T. No-55/2024-25

THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 31 / 2024
Dated: 02.07.2024

Present:

1. **Dr. M.P. Ravi Prasad**
   Additional Commissioner of Commercial Taxes . . . . Member (State)

2. **Sri Kiran Reddy T**
   Additional Commissioner of Customs & Indirect Taxes . . . . Member (Central)

1.	Name and address of the applicant	M/s. Fidelity Information Services India Private Limited, 2nd, 3rd and 6th Floor, Tower 3, WRAP Building, EPIP, Zone 1, Whitefield Road, Bengaluru-560 066.
2.	GSTIN or User ID	29AAGCS0395D1ZA
3.	Date of filing of Form GST ARA-01	05-05-2023
4.	Represented by	Ms. Smritikona Dutta, DAR
5.	**Jurisdictional Authority – Centre**	The Commissioner of Central Tax, Bengaluru East GST Commissionerate, East Division-7, Range-RANGE-BED7
6.	Jurisdictional Authority – State	ACCT, LGSTO-036, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No. DC 2904230382631 Dated 24.04.2023

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017

M/s. Fidelity Information Services India Private Limited, 2nd, 3rd and 6th Floor, Tower 3, WRAP Building, EPIP, Zone 1, Whitefield Road, Bengaluru-560 066 (hereinafter referred to as 'The applicant'), having GSTIN 29AAGCS0395D1ZA have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a Private Limited Company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The applicant is engaged in the business of software development and maintenance services and Information technology enabled services.

3. The applicant has sought advance ruling in respect of the following questions:

i. *The Company recovers joining bonus and retention bonus on account of employee's inability to serve the organization (or a particular department, in case of retention bonus) for a pre-agreed period. The applicant wishes to seek clarity whether GST would be applicable on recovery of such bonus?*

ii. *Whether GST would be applicable on recovery of work from home one-time setup allowance paid to employees in case where the employees exit before serving the pre-defined period from the payout date?*

iii. *Whether GST would be applicable on recovery of amount paid as financial assistance to employees under Tuition Assistance Program (TAP) policy in case where the employee exit before serving the pre-agreed period in the organization?*

4. Admissibility of the application: The question is about the "determination of the liability to pay tax on any goods or service or both" and is admissible under Section 97(2)(e) of the CGST Act 2017.

5. Brief Facts of the Case:

5.1 The applicant states that they are engaged in the business of providing software development and maintenance services and Information technology enabled services (ITES) including but not limited to back-office operations, call center services, business support services to both domestic as well as overseas customers.

5.2 Recovery of retention bonus:

a. The applicant states that the Company at the time of appointing any employee in the organization, enters into a contract with the employee by issuing 'Letter of Appointment'. Vide said letter, all the terms and conditions related to employment are decided and agreed between the employee and employer i.e., the applicant in the instant case.

b. The Company in addition to the existing annual total consideration, offers a retention bonus to incentivize the employees and retain them for a longer duration. Such disbursement of retention bonus is associated with a condition which demands serving of pre-defined period by the employee in the organization. In case where the employee wishes to voluntarily exit the organization within stipulated time period from the payout date, such retention bonus is recovered from the

employee. The same can be construed equivalent to recovery of salary which is paid in advance to the employee under the employment contract and not a consideration towards any service rendered by employer to the employee. In case where the employee voluntarily moves to a different role through an IJP ('Internal Job Posting') within stipulated time period from the payout date, such retention bonus is recovered from the employee.

5.3 Recovery of joining bonus:

The applicant states that similar to retention bonus, the Company in order to incentivize an employee to join the organization, offers a one-time joining bonus which is payable with the first salary of the employee. Such disbursement of joining bonus is subject to a condition which demands serving of pre-defined period by the employee in the organization. In case where the employee wishes to voluntarily exit the organization within stipulated time period from the date of joining ('DOJ'), such joining bonus is recovered from the employee.

5.4 Recovery of amount paid as work from home ('WFH') allowance:

a. The applicant states that due to outbreak of COVID-19 pandemic, the employees of the Company were instructed to undertake work from home in lines with the various guidelines issued by the Government from time to time. In order to enable employees to undertake work effectively and efficiently, a one-time work from home set up allowance amounting to INR 22,000/- was provided to employees by the applicant. The said amount is given as a one-time allowance which is payable only once during the entire tenure of the employee in the Company.

b. The applicant states that a one-time amount of INR 22,000/- is paid uniformly to all employees along with their salary of a particular month for expenses incurred on setting up home office infrastructure. The said allowance is disbursed subject to a condition which demands serving of pre-defined period from the date of payout in the organization. In case where the employee wishes to exit before serving the stipulated period, the amount so paid as one-time setup allowance stands recoverable by the applicant.

