AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.206, 2ND FLOOR, PAPJM BUILDING , NO.1 , GREAMS ROAD,
CHENNAI -600 006.

RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER SECTION 98(4) OF THE TNGST ACT, 2017.

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai-600 034.	Smt. T. Indira, Joint Commissioner / Member (SGST), Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.

Advance Ruling No. 125/AAR/2023 Dated: 20.12.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		33AAGCS8525B1ZL
Legal Name of Applicant		Faiveley Transport Rail Technologies India Private Limited
Registered Address / Address provided while obtaining user id		P.B. No. 39, Harita, Hosur, Krishnagiri, Tamil Nadu – 635 109
Details of Application		GST ARA – 01 Application Sl.No.03/2023 dated 19.01.2023
Jurisdictional Officer Concerned Officer		Center : Salem Commissionerate Hosur – 1 Division State : Hosur (South)-1 Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Manufacturers & Service providers
B	Description (in brief)	M/s. Faiveley Transport Rail Technologies India Private Limited ('the Applicant') situated at P.B. No. 39, Harita, Hosur, Krishnagiri, Tamil Nadu – 635 109 is inter alia engaged in the business of manufacturing, supplying and exporting equipment for the Rolling Stock industry. The said equipment includes, inter alia, railway door systems, grills for train coaches, braking systems and pantographs for railways.
Issue/s on which advance ruling required		Now the Company seeks an advance ruling on the (i) determination of the liability to pay tax on any goods or services or both, and on the (ii) admissibility of input tax credit of tax paid or deemed to have been paid.
Question(s) on which advance ruling is required		a. Whether GST is applicable on recovery of nominal amount by the Applicant from employees for availing the facility of Canteen at the factory premises; b. Whether Input Tax Credit is available on facility of canteen service provided to employees by applicant as statutory obligation under Factories Act; c. Whether GST is applicable on the recovery of premium of Medical Insurance Policy from the employees for them and their dependents at actuals under the HR Policy; d. Whether GST is applicable on recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises provided to the employees in the course of employment;

	e. Whether GST is applicable on facility of Car extended to the employees of the Applicant-Company in the course of employment; f. Whether Input Tax Credit can be availed on expense incurred for the well-being of employees such as vaccination and others benefits to avoid any disruption in Business; and g. Whether Input Tax Credit is available on GST charged for gardening expenses of the Applicant-Company.

1. The applicant submitted a copy of Electronic Cash Ledger evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 The applicant, a GST Registrant, is a Private Limited company under the Administrative control of 'CENTER' and they are engaged in the business of manufacturing, supplying and exporting equipment for the Rolling Stock industry. The said equipment includes, inter alia, railway door systems, grills for train coaches, braking systems and pantographs for railways.

2.2 The applicant has submitted that –

- They provide in-house canteen facility to their employees on their own account, for which the applicant recovers a nominal fixed amount from the salaries of the employees on a monthly basis. They discharge GST @ 5% under SAC 996333 'Services provided in canteen and other similar establishments'.
- The applicant has purchased a 'Group Insurance Policy', the facility of which is also extended to the dependents of the employees. The applicant recovers the premium on actual basis including GST charged by the Insurance Company from their employees.
- The Applicant provides transportation facility to its employees, for which the Applicant avails 'renting of motor vehicles service', 'cab services' through third party. The Applicant initially pays the entire amount to the third party and subsequently recovers the nominal partial amount from the respective employees availing such facility.
- the Applicant company has proposed to provide the facility of car to its employees, under which the applicant will pay the lease premium directly to car leasing company, and deduct the same from the overall Salary cost of the related employees. Facility of car extended to employees is considered as perquisite under Income Tax Act, 1961 and due tax required to be paid by employees on it under the head Income from Salary.

- During the COVID-19 pandemic, the applicant Company had arranged a vaccination drive for its employees, and that they had also paid the applicable GST on such vaccines that were provided to its employees.
- The Applicant incurs expenses in relation to maintenance of a garden at the factory premises. In terms of the requirements of Tamil Nadu Pollution Control Board ('TNPCB'), the Applicant is required to maintain a garden at the factory premises and develop a green belt in and around the factory premises.

2.3 The authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

3. The concerned State authority under whose administrative jurisdiction the taxpayer falls, have vide their letter dated 19.10.2023 furnished their query-wise comments, as given below :-

a. Regarding the applicability of GST on recovery of nominal amount from employees for availing the facility of Canteen, it was stated that Supply of food by employer to its employees is a transaction incidental or ancillary to main business and covered under clause (b) of Section 2(17) of CGST Act. Further in terms of Schedule-II, Clause 6 of CGST Act ibid, supply of food for valuable consideration is deemed to be supply of services, hence, it is **taxable under GST as outward supply** notwithstanding that no profit is claimed by employer in providing such service. – In Re: Caltech polymers Pvt. Ltd. – 2018(12) G.S.T.L. 350 (A.A.R. – GST). This order has been affirmed in 2018 (18) G.S.T.L. 373 (App. A.A.R. – GST). Further, Advance Ruling of Karnataka No. KAR ADRG No.42/2022, dated 29.11.2022 stated that the subsidized deduction made by the applicant from employees who are availing food in factory considered as supply of Canteen Services by the applicant under Sec.7 of GST Act 2017, liable to be paid by the applicant on the value of supply under Rule 30 and 31 of GST Act 2017.

b. Regarding the eligibility of Input Tax Credit ('ITC') on facility of canteen service provided to employees, it was stated that Input Tax Credit is not eligible as per Section 17(5)(b) of the Central Goods and Services Tax Act, 2017. Provided that the Input Tax Credit shall be available, where it is obligatory for an employer to provide the same to its employees (above 250 employees – as per the provisions of Sec.46 of Factories Act, 1948) under any law for the time being in force. The applicant shall not be eligible for the Input Tax Credit in respect of Canteen services (AAR Ruling Madhya Pradesh GST – Tvl. Bharat Oman Refineries Ltd. Case No.17/2020, order No.02/2021, dated 07.06.2021.

c. Regarding the applicability of GST on the recovery of premium of Medical Insurance Policy from the employees, it was stated that GST is applicable on the recovery of premium of Medical Insurance Policy from the employees for them and their dependents. The recovery of premium of Medical Insurance Policy considered as supply of Services by the applicant under Sec.7 of GST Act 2017, liable to be paid by the applicant on the value of supply under Rule 30 and 31 of GST Act 2017.

d. Regarding the applicability of GST on recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises, it was stated that GST is applicable on recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises provided to the employees in the course of employment. The recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises considered as supply of Services by the applicant under Sec.7 of GST Act 2017, liable to be paid by the applicant on the value of supply under Rule 30 and 31 of GST Act 2017.

e. Regarding the applicability of GST on facility of Car extended to the employees of the Applicant-Company, it was stated that GST is applicable on facility of Car extended to the employees of the Applicant- Company in the course of employment. Facility of Car extended to the employees of the Applicant-Company in the course of employment considered as supply of Services by the applicant under Sec.7 of GST Act 2017, liable to be paid by the applicant on the value of supply under Rule 30 and 31 of GST Act 2017.

f. Regarding the eligibility of ITC on expenses incurred for the well-being of employees such as vaccination and others benefits to avoid any disruption in Business, it was stated that Input Tax Credit cannot be availed on expense incurred for the well-being of employees such as vaccination and others benefits.

g. Regarding the eligibility of ITC on GST charged for gardening expenses of the Applicant-Company, it was stated Gardening & Plantation is not under business requirement. It is for non-business use which will not qualify for Input Tax Credit in terms of Sec.17(1) of CGST Act 2017. Hence Input Tax Credit is not available on GST charged for gardening expenses of the Applicant- Company. (Advance Ruling No.GST-ARA-79/2018-19/B-168, dated 24.12.2018 Maharashtra Authority for Advance Ruling)

4. The jurisdictional Central authority has not furnished any reply in this regard, and it is construed that there are no proceedings pending on the issues raised by the applicant.

