec 7(1) of the GST Act 2017 because of the following provisions under the Act:

1. Supply of food by the Company to its employees being an activity in connection with or incidental to the main business, would definitely be business as per clause (b) of Section 2(17).

2. Since the applicant recovers the cost of food from its employees, there is consideration as defined in Section 2(31) of the GST Act, 2017.

3. Supply of food would be a composite service as defined vide clause 6 of Schedule II

Will the above literal interpretation of the Law without going through the intent of the provisions pass muster? The answer will be an obvious "No". Let us dissect the above postulation:

Sec 1 (17) (b) of the CGST Act 2017 defines business as any activity or transaction in connection with or incidental or ancillary to the main business activity.

Merriam Webster dictionary defines "In Connection with" as "In relation to something"

Canteen service has no relation whatsoever with the main business activity

The same dictionary also defines "Incidental" as "being likely to ensue as a chance or minor consequence"

Canteen services neither ensue as a chance or a consequence of the main business – it is an activity undertaken by the employer at its discretion.

So canteen service is not business as had been assumed by the Authority

The cost of the meal is probably Rs 100/- whereas the employer is recovering Rs 30/- which means the employer is bearing a cost of Rs 70/- towards staff expenses which is part of the compensation package of the employee. This he does to keep up the workers' morale to boost productivity. Besides the Company is

complying with Section 46 of the Factories Act. So there is consideration – but in a reverse direction to what had been assumed by the Authority i.e. the consideration is not paid by employee to employer but by employer to employee. This then the follows that ***the real beneficiary of the canteen service is the Company and not the employee for which the Company is bearing a cost of Rs 70/- per meal. So this is supply of service by employee to employee instead of employer to employee which is not supply as per clause 1 of Schedule III of the CGST Act 2017.***

The advance Ruling Authority has also ignored the **Department clarification issued on 10th July 2017 through Press Information Bureau** which is reproduced as below:

"*Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services).* ***It follows there from that supply 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."***

From the above it is clear that the Ruling by the Kerala advance Ruling Authority is grossly erroneous in as much as it has ignored the provisions of the GST Act- both in letter & spirit and hence should not be a precedent in deciding GST liability on various perquisites being paid by the employer to the employee.

The direct repercussions of this Advance ruling will be

1. *Healthcare services provided by employer will be deemed as service*
2. *Schools maintained for employees will men that employer has provided "Education service"*
3. *Quarters being provided at concessional rent will men that "Renting Services" have been provided*

All the above services being exempt vide CGST (RT) notification 12/2017 dated 28.06.17, ***the ITC in respect of these services would be denied vide section 17(2) of the CGST Act 2017.***

4. *Uniforms provided to staff without consideration would amount to sale of Goods as per Clause 2 of Schedule 1 of the CGST Act (Related party Transaction)*