5.5. Tuition Assistance Program ('TAP')

a. The applicant states that to upskill their employees, provides financial assistance to employees who wish to pursue job-related professional development initiatives. The eligible employees are allowed to pursue further education in the form of graduate/ post graduate degree/ diploma or specific certificate courses through TAP. The applicant shall reimburse INR 50,000/- in a year (except in case of certain employees who would be eligible to claim INR 50,000/- in a period of 3 years) either in full or in part and the employee can opt for one or more courses/ certifications/ trainings.

b. The course so selected by the employee should be relevant to the employee's existing job role or towards the approved company assignments that he/ she may be required to undertake in future. The amount is expensed on employee to make

him technically proficient and upgrade his skill so that he/ she may contribute more towards the growth of the organization. The amount under TAP is paid with a pre-agreed condition that in case the employee wishes to exit the organization, the Company has a right to recover all such payments made to the employees in the preceding 12 months from the date of certification.

6. Applicant's Interpretation of Law:

6.1 Taxability of recovery of bonus/ allowance:

i. The applicant states that they are receiving an amount from employee on account of recovery of bonus/ allowance, however, no activity is performed by employer in return for such consideration. There is a contractual relationship between employer and employee for rendition of employment services in lieu of remuneration as per the terms of contract. However, there is no direct contractual relationship for recovery of bonus/ allowance. The aspects related to bonus/ allowances recovery arises only at the time of termination of contract i.e., when the employee wishes not to serve the stipulated period and instead compensate the employer in lieu of the inconvenience caused due to his premature termination. Therefore, bonus/ allowance recovery can be said to be compensatory in nature.

ii. Moreover, the employee on his own decides whether to serve the pre-agreed period or simply exit by paying an amount at his convenience. The applicant has no option but to accept an amount in lieu of the unserved period. Thus, there is neither discretion/ desire of the employer nor any benefit is accrued to him from sudden exit of the employee.
Hence, it can be said that the fundamental premise of 'activity for a consideration' itself is not satisfied and thus, the recovery of bonus/ allowance shall not be leviable to service tax.

iii. Para 2.3.1 of education guide provides:

> *"2.3.1 Would imposition of a fine or a penalty for violation of a provision of law be a consideration for the activity of breaking the law making such activity a 'service'? No. To be a service an activity has to be carried out for a consideration. Therefore, fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity."*

Thus, it can be inferred that recovery of bonus/ allowance which is compensatory in nature (accrues on employee deciding not to serve the pre-agreed time period) cannot be construed as consideration for an activity.

a. Moreover, the education guide clarified many queries with respect to employer-employee transactions. In para 2.9.3 of the education guide, following was clarified:

"2.9.3 Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to service tax?

No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act."

b. Therefore, as mentioned above, it is pertinent to note that in case where the amount is received by an employee from the employer by reason of premature termination of contract of employment, CBIC has answered in the negative stating that such amounts would not be related to the rendition of service.

c. The present case relates to a contra situation i.e., where an employer/ applicant receives an amount from employee on premature termination of employment contract. Thus, in the instant case, the applicant has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. Therefore, the applicant cannot be said to have rendered any service per se as the employer has not 'tolerated' any act of the employee in terms of Section 66E(e) of Finance Act, 1994 but has permitted a sudden exit upon being compensated by the employee in this regard. Thus, it can be said that amount paid by employee to applicant (i.e., bonus/ allowance) shall not be chargeable to GST.

d. Consequently, it can be construed that where employee is receiving amount from employer for premature termination, it is considered as to be a part of employment contract. Therefore, in a reverse situation, wherein an employer is receiving compensation from employee in lieu of unserved notice period, then in such a case it should not be considered as a fresh obligation or toleration on the part of employer as the relevant clauses were already available in the employment contract.

iv. Further, it may be noted that condition to recover the bonus/ allowance is intended to compensate the employer for the disruption in work or inconvenience caused to him, on account of early release of employee from the organization.

v. In order to tax any transaction/ activity under GST, it is vital that the same fall under the ambit of '*scope of supply*' as defined under Section 7 of CGST Act, 2017.

vi. Once the activity qualifies as 'supply' under GST, reference may be made to Schedule II of CGST Act, 2017 to classify such activity as supply of goods or service.

vii. Given the above, at first, it is crucial to analyze whether the recovery made on account of bonus/ allowance tantamount to 'supply' under GST. In case where the said recovery falls under the ambit of 'supply', it shall then be deliberated

whether the same qualifies as 'toleration of an act or situation' in terms of clause 5(e) of Schedule II.

viii. At this juncture, the applicant would like to submit that co-existence of 'activity' and 'consideration' and the reciprocal relationship between the employer and employee is necessary to treat an event as supply under Section 7 of CGST Act, 2017. Each and every cash flow need not be construed as a consideration.

ix. In the given scenario, the applicant has merely exercised his contractual right arising out of the original employment contract, without carrying out any activity per se at his end as any reciprocal gesture, which would have entitled him to receive the said amount from employee. Thus, it would certainly not be a taxable supply as envisaged under Section 7 of the CGST Act, 2017.