5. On interpretation of law, the applicant states that –

- The provision of the canteen services to employees is not being carried out as a business activity, rather the same is rendered in order to comply with the statutory requirement under the Factories Act, and that the Applicant does not make any profit but only a nominal cost was recovered from the employees. Further, as per Section 7(2)(a) of the CGST Act, read with Entry 1 of Schedule III, 'services by an employee to employer in course of employment' shall be neither supply of goods nor services. The CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has categorically clarified that services by employer to its employee 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 employer to its employees provided they are in the course of or in relation to employment. In this regard, the applicant had placed reliance on the ruling of the Hon'ble Gujarat AAR in RE: **Troikaa Pharmaceuticals Limited [2022-VIL-231-AAR],** the ruling of Maharashtra AAR in **RE: Tata Motors Limited in [2021-TIOL-197-AAR-GST]**, the appellate ruling by Gujarat in AAAR in **RE: Amneal Pharmaceuticals Limited [GUJ/GAAAR/APPEAL/2021/07],** and the Madhya Pradesh AAR in a ruling in **RE: Bharat Oman Refineries Limited [Order No. 02/2021 dated 07.06.2021].**
- Regarding the availment of ITC of GST paid on Canteen facility, the applicant states that as per Section 17(5) of the CGST Act, ITC on food and beverages, outdoor catering, etc. is not available. However, it would be available where the same is used in making outward supply (same category of supply or as an element of a taxable composite or mixed supply). Further, the proviso is provided to clarify that the ITC in respect of such goods or services or both would be eligible where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. Further, the CBIC vide Circular No. 172/04/2022- GST dated 06.07.2022 has 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 the section 17(5) of the CGST Act, which means that ITC would be available on all the goods or services provided in section 17(5)(b) of the CGST Act, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. Thus, in light of the above-mentioned Circular, ITC is available on the GST paid in relation to canteen charges. the applicant had placed reliance on the ruling of the Hon'ble Gujarat AAR in RE: **Troikaa Pharmaceuticals Limited [2022-VIL-231-AAR]**. It was also stated that Hon'ble Andhra Pradesh HC in RE: **Ferro Alloys Corporation Ltd. vs. Government of Andhra Pradesh Labour Employment and Technical Education (Labour II) Deptt. [2003 (96) FLR 160]** has held that the mode in which the specified establishment must set up a canteen is not provided in the factories Act. It is left to the discretion of the concerned establishment to discharge its obligation of setting up a canteen either directly or by employment of a contractor.

- As far as the GST applicability on Insurance premium on Insurance services to dependents of the employees of the Applicant-Company is concerned, it was stated that in terms of Section 7(1) of CGST Act, an activity constitutes a supply, only when it is made by a person in the course or furtherance of business. The expression 'business' is defined u/s 2(17) of GST Act, but 'in the course or furtherance of business' has not been defined anywhere under GST Act. It is further submitted that the Applicant-Company is recovering premium of Group Medical Insurance Policy at actuals pertaining to the retired employees and the dependents like parents of the employees, etc. The Applicant-Company is not an insurance company and is not providing any insurance services. The service of insurance has been provided by insurance company and the Applicant-Company is simply collecting insurance premium at actuals for retired employees and remitting the same to the insurance company. It was also stated that as per definition of 'business', the collection of premium of insurance policy is not the business of the applicant. Moreover, this activity or transaction is not in connection with or incidental or ancillary to the business of the applicant. The CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has clarified 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. Accordingly, the same will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. In the instant case, as the insurance premium is provided in terms of the HR policy of the Applicant-Company, the same is a contractual obligation. Accordingly, in terms with the above-mentioned circular, GST is not exigible on recovery of insurance premium from the employees. In this regard, the Applicant places reliance on the ruling of Maharashtra AAR in **RE: Jotun India Private Limited [2019 (29) G.S.T.L. 778 (A.A.R. - GST)]**, Maharashtra AAR's ruling in **RE: POSCO India Pune Processing Centre Private Limited [2019 (21) G.S.T.L. 351 (A.A.R. - GST)]**, Madhya Pradesh AAR in a ruling in **RE: Bharat Oman Refineries Limited [Order No. 02/2021 dated 07.06.2021]**.
- Regarding the GST applicability on recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises, it was stated that as per the term 'supply' as defined under Section 7 of CGST Act, in order to constitute a supply, the same should be in furtherance of business and for a consideration. In the present case, there is no furtherance of business and in fact no consideration is involved, but recovery of partial amount only, which is reimbursement of expenses. Thus, transaction between the company and their employee are not supply of service and not liable to GST. It is reiterated that the CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has clarified 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. In the instant case, as the Applicant-Company provides the transportation facility to the employees of the Company in terms of the HR policy. Accordingly, in

terms of the above-mentioned Circular, recovery from employees in relation to transportation facility will not be exigible to GST. In this regard, reliance is placed on the ruling of the Uttar Pradesh AAR in RE: **POCSO India Pune Processing Center Private Limited [2019 (21) GSTL 351]**, the ruling of the Maharashtra AAR in RE: **Integrated Decisions and Systems Private Limited [Advance Ruling No. GST-ARA- 116/2019-20/B-113].**

- On the GST Applicability on facility of Car extended to employees in the course of employment, it was stated that the Applicant-Company has proposed to provide the facility of car to its employees in the course of employment. The Applicant-Company will pay the lease premium directly to car leasing company. Overall Salary cost of the related employees will get reduced to the extent of cost incurred by Applicant-Company to extend the expense incurred in relation car facility provided to employees for office purpose. Facility of car extended to employees considered as perquisite under Income Tax Act, 1961 and due tax required to be paid by employees on it under the head Income from Salary. In the instant case, the provision of the Car lease premium to employees is not being carried out as a business activity. In this regard, it is reiterated that the CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has clarified 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. In the instant case, as the Applicant-Company willing to provide the facility of car lease to the employees of the Company in terms of the HR policy, the same is a perquisite for the employees. Accordingly, in terms of the above-mentioned Circular, recovery from employees in relation to car lease premium will not be exigible to GST.
- Regarding the ITC on GST paid on medical facilities extended to the employees, the applicant, being one of the leading organization in supply of railway goods, takes utmost precautions of its employees. The Applicant extends various health benefits and medical facilities to its employees. It is submitted that the term 'health service' is not defined under the CGST Act. It is further submitted that the health and medical cover provided by the Applicant will not get covered under definition of 'Service' u/s. 2(102) of the CGST Act as no separate consideration is charged. Accordingly, the ITC for such inward supplies are not blocked credits u/s. 17(5)(b)(i) of the CGST Act,2017. It is further submitted that such medicines cannot be considered as 'goods used for personal consumption' since the cost of these medicines are borne by the Applicant as a part of service contract with its employees. It is submitted that, in order to avail ITC of the above supplies, the supplies should be eligible u/s.16 of the CGST Act and should be not be blocked u/s. 17(5) of the CGST Act. It is further submitted that though there is no outright mention about ITC eligibility on preventive measures in the CGST Act, from the intention of the law, it can be derived that such expenses shall be treated as rendered for the furtherance of business. Reference in this regard, can be drawn from the Income Tax Laws. It is submitted that in RE: **Commissioner of Income Tax Kerala, Vs. Malayalam Plantations Limited [1964 AIR**

