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TITLE- GST ON TRANSACTIONS BETWEEN EMPLOYER AND EMPLOYEES

INTRODUCTION

“To win in the marketplace you must first win in the workplace.” - Doug Conant, CEO of Campbell’s Soup

The relationship between the employer and employee in India is governed by various labour laws and regulations. These laws are designed to safeguard the rights of workers and ensure fair treatment at the workplace, when a new employee is hired by the employer in the workforce, the employer is not just deploying a new member in the workforce but also establishing a new relationship as the employer and employees work in close proximity and share work space. Therefore, it becomes vital for any business entity to maintain the employee-employer relationship and in order to maintain this relationship there are many perquisites and facilities provided by the employer to the employee and in this piece of research we will delve into the taxability of transactions between the employer and the employee under the GST regime.

ISSUE

Whether the transaction between employer and employee is taxable under GST regime?

CONTROVERSY

Transactions which fall within the scope of supply as per section 7 of CGST Act are taxable under the CGST Act, 2017. Furthermore, there are certain transactions which are considered neither supply of goods nor supply of services which are outside the scope of GST, these instances are enlisted under Schedule III of CGST Act.

Schedule III(Entry 1) says that “*SERVICES BY AN EMPLOYEE TO THE EMPLOYER IN THE COURSE OF BUSINESS OR IN RELATION TO HIS EMPLOYMENT*” The emphasis should be placed on “*services by an employee*” which points out that where the flow of service is from employee to employer and such flow is in furtherance of business or in relation to employment Moreover, services provided by an employee to an employer in the course of business or in the course of employment will be outside the scope of the said Act as it will not be deemed as a Supply as per section 7 of the said Act.

On the Contrary, Schedule I of the said Act provides for instances where activities are treated as supply even if there is no consideration. Entry 2 of Schedule I of the said Act, reads “*Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business*” Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

CRITICAL ANALYSIS

Taking into account the condurum created as to taxability of transaction between employee and employer there have been many advance rulings pertaining to the subject of taxability of transaction between the employer and employee, the two most recent advance ruling pertaining to the said issue are Tata Motors Limited [2020 VIL 257 AAR] by AAR Maharashtra dated 25 August 2020 and Beumer India Private Limited [2020 VIL 316 AAR] by AAR-Haryana dated 29 October 2020, are remarkable advance rulings as both of these rulings are latest in time and took a contrasting view for the said issue.

RECENT ADVANCE RULINGS

In the case of *Tata Motors*, The Applicant was is in the business of manufacturing commercial and passenger vehicles, the applicant provided transportation facilities to its employees in lieu of nominal amount charged by the employer on the employees for availing the transportation facility, The Applicant contended availability of input tax credit on the service provided by the employer whereas the AAR in its ruling emphasised on the point that the transactions between the employer and employee is not deemed as a supply under CGST Act as per Section-7 and by the virtue of Entry 1 of Schedule III it is outside the purview of GST, therefore AAR in the ruling laid down that when the applicant is not supplying any services to its employees, GST would not be levied on the nominal amount recovered by applicant from its employees.

Whereas in the case of *Beumer India* similar factual circumstances were involved herein the applicant hired a transportation facility in order to provide bus service facility to its employees to and from the workplace and charged a nominal amount in case of air conditioning facility, the AAR of Haryana rejected the contention of the applicant that the said transportation facility is not taxable by the virtue of Entry 1 of Schedule III, on the ground that the said Entry talks about the transaction between the services provided by the employee to the employer in furtherance of business or and in the instant case the transportation facility is provided by the employer to the employee and the flow of service is from the employer to the employee not from the employee to employer therefore it is not covered under schedule III and such a transaction is considered as a supply as per section 7 of the CGST, Act 2017, therefore GST will be levied in this particular case.

It is undisputable to note that the rulings in both the cases are contrary to each other and took a divergent view as to the taxability of transaction between the employer and employee further more to resolve the ambiguity as to the said issue the central board of indirect taxes and custom in the *Press release dated 10 July 2017*, wherein it clarified that the transaction in which the employer supply service or goods as per the contractual agreement between the employer and the employee will not be taxable under GST, furthermore in a *Circular no. 172/04/2022- GST* it was clarified that any perquisites given by the employer to the employee as per the contractual agreement in lieu of service provided by the employee will not be subject to GST.

CONCLUSION

In general, the employer-employee relationship, including salary or wages, falls outside the scope of GST. Nevertheless, specific situations or arrangements may warrant further examination to ensure compliance with GST regulations, so in the view of divergent ruling as to the issue of taxability of transaction between the employer and employee, the employer providing various perquisites and facilities in form of transportation, canteen facility etc to the employees, the entities are advised to review the contractual agreement with their employees.