1722, 1964 SCR (7) 693], it was held that the term 'purpose of business 'may not include only the day to day running but may also include measure for the preservation of the business. It is further submitted that in the instant case, the Applicant merely acts as a facilitator between the employees and the medicinal perquisites provided to them. In this regard, it is submitted that CBIC vide Press Release dated 10.07.2017 had clarified that supplies made by the employer to the employees based on their contractual agreements would not be subjected to GST. It had been further clarified that a transaction involving such services, on which GST has been paid to a third party, would not attract further GST when the employer provides it free-of-cost to the employees. In view of the above provisions and judicial precedents, it is submitted that as the GST discharged on expenses related to medicinal facilities to the employees, is for the furtherance of business, and the ITC thereto is not blocked u/s. 17(5) of the CGST Act, the ITC on such expenses shall be allowed.

- As far as the ITC admissibility on Gardening Expenses is concerned, the Applicant has maintained a garden at the factory estate of the Company to meet the requirements of TNPCB guidelines requiring the development of a green belt in and around the factory premises. It is submitted that as the maintenance of a garden at the factory premises is required by the law, the credit thereof shall be allowed. It is further submitted that the definition of the terms of 'input' and 'input services' are wide enough to cover gardening services as input services. The definition of the terms begins with 'any', which enables it to cover any services, which is used for the furtherance of business. It is submitted that in RE: **Grasim Industries Limited vs. Collector of Customs [2008 – TMI – 46155 – SC]**, the Hon'ble Apex Court had held that the elementary principle of interpreting any word while considering statute is to gather the means or sentential legis of the Legislature. It is further submitted that as a settled principle of law, where the law mandates the requirement of maintenance of a garden in the factory premises, the ITC thereon, is admissible. It is submitted that in RE: **Ordinance Factory, Bhandara [2020 (38) GSTL 530 (AAAR-GST-Mah)]**, the AAAR had held that where the State Pollution Control Board has mandated the requirement of maintenance of garden inside the factory, the said service would qualify as 'input service' and the ITC thereon would be available. The applicant had also relied on other ruling like RE: **ThyssenKrupp Eletrical Steel (India) Private Limited vs. Commissioner of C. Ex. [2017 (3) GSTL 176 (Tri.-Mum.)]**, RE: **Orient Bell Limited vs. Commissioner of C. Ex. [2017 (52) STR 56 (Tri.-All.)]**, RE: **Sterlite Industries India Limited vs. Commissioner of C. Ex., Madurai [2016 (41) STR 867 (Tri.-Chennai)]**, the judgement of the Hon'ble Madras HC in RE: **Commissioner of C. Ex. vs. Rane TRW Steering Systems Limited [2015 (39) STR 13 (Mad.)]**

PERSONAL HEARING

6.1 The applicant, after consent, was given an opportunity to be heard in person on 14.11.2023. Mr. Ganesh Kumar, Chartered Accountant, on being authorized by the Applicant, appeared for Personal Hearing.

6.2 He explained in detail the rationale behind the queries raised on behalf of the company and he reiterated the submissions made already while filing the application. During the personal hearing proceedings, he furnished an additional submission in support of their contention. He also furnished a file containing the clarifications/documents, referred to in the additional submissions made, including the copies of the relevant circular, Consent Orders issued by the Tamil Nadu Pollution Control Board, relevant case laws, Advance Rulings, etc.

6.3 To a specific query raised by the Members as to whether the canteen is run by any third party or by the company's own staff, he explained that in respect of their company at Hosur, the canteen is operated by the company's own staff and in respect of the other unit at Bhatti, Himachal Pradesh, it is outsourced.

6.4 The Members further enquired about the nature of recovery of amounts from the employees relating to canteen, Insurance, Transportation, Car Leasing, etc. The Representative replied that in respect of Canteen and mass transportation of employees, they receive only a nominal amount from their employees who use such facility, but in respect of the activities relating to Employee Insurance and Car Leasing services, the actual amount incurred are being recovered from the respective employees who avail such facility. He further undertook to furnish any other clarification/document in relation to this application as and when called for by the Advance Ruling authorities.

6.5 In the additional submissions filed at the time of personal hearing, they reiterated that services provided in pursuance to employment contract are not subject to GST. To this effect, in support of their stand on the issue relating to GST liability on canteen facility, they have discussed some more case laws, viz., the ruling of Gujarat AAR in RE: **SRF Limited [Advance Ruling No. GUJ/GAAR/R/2022/41]**, the ruling of Gujarat AAR in RE: **Zydus Lifesciences Limited [Advance Ruling No. GUJ/GAAR/R/2022/42],** the ruling of Haryana AAR in RE: **Rites Limited [2022-VIL-283-AAR]**, the ruling of Gujarat AAR in RE: **TATA Autocomp Systems Limited [2023-VIL-108-AAR]**, the ruling of Gujarat AAR in RE: **AIA Engineering Limited [2023-VIL-67-AAR],** and the ruling Gujarat AAR in RE: **Cadila Pharmaceuticals Limited [2023-VIL-68-AAR].** Similarly, in respect of the issue involving GST liability on the Transportation facility provided, they relied further on the ruling of Gujarat AAR in RE: **TATA Autocomp Systems Limited,** the ruling of Gujarat AAR in RE: **Brandix Apparel India Private Limited,** and the ruling of Gujarat AAR in RE: **SRF Limited**, mentioned supra.

DISCUSSION AND ANALYSIS

7.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearing and the comments furnished by the State Tax Authorities. The applicant filed advance ruling application under Section 97(2) of GST Act, 2017.

7.2 From the submissions made at the time of filing the application, it is seen that the applicant had sought an advance ruling, on the following aspects, viz.,

a. Whether GST is applicable on recovery of nominal amount by the Applicant from employees for availing the facility of Canteen at the factory premises;
b. Whether Input Tax Credit is available on facility of canteen service provided to employees by applicant as statutory obligation under Factories Act;
c. Whether GST is applicable on the recovery of premium of Medical Insurance Policy from the employees for them and their dependents at actuals under the HR Policy;
d. Whether GST is applicable on recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises provided to the employees in the course of employment;
e. Whether GST is applicable on facility of Car extended to the employees of the Applicant-Company in the course of employment;
f. Whether Input Tax Credit can be availed on expense incurred for the well-being of employees such as vaccination and other benefits to avoid any disruption in Business; and
g. Whether Input Tax Credit is available on GST charged for gardening expenses of the Applicant-Company

Prima facie, it is observed that all the queries relate either to admissibility of input tax credit (ITC), or to applicability of GST, whereby the queries in question get covered under Section 97(2)(d) and 97(2)(e) of the CGST Act, 2017, and accordingly, the application is liable for admission.

8. Accordingly, we intend to carry out an issue-wise discussion on the basis of applicable legal provisions and on the basis of submissions made, details/documents furnished by the applicant at the time of filing the application and during the personal hearing, as detailed below :-

8.1.1 **Whether GST is applicable on recovery of nominal amount by the Applicant from employees for availing the facility of Canteen at the factory premises** – The applicant states that they provide in-house canteen facility to their employees on their own account, for which the applicant recovers a nominal fixed amount from the salaries of the employees on a monthly basis. They discharge GST @ 5% under SAC 996333 'Services provided in canteen and other similar establishments'. However, they have argued that the provision of the canteen services to employees is not being carried out as a business activity, and that the same is rendered in order to comply with the statutory requirement under the Factories Act and that they do not make any profit but only a nominal cost was

recovered from the employees. Further, as per Section 7(2)(a) of the CGST Act, read with Entry 1 of Schedule III, 'services by an employee to employer in course of employment' shall be neither supply of goods nor services. The CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has categorically clarified that services by employer to its employee 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 employer to its employees provided they are in the course of or in relation to employment.

8.1.2 Entry 1 of Schedule III states as follows :- *"services by an employee to employer in the course of or in relation to his employment"* shall be neither supply of goods nor supply of services. It could be seen here that Schedule III basically deals with 'services by an employee to employer', and not the other way round. Only as a corollary, the 'services by the employer to the employee', especially when provided in the form of perquisites, has been discussed in the CBIC Circular No. 172/04/2022 – GST dated 06.07.2022 in its para 2 of clarification to issue No.5, wherein it has been explained as follows:-

> *"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.*

8.1.3 From the above, it could be inferred that perquisites in terms of a contractual agreement between the employer and employee are to be kept outside the ambit of GST. Accordingly, such contractual agreement filed, if any, is required to be taken up for discussion in the instant case. However, we notice that though the applicant has furnished the statement of facts, relevant legal provisions, the applicant's interpretation of law, additional submissions made during the personal hearing, and a plethora of case laws/rulings, they have not furnished copies of any such employment contracts/agreements, or even the excerpts from the same, concerning the issue in question. Under these circumstances, no further discussion could be made on this aspect.

8.1.4 Notwithstanding the above aspect relating to employment contracts, it may be seen that in order to place any service provided by the employer to employee outside the ambit of GST, the same should be in the form of a perquisite. Though the term 'perquisite' has not been defined under the provisions of GST, the same is discussed under the Income Tax Act, where it has been stated in Section 17(2) as follows :-

> *"perquisite" includes—*
>
> *(i) the value of rent-free accommodation provided to the assessee by his employer;*
> *(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;*
> (iii) ——————————"

It could be further inferred from the above, that any service rendered free of charge, or, any service rendered on a concessional basis shall qualify as a perquisite. Here again, it is to be noted that only the value/portion to the extent of concession offered by the employer is to be treated as a perquisite and not the remaining portion/value that has been charged by the employer. Applying the said analogy to the instant case, in respect of the canteen services provided by the applicant to its employees, it becomes clear that the exemption provided in Entry 1 of Schedule III to the CGST Act, 2017 applies only to the concession part extended to the employees and not on the value charged on the employees.

8.1.5 In this regard, we notice that the applicant had placed reliance on the ruling of the Hon'ble Gujarat AAR in RE: **Troikaa Pharmaceuticals Limited [2022-VIL-231-AAR],** the ruling of Maharashtra AAR in **RE: Tata Motors Limited in [2021-TIOL-197-AAR-GST]**, the appellate ruling by Gujarat in AAAR in **RE: Amneal Pharmaceuticals Limited [GUJ/GAAAR/APPEAL/2021/07],** and the Madhya Pradesh AAR in a ruling in **RE: Bharat Oman Refineries Limited [Order No. 02/2021 dated 07.06.2021].** They have quoted some more rulings in the additional submissions made by them during the personal hearing, viz., the ruling of Gujarat AAR in RE: **SRF Limited [Advance Ruling No. GUJ/GAAR/R/2022/41]**, the ruling of Gujarat AAR in RE: **Zydus Lifesciences Limited [Advance Ruling No. GUJ/GAAR/R/2022/42],** the ruling of Haryana AAR in RE: **Rites Limited [2022-VIL-283-AAR]**, the ruling of Gujarat AAR in RE: **TATA Autocomp Systems Limited [2023-VIL-108-AAR]**, the ruling of Gujarat AAR in RE: **AIA Engineering Limited [2023-VIL-67-AAR],** and the ruling Gujarat AAR in RE: **Cadila Pharmaceuticals Limited [2023-VIL-68-AAR].** We would like to place on record that an advance ruling pronounced by the Authority or the Appellate Authority shall be binding only on the applicant who had sought it, and the concerned officer or the jurisdictional officer in respect of the applicant.

8.1.6 However, keeping in mind the persuasive effect that it brings to the issue in question, we intend to take it up for discussion as well. On perusal of the Advance Rulings referred by the applicant, we notice that all the rulings are in respect of a situation where a third party engaged by the employer is the actual canteen service provider. It may be observed that in such cases, since the employer is not actually providing any service to the employees (other than bearing a portion of the canteen expenses incurred), no direct supply of service between the employer and employee is involved. Whereas in the instant case, the applicant admittedly runs the canteen on his own account whereby they become the provider of canteen service to the employees. When a specific query on this aspect was raised by the Members during the personal hearing on 14.11.2023, the authorized representative clarified that in respect of their company at Hosur (applicant), the canteen is operated with the assistance of company's own staff and in respect of the other unit at Bhatti, Himachal Pradesh, it is outsourced. We find that the said aspect is reiterated further in para 2 of Annexure-I (Statement of facts) attached along with the Application Form for Advance Ruling filed by the applicant. Therefore, since the facts and circumstances relating to the instant case of their unit at Hosur differ from that of the rulings referred above, they become distinguishable.

8.1.7 Thereby, it becomes clear that the canteen service provided by the applicant company on its own account to its employees, is a composite supply which gets treated as a supply of service in terms of Entry No.6 of Schedule II to the CGST Act, 2017, that reads as follows:-

"6. Composite supply
The following composite supplies shall be treated as a supply of services, namely:--
(a) works contract as defined in clause (119) of section 2; and
(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration."
And accordingly, we hold that the amount charged on the employees by the applicant, whether nominal or otherwise, is to be treated as the consideration for such supply of canteen service on its own account to its employees on which taxes under GST is liable to be discharged by the applicant/employer.

8.2.1 **Whether Input Tax Credit is available on facility of canteen service provided to employees by applicant as statutory obligation under Factories Act** - Regarding the availment of ITC of GST paid on Canteen facility, the applicant states that as per Section 17(5) of the CGST Act, ITC on food and beverages, outdoor catering, etc. is not available. However, it would be available where the same is used in making outward supply (same category of supply or as an element of a taxable composite or mixed supply). It may be seen that a proviso after sub- clause (iii) of clause (b) of sub- section (5) of section 17 of the CGST Act is provided to clarify that the ITC in respect of such goods or services or both would be eligible where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. This apart, the CBIC vide Circular No. 172/04/2022- GST dated 06.07.2022 has 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 the section 17(5) of the CGST Act, which means that ITC would be available on all the goods or services provided in section 17(5)(b) of the CGST Act, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. Thus, in light of the above-mentioned Circular, the applicant contended that ITC is available on the GST paid in relation to canteen charges.

8.2.2 In this regard, it may be seen that Section 17(5) of the CGST Act, 2017, provides for certain situations involving supply of goods or services, where ITC is blocked, and it reads as below :-

> *"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the*
> *following, namely:—*
>
> *(a) ————————————*
>
> *(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 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;*

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

(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."*

8.2.3 We notice that the CBIC in its Circular No.172/04/2022- GST dated 06.07.2022 has clarified that the proviso after sub- clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act, as reproduced above is applicable to the whole of clause (b) of the section 17(5) of the CGST Act, from which it becomes clear that ITC would be available on the supply of all the goods or services referred in section 17(5)(b), where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. The provisions of Section 46 of the Factories Act, 1948, which deals with the obligation of providing canteen facilities by the employer to its employees, reads as :-

"46. Canteens.— (1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.]
(2) Without prejudice to the generality of the foregoing power, such rules may provide for—
(a) the date by which such canteen shall be provided;
(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
(c) the foodstuffs to be served therein and the charges which may be made therefor;
(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c)."

8.2.4 It could be seen from the above, that when more than 250 employees are ordinarily employed, the employer is mandatorily required to provide canteen facility to the employees. In this regard, the applicant had placed reliance on the ruling of

the Hon'ble Gujarat AAR in RE: **Troikaa Pharmaceuticals Limited [2022-VIL-231-AAR],** wherein it was held that ITC on GST paid on canteen facility is admissible on the food supplied to employees subject to the condition that burden of GST have not been passed on to the employees of the company. In other words, ITC on the above will be restricted to the extent of cost borne by the applicant for providing canteen services to its employees, but disallowing the proportionate credit to the extent embedded in the cost recovered from such employees. This is in view of the fact that once the incidence of tax is actually borne by the ultimate consumer of service, i.e., the employees, the employer cannot take credit of that part of the tax which was borne by the employee. We also notice that the same view stands substantiated by the Ruling of the Gujarat Appellate Authority for Advance Ruling Order No.GUJ/GAAAR/Appeal/2022/23 dated 22.12.2022 in the case of M/s.Tata Motors Ltd., Ahmedabad – 2022-VIL-100-AAAR, and in the case of M/s.Tata Autocomp Systems Ltd., - 2023-VIL-108-AAR, where the Gujarat Authority for Advance Ruling had held on similar lines.

8.2.5 The concerned State authority under whose administrative jurisdiction the taxpayer falls, had opined that the applicant shall not be eligible for the Input Tax Credit in respect of Canteen services in view of the AAR Ruling Madhya Pradesh GST - Tvl. Bharat Oman Refineries Ltd. Case No.17/2020, Order No.02/2021, dated 07.06.2021. It is seen that this ruling of the Madhya Pradesh AAR referred above, has been appealed against by the taxpayer and the Madhya Pradesh Appellate Authority for Advance Ruling in its Order No.MP/AAAR/07/2021 dated 08.11.2021 had overruled the same by pronouncing a verdict as below :-

> *"5(c) Input credit of GST paid to canteen service provider would be available to the appellant in terms of proviso under Section 17(5)(b) 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."*

8.2.6 Accordingly, we hold that GST charged on the inward supplies received, if any, in relation to the provision of food to the employees by the applicant is admissible as ITC to them, provided the number of direct employees in the establishment is more than 250. Further, we also hold that while availing such ITC, the proportionate credit to the extent of cost recovered from such employees is required to be reversed by the applicant/employer.

8.3.1 **Whether GST is applicable on the recovery of premium of Medical Insurance Policy from the employees for them and their dependents at actuals under the HR Policy** - As far as the GST applicability on Insurance premium on Insurance services to dependents of the employees of the Applicant-Company is concerned, it was stated by the applicant that in terms of Section 7(1) of CGST Act, an activity constitutes a supply, only when it is made by a person in the course or furtherance of business. The expression 'business' is defined u/s 2(17) of GST Act, but 'in the course or furtherance of business' has not been defined anywhere under GST Act. It is further submitted that the Applicant-Company is recovering premium of Group Medical Insurance Policy at actuals pertaining to the retired employees

and the dependents like parents of the employees, etc. The Applicant-Company is not an insurance company and is not providing any insurance services. The service of insurance has been provided by insurance company and the Applicant-Company collected insurance premium at actuals for retired employees and remits the same to the insurance company. It was also stated that as per definition of 'business', the collection of premium of insurance policy is not the business of the applicant. Moreover, this activity or transaction is not in connection with or incidental or ancillary to the business of the applicant. The CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has clarified 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. Accordingly, the same will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. In the instant case, as the insurance premium is provided in terms of the HR policy of the Applicant-Company, the same is a contractual obligation. Accordingly, the applicant stated that in terms with the above-mentioned circular, GST is not exigible on recovery of insurance premium from the employees.

8.3.2 The concerned State authority had stated that the recovery of premium of Medical Insurance Policy is considered as supply of Services by the applicant under Section 7 of GST Act 2017, liable to be paid by the applicant on the value of supply under Rule 30 and 31 of GST Act 2017. We observe that though the authority has referred to Section 7 of the CGST Act, 2017, that talks about the scope of supply, the authority has not adduced any discussion or comment to justify his/her stand as to how the recovery of premium of Medical Insurance Policy and remitting the same in actuals to the actual service provider, gets covered under the expression "Supply". Likewise, the authority's reference to Rules 30 and 31 of CGST Rules, 2017, and the applicability of the same to the instant case also has not been justified or explained by the authority. In the absence of any such justification in relation to the issue in question, the concerned State authority's opinion is not taken up for discussion.

8.3.3 Reportedly, the applicant-company is recovering premium of Group Medical Insurance Policy at actuals pertaining to the retired employees and the dependents like parents of the employees, etc., and remitting the same to the insurance company. It has also been reported by them that the Applicant-Company is not an insurance company and that they are not providing any insurance services. Under the facts and circumstances of the instant case, since the Applicant-company recovers the premium in actuals from the employees (the service receivers) and remits the same to the insurance companies (the service providers), we observe that the role of the applicant company is restricted to being a facilitator in the transaction involved and that they do not involve themselves in any supply of insurance service to the employees or their dependents.

8.3.4 In terms of Section 7(1) of CGST Act, an activity constitutes a supply, only when any goods/services are supplied by a person for a consideration in the course or furtherance of business. Therefore, to constitute a supply, basically there should

be a flow of goods/services, the supply should be made for a consideration, and that the same should be made in the course or furtherance of business. We observe that it is clear in the instant case that no consideration accrues to the applicant, either directly or indirectly, as the premium amount payable to the insurance company is reportedly received on actual basis from the employees and remitted back to the insurance company. We also observe that the applicant company is not into the business of insurance, and that they are neither operating as an insurance agent on their own account in respect of their employees and their dependents, nor, they are involved in supply of health insurance service to the public. Thereby, we are of the view that the applicant is just a facilitator in the transaction relating to insurance, and practically no supply of service is made in the course or furtherance of business by the applicant in the instant case. Since the provision of this insurance cover to the employees and their dependents is reportedly provided in terms of the HR policy of the Applicant-Company, the same is to be treated as a contractual agreement entered into between the employer and the employee in accordance with clause 1 of Schedule III of the CGST Act, 2017, which is neither a supply of goods nor a supply of service. As per Section 7(2) of the Act, ibid, Schedule III supersedes Schedules I and II, which means that even if it is considered as a supply under Section 7(1), no tax will be payable in view of the provisions contained in clause 1 of Schedule III.

8.3.5 In this regard, the Applicant places reliance on the ruling of Maharashtra AAR in **RE: Jotun India Private Limited [2019 (29) G.S.T.L. 778 (A.A.R. - GST)]**, Maharashtra AAR's ruling in **RE: POSCO India Pune Processing Centre Private Limited [2019 (21) G.S.T.L. 351 (A.A.R. - GST)]**, Madhya Pradesh AAR in a ruling in **RE: Bharat Oman Refineries Limited [Order No. 02/2021 dated 07.06.2021]**. Though such advance rulings are binding only on the applicant who had sought it, the same are considered for discussion keeping in mind the persuasive effect that it brings to the issue. On perusal of the Advance Rulings referred by the applicant, we notice that all the rulings relate to a similar situation where the insurance company is the actual service provider, and the findings discussed as above get substantiated through these rulings. Accordingly, we hold that no supply of service by the applicant is present in the instant case involving the collection and remitting of insurance premium to the insurance companies, and therefore GST is not liable to be discharged on such cases.

8.4.1 **Whether GST is applicable on recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises provided to the employees in the course of employment** - Regarding the GST applicability on recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises, it was stated by the applicant that as per the term 'supply' as defined under Section 7 of CGST Act, in order to constitute a supply, the same should be in furtherance of business and for a consideration. In the present case, the applicant avails 'renting of motor vehicles service', 'cab services' through third party, to provide this facility to the employees. Accordingly, they contended that there is no furtherance of business and in fact no consideration is involved, but recovery of partial amount only, which is reimbursement of expenses. Thus, transaction between the company and their

employee are not supply of service and not liable to GST. It is reiterated that the CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has clarified 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. In the instant case, as the Applicant-Company provides the transportation facility to the employees of the Company in terms of the HR policy. Accordingly, the applicant stated that in terms of the above-mentioned Circular, recovery from employees in relation to transportation facility will not be exigible to GST.

8.4.2 The concerned State authority had stated that the recovery of premium of Medical Insurance Policy is considered as supply of Services by the applicant under Section 7 of GST Act 2017, liable to be paid by the applicant on the value of supply under Rule 30 and 31 of GST Act 2017. We observe that though the authority has referred to Section 7 of the CGST Act, 2017, that talks about the scope of supply, the authority has not adduced any discussion or comment to justify his/her stand as to how the recovery of nominal amount from employees for using of transportation facility to and from the factory and office premises provided by a third party to the employees in the course of employment gets covered under the expression "Supply". Likewise, the authority's reference to Rules 30 and 31 of CGST Rules, 2017, and the applicability of the same to the instant case also has not been justified or explained by the authority. In the absence of any such justification in relation to the issue in question, the concerned State authority's opinion is not taken up for discussion.

8.4.3 We notice that the applicant in the instant case, recovers a nominal amount from employees for using of transportation facility to and from the factory and office premises, for which purpose, the applicant avails 'renting of motor vehicles service', 'cab services' through third party. The applicant also reports that the provision of transportation facility to its employees is in terms of the HR policy. However, since the applicant has not adduced any documents/details to this effect, these aspects are not taken up for further discussion.

8.4.4 Notwithstanding the same, we are of the opinion that the discussions already made in paras 8.3.3 and 8.3.4 supra, relating to the issue involving insurance premium, applies to this case of transportation of employees, as well, as it is reportedly carried out in terms of the HR policy of the applicant company. Here again, it is to be noted that the transportation service is not being carried out by the applicant on their own account, and that it is being availed reportedly through 'renting of motor vehicles service', 'cab services', etc., through a third party. Therefore, it becomes clear that in the instant case, the cab operators are the actual services providers, and that the applicant is not involved in any supply of transportation service to the employees. Further, in the instant case the applicant themselves pay up the actual cost of transportation to the service providers, i.e., the cab operators, but recovers only a nominal portion of the transportation cost from the employees, whereby the remaining portion of the transportation cost is borne as expenditure by the applicant. Further, since the nominal amount recovered from the

employees forms part of the total cost reimbursed to the transportation service providers, no consideration actually accrues to the applicant in the instant case as well.

8.4.5 In this regard, reliance is placed by the applicant in support of their stand on the ruling of the Uttar Pradesh AAR in RE: **POCSO India Pune Processing Center Private Limited [2019 (21) GSTL 351]**, the ruling of the Maharashtra AAR in RE: **Integrated Decisions and Systems Private Limited [Advance Ruling No. GST-ARA- 116/2019-20/B-113].** In the additional submissions made during the personal hearing, they relied further on the ruling of Gujarat AAR in RE: **TATA Autocomp Systems Limited,** the ruling of Gujarat AAR in RE: **Brandix Apparel India Private Limited,** and the ruling of Gujarat AAR in RE: **SRF Limited**, mentioned supra. Though such advance rulings are binding only on the applicant who had sought it, the same are considered for discussion keeping in mind the persuasive effect that it brings to the issue. On perusal of the Advance Rulings referred by the applicant, we notice that all the rulings relate to a similar situation where a third party is the actual transportation service provider, and the findings discussed as above get substantiated through these rulings. Accordingly, we hold that no supply of service by the applicant is present in the instant case involving the transportation facility extended to the employees through a third party, and therefore GST is not liable to be discharged on such cases.

8.5.1 **Whether GST is applicable on facility of Car extended to the employees of the Applicant-Company in the course of employment** - On the GST Applicability on facility of Car extended to employees in the course of employment, it was stated by them that the Applicant-Company has proposed to provide the facility of car to its employees in the course of employment. The Applicant-Company will pay the lease premium directly to car leasing company. Overall Salary cost of the related employees will get reduced to the extent of cost incurred by Applicant-Company to extend the expense incurred in relation car facility provided to employees for office purpose. Facility of car extended to employees is considered as perquisite under Income Tax Act, 1961 and due tax is required to be paid by employees on it under the head Income from Salary. In the instant case, the provision of the Car lease premium to employees is not being carried out as a business activity. In this regard, it is reiterated that the CBIC vide Circular No. 172/04/2022 – GST dated 06.07.2022 has clarified 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. In the instant case, as the Applicant-Company is willing to provide the facility of car lease to the employees of the Company in terms of the HR policy, the same is a perquisite for the employees. Accordingly, the applicant contended that in terms of the above-mentioned Circular, recovery from employees in relation to car lease premium will not be exigible to GST.

8.5.2 In the instant case, the Applicant-Company reportedly pays the lease premium directly to car leasing company, and the overall salary cost of the related employees will get reduced to the extent of cost incurred by Applicant-Company to extend the expense incurred in relation car facility provided to employees for office purpose. However, we notice that the circumstances relating to the car lease premium differs basically from the other cases discussed above in view of the fact that these types of car facility are normally provided to a few specific employees of the organisation, and that they are not general in nature like the canteen facility, insurance facility or the mass transportation facility.

8.5.3 Notwithstanding the same, in order to ascertain whether the instant transaction constitutes a 'Supply' or not, the basic fact as to whether the facility extended qualifies as a 'Perquisite' or not, is required to be determined in the instant case. It is seen that the applicant claims that the same is a 'perquisite' for the employees and in terms of the CBIC Circular dated 06.07.2022, recovery from employees in relation to car lease premium will not be exigible to GST.

8.5.4 In this regard, it may be seen that entry 1 of Schedule III of the CGST Act, 2017, states as follows :- *"services by an employee to employer in the course of or in relation to his employment"* shall be neither supply of goods nor supply of services. It could be seen here that Schedule III basically deals with 'services by an employee to employer', and not the other way round. Only as a corollary, the 'services by the employer to the employee', especially when provided in the form of perquisites, has been discussed in the CBIC Circular No. 172/04/2022 – GST dated 06.07.2022 in its para 2 of clarification to issue No.5, wherein it has been explained as follows:-

> *"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.*

8.5.5 From the above, it could be inferred that perquisites in terms of a contractual agreement between the employer and employee are to be kept outside the ambit of GST. Accordingly, such contractual agreement filed, if any, is required to be taken up for discussion in the instant case. However, we notice that the applicant have not furnished copies of any such employment contracts/agreements, or even the excerpts from the same, concerning the issue in question. Under these circumstances, no further discussion could be made on this aspect.

8.5.6 Notwithstanding the above aspect relating to employment contracts, it may be seen that in order to place any service provided by the employer to employee outside the ambit of GST, the same should be in the form of a perquisite. Though the term 'perquisite' has not been defined under the provisions of GST, the same is discussed under the Income Tax Act, where it has been stated in Section 17(2) as follows :-

"perquisite" includes—

(i) the value of rent-free accommodation provided to the assessee by his employer;
(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;
(iii) ——————"

It could be further inferred from the above, that any service rendered free of charge, or, any service rendered on a concessional basis shall qualify as a perquisite. We find that in the instant case, having paid the lease premium directly to car leasing company, the applicant deducts the amount to the extent of cost incurred by Applicant-Company from the Salary of the related employees, as admitted by them.

8.5.7 Once the applicant themselves admit that they do no bear any cost, or any portion of the cost incurred, and when the entire lease premium is recovered from the salary of the employees concerned, we are of the opinion that the amount recovered do not qualify as a 'perquisite' by any means whatsoever, and therefore the transaction in the instant case, do not get covered within the ambit of entry 1 of Schedule III of the CGST Act, 2017. Moreover, we observe that in such cases, the cars are normally booked under the name of the company/organization, and it remains with them for a specific period, or until the lease period is over. Therefore, when the applicant provides the said service to their employees on their own account, and when the element of 'perquisite' is absent in the instant case, we hold that under the circumstances of the case, GST is applicable on the facility of Car extended to the employees of the Applicant-Company, even if it is in the course of employment.

8.6.1 **Whether Input Tax Credit can be availed on expense incurred for the well-being of employees such as vaccination and other benefits to avoid any disruption in Business** - Regarding the ITC on GST paid on medical facilities extended to the employees, the applicant stated that being one of the leading organization in supply of railway goods, takes utmost precaution of its employees. The Applicant extends various health benefits and medical facilities to its employees. It is submitted that the term 'health service' is not defined under the CGST Act. It is further submitted that the health and medical cover provided by the Applicant will not get covered under definition of 'Service' u/s. 2(102) of the CGST Act as no separate consideration is charged. Accordingly, the ITC for such inward supplies are not blocked credits u/s. 17(5)(b)(i) of the CGST Act, 2017. It is further submitted that such medicines cannot be considered as 'goods used for personal consumption' since the cost of these medicines are borne by the Applicant as a part of service contract with its employees. It is submitted that, in order to avail ITC of the above supplies, the supplies should be eligible u/s.16 of the CGST Act and should be not be blocked u/s. 17(5) of the CGST Act. It is further submitted that in the instant case, the Applicant merely acts as a facilitator between the employees and the medicinal perquisites provided to them. In this regard, it is submitted that CBIC vide Press Release dated 10.07.2017 had clarified that supplies made by the employer to the employees based on their contractual agreements would not be subjected to GST. It had been further clarified that a transaction involving such

services, on which GST has been paid to a third party, would not attract further GST when the employer provides it free-of-cost to the employees. In view of the above provisions and judicial precedents, the applicant stated that as the GST discharged on expenses related to medicinal facilities to the employees, is for the furtherance of business, and the ITC thereto is not blocked u/s. 17(5) of the CGST Act, the ITC on such expenses shall be allowed.

8.6.2 In this case, we notice that the applicant seeks clarification on whether ITC is blocked under section 17(5) of the CGST Act, 2017, in respect of the GST involved on the expenses related to medicinal facilities extended to the employees. The applicant had contended that such medicines cannot be considered as 'goods used for personal consumption' since the cost of these medicines are borne by the Applicant as part of service contract with its employees. They have further contended that a transaction involving such services, on which GST has been paid to a third party, would not attract further GST when the employer provides it free-of-cost to the employees, and therefore the ITC thereto is not blocked under section 17(5) of the CGST Act, 2017.

8.6.3 At the outset, we would like to make it clear that liability to GST, and ITC eligibility are two different legs of a transaction which operate independently of each other. Accordingly, we are of the opinion that the applicant's attempt as above to link the ITC eligibility to GST liability or otherwise, is grossly misplaced. Further, considering the fact that the instant query relates to ITC eligibility on medicines provided to employees free of cost, we turn our attention to ITC eligibility on this aspect. The applicant's contention that medicines cannot be considered as 'goods used for personal consumption' in the instant case, stems from the fact that the cost of these medicines are borne by the Applicant as a part of service contract with its employees. It may be noted that medicines are essentially goods meant for personal consumption, irrespective of the fact whether the cost was borne by the applicant or not.

8.6.4 As per Section 17(5)(b) of the CGST Act, 2017, the supply of goods or services or both in relation to health services cannot be availed as ITC, unless it is obligatory for an employer to provide the same its employees under any law for the time being in force. We notice that inspite of their claim that providing medical facility is part of service contract, the applicant has not adduced any details or documentary evidence in support of the same, and as a result no further discussions could be made in this regard. Moreover, even in the event of considering the same as an obligation or responsibility on the part of the employer, the same should be mandated under any law for the time being in force, and this aspect has not been substantiated by the applicant.

8.6.5 The applicant had further submitted that though there is no outright mention about ITC eligibility on preventive measures in the CGST Act, from the intention of the law, it can be derived that such expenses shall be treated as rendered for the furtherance of business. Reference in this regard, can be drawn from the Income Tax Laws. It is submitted that in RE: **Commissioner of Income Tax Kerala, Vs. Malayalam Plantations Limited [1964 AIR 1722, 1964 SCR (7) 693]**, it was held

that the term 'purpose of business' may not include only the day to day running but may also include measure for the preservation of the business. While appreciating the contents and its interpretation, we observe that the said case law is in relation to Income Tax laws, whereby they become absolutely distinguishable from the instant case. Further, we notice that basically, the GST law places a bar on the availment of ITC in respect of the goods or services used for personal consumption, like food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, etc., as enumerated under 17(5)(b)(i) of the CGST Act, 2017. In this regard, we find that the only respite available to the applicant in the form second proviso to Section 17(5)(b) of the CGST Act, 2017, also stands exhausted as discussed above, and therefore we hold that Input Tax Credit cannot be availed on the expense incurred for the well-being of employees such as vaccination and other health benefits extended to them.

8.7.1 **Whether Input Tax Credit is available on GST charged for gardening expenses of the Applicant-Company** - As far as the ITC admissibility on Gardening Expenses is concerned, the Applicant states that they are maintaining a garden at the factory estate of the Company to meet the requirements of Tamil Nadu Pollution Control Board guidelines requiring the development of a green belt in and around the factory premises. It is submitted that as the maintenance of a garden at the factory premises is required by the law, the credit thereof shall be allowed. It is further submitted that the definition of the terms of 'input' and 'input services' are wide enough to cover gardening services as input services. The definition of the terms begins with 'any', which enables it to cover any services, which is used for the furtherance of business. It is submitted that in RE: **Grasim Industries Limited vs. Collector of Customs [2008 – TMI – 46155 – SC]**, the Hon'ble Apex Court had held that the elementary principle of interpreting any word while considering statute is to gather the means or sentential legis of the Legislature. Therefore, the applicant contended that as a settled principle of law, where the law mandates the requirement of maintenance of a garden in the factory premises, the ITC thereon, is admissible.

8.7.2 We notice that the concerned State authority had stated that Gardening & Plantation is not for business use which will not qualify for Input Tax Credit in terms of Sec.17(1) of CGST Act 2017. Hence Input Tax Credit is not available on GST charged for gardening expenses of the Applicant Company. The Authority had quoted the Advance Ruling No.GST-ARA-79/2018-19/B-168, dated 24.12.2018 passed by the Maharashtra Authority for Advance Ruling, wherein it was ruled that services availed in relation to plantation and gardening within the plant area will not qualify for input tax credit.

8.7.3 On the contrary, we find that the said decision against the taxpayer, viz., M/s.Ordnance Factory, Bhandara has been overruled already, and the ITC on the expenses incurred on maintenance of garden inside the factory premises said order has been allowed by Maharasthra Appellate Authority for Advance Ruling in its Order No. MAH/AAAR/SS-RJ/13/2019-20 dated 18.10.2019, on an appeal by the

said taxpayer against the Advance Ruling referred to by the concerned State authority.

8.7.4 The Applicant while filing their additional submissions during the personal hearing on 14.11.2023, had furnished a Consent Order No.2105137138783 dated 12.04.2021 issued by the Tamil Nadu Pollution Control Board, wherein it has been specified under Sl.No.11 of the 'Special Conditions' as *"11. The occupier shall develop adequate width of green belt at the rate of 400 number of trees per Hectare"*. Likewise, vide another Consent Order No.2105237138783 dated 12.04.2021, it has been laid out under Sl.No.4 of the 'Additional Conditions' as *"4. The unit shall continue to develop more green belt in and around the unit's premises"*. On perusal of the said consent orders, it is seen that the same were issued under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, as amended in 1987 (Central Act 14 of 1981), and the rules and orders made thereunder.

8.7.5 It is seen that the definition of 'Input Service' as provided under Section 2(60) of the CGST Act, 2017, *"means any service used or intended to be used by a supplier in the course or furtherance of business"*, and it begins with the word "any". Likewise, Section 16(1) of the Act, that provides for eligibility and conditions for taking ITC, also encompasses the phrase *"be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business"*, which again contains the word "any". We observe that the above legal provisions relating to availment of ITC gives it a wider connotation to include those inputs and inputs services that are used or intended to be used in the course or furtherance of his business.

8.7.6 In support of their stand that ITC is eligible on gardening expenses, the applicant has stated that in RE: **Ordinance Factory, Bhandara [2020 (38) GSTL 530 (AAAR-GST-Mah)]**, the AAAR had held that where the State Pollution Control Board has mandated the requirement of maintenance of garden inside the factory, the said service would qualify as 'input service' and the ITC thereon would be available. The applicant had also relied on other ruling like RE: **ThyssenKrupp Eletrical Steel (India) Private Limited vs. Commissioner of C. Ex. [2017 (3) GSTL 176 (Tri.-Mum.)]**, RE: **Orient Bell Limited vs. Commissioner of C. Ex. [2017 (52) STR 56 (Tri.-All.)]**, RE: **Sterlite Industries India Limited vs. Commissioner of C. Ex., Madurai [2016 (41) STR 867 (Tri.-Chennai)]**, the judgement of the Hon'ble Madras HC in RE: **Commissioner of C. Ex. vs. Rane TRW Steering Systems Limited [2015 (39) STR 13 (Mad.)]**. We notice that only the ruling of the Maharashtra Appellate Authority for Advance Ruling in the case of **Ordinance Factory, Bhandara [2020 (38) GSTL 530 (AAAR-GST-Mah)]**, wherein it has been held that gardening service would qualify as 'input service' and the ITC thereon would be available, carries atleast persuasive value, if any, to the instant case, as it relates to the provisions of GST. All other case laws relate to the legacy period, i.e., prior to 1.07.2017 (introduction of GST), and therefore are distinguishable. However the persuasive effect that it brings to the discussion could not be ignored.

8.7.7 It could be seen that the definition of 'input service' provided under Rule 2(l) of the erstwhile CENVAT Credit Rules, 2004 was already wide enough to encompass the availability of credit on such gardening services, as it contained the words, *"whether directly or indirectly, in or in relation to the manufacture"*. Whereas the definition of 'input service' provided under Section 2(60) of the CGST Act, 2017, is much wider as it contains the words *"in the course or furtherance of business"*. Further, we find that Section 17(5) of the CGST Act, 2017 was amended with effect from 01.02.2019, based on the recommendations of the 28th GST Council meeting. This apart, the CBIC in its Circular No.172/04/2022-GST dated 06.07.2022, while providing clarification on various issued of Section 17(5) of the CGST Act, has observed in para 2 to query No.3 as follows :-

> *"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."*

8.7.8 Having been mandated by the Tamil Nadu Pollution Control Board under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, as amended in 1987 (Central Act 14 of 1981), and the rules and orders made thereunder, as discussed in detail above, it is observed that gardening and maintenance of green belt in and around the unit's premises is an activity in the course or furtherance of business that is mandatorily required to be carried out by the applicant. Accordingly, we hold that ITC is available on the input services received by the applicant in the instant case, in relation to gardening activities carried out within the factory premises.

9. In view of the above, we rule as under;

RULING

(a) GST is liable to be discharged by the applicant on the amount charged on the employees by the applicant, for the supply of canteen service on its own account to its employees, in view of the reasons discussed in paras 8.1.6 and 8.1.7 supra.

(b) ITC is eligible on the inward supplies received, if any, in relation to the provision of food to the employees, provided the number of direct employees in the establishment is more than 250. However, while availing such ITC, the proportionate credit to the extent of cost recovered from such employees is required to be reversed by the applicant, as discussed in para 8.2.4 supra.

(c) GST is not liable to be discharged by the applicant in relation to the recovery of medical insurance premium from the employees for them and their dependents at actuals as claimed by the applicant, and if the same is

provided in terms of the contractual agreement entered into between the employer and the employee as discussed in para 8.3.4 supra.

(d) GST is not liable to be discharged by the applicant in relation to the recovery of nominal amount from employees for using the transportation facility in terms of the contractual agreement entered into between the employer and the employee as discussed in paras 8.4.4 supra.

(e) GST is applicable on the facility of Car extended to the employees of the Applicant-Company, even if it is in the course of employment, as discussed in para 8.5.7 supra.

(f) ITC cannot be availed on the expenses incurred for the well-being of employees such as vaccination and others health benefits extended to them, as discussed in paras 8.6.4 and 8.6.5 supra.

(g) ITC is available on the input services received by the applicant in relation to gardening activities carried out within the factory premises, as discussed in paras 8.7.7 and 8.7.8 supra.

(T.INDIRA)
Member (SGST)

(D.JAYAPRIYA)
Member (CGST)

To

M/s. Faiveley Transport Rail Technologies India Private Limited,
P.B. No. 39, Harita, Hosur,
Krishnagiri, Tamil Nadu – 635 109

//By RPAD//

AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
TAMILNADU

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
   No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
   Chennai – 600 034.

2. The Commissioner of Commercial Taxes,
   2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & C.Ex.,
   Salem Commissionerate.
   No.1, Foulkes Compound, Anaimedu,
   Salem – 636 001.

2. The Assistant Commissioner (ST),
   Hosur (South)-I Assessment Circle,
   Hosur – 635 109.

3. Master File / spare – 1.