x. Moreover, the employer's existing right under the employment contract cannot be construed as an obligation accepted by him under the same contract, in absence of any other contract executed by him, so as to invoke taxation as contemplated under entry 5(e) of Schedule II.

xi. In other words, the recovery of bonus/ allowance by the applicant occurs as an incidence of the employment documents, which is already in existence, and therefore, the employer (who has simply accepted the resignation and exercised his existing right in pursuance of the said letter to recover bonus/ allowance as pre-determined) cannot be alleged to have agreed to any kind of obligation to tolerate any situation, in pursuance of any separate and distinct activity contract, which does not exist.

xii. Further, the fact that the said recovery clause, as stipulated in the employment documents, is accepted by the employee at the time of receiving such bonus/ allowance, goes to prove that the employee has already accepted an obligation to surrender the bonus/ allowance earned by him during the course of the employment, as part of the terms and conditions of the employment documents. Such recovery of bonus/ allowance in pursuance of the employment documents cannot partake the character of any consideration paid by the employee to the employer for any activity said to have been carried out by the employer.

xiii. Furthermore, while determining tax implication on a transaction, it is crucial to understand the primary intention of the parties flowing from the contract/ agreement. In transaction involving recovery of bonus/ allowance the primary intention of the parties is not to earn consideration through bonus/ allowance recovery. Such amounts are sub-servient and ancillary to the primary objective of employment contract i.e., rendition of services by an employee to employer. Recovery of bonus/ allowance may be considered as an adjustment or reduction in consideration against the original supply (i.e., bonus/ allowance) but shall not be considered as a consideration for a fresh supply.

xiv. The act of bonus/ allowance recovery is only an extinguishment of the obligation of the employee which does not constitute an independent/ voluntary act by the applicant. Thus, the act of bonus/ allowance recovery arises as a condition of

non-serving of the pre-defined period is not an independent contract in itself to qualify as a supply.

xv. Therefore, it can be said that once bonus/ allowance recovery is stipulated in the employment documents, the employer can only sue for recovery of such amount but cannot enforce mandatory serving of the pre-agreed period. Since the employer cannot enforce mandatory serving of the stipulated period, the employer cannot be said to have refrained from an act of suing the employee for mandatory serving against the bonus/ allowance recovery. Thus, bonus/ allowance recovered cannot be said to be consideration against agreeing to the obligation to refrain from an act or to tolerate an act.

xvi. The applicant incurs expenses in form of retention/ joining bonus, WFH allowance and TAP benefits in order to incentivize the employees and inculcate technical skills. Where the employee opts to leave the organization, the bonus/ allowance recovered is in order to compensate the employer for the inconvenience caused due to early exit of the employee (since the employer had deployed its resources to motivate and professionally train the employees so that they can contribute towards the growth of organization at least for a particular pre-defined period, however, now the employer would be required to hire new employees and again incur the similar expenses for their development).

xvii. Separately it may be noted that the term 'Consideration' is defined in section 2(31) and states 'consideration in relation to supply of goods or services or both includes'. In this regard it may be noted that the Apex court in case of **'Doypack Systems Pvt Ltd v/s Union Of India and Ors'** has held that the phrase 'in relation to' is equivalent to phrases 'Concerning with' and 'pertaining to'.

Therefore, drawing analogy from there, the phrase 'in relation to' used in the definition of the term consideration suggests a connection/nexus with the act of supply. In the present case, bonus/allowance recovery originates only at the time of termination of service agreement. As quoted above the purpose of the agreement is rendition of employment service and not recovery of bonus or allowance. Thus there is no underlying agreement for bonus/allowance recovery and it just emerges as a condition of not serving the pre-defined period and is not an independent contract in itself to qualify as a supply. Hence recovery of bonus allowance is a condition of contract and cannot be construed as a consideration for contract.

D. Analysis in light of Circular No. 178/10/2022- GST dated 03 August 2022 issued under GST

i. Owing to ambiguity regarding taxability of an activity/ transaction as supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act, the Government vide Circular No. 178/10/2022-GST dated 03 August 2022 has clarified the scope of entry 5(e) of Schedule II (i.e., agreeing to the obligation to refrain from an act or to tolerate an act or situation, or to do an act) of CGST Act.

ii. The expression in entry 5(e) of Schedule II of CGST Act have following three limbs which are discussed by way of examples:

1) **Agreeing to the obligation to refrain from an act** - For instance, non-compete agreements, where one party agrees not to compete with the other party in a product/ service/ geographical area against a consideration paid by other party

2) **Agreeing to the obligation to tolerate an act or situation** - This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker

3) **Agreeing to the obligation to do an act** - This would include the case where an industrial unit agrees to install equipment for zero emission/ discharge at the behest of the RWA of a neighboring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

a. Further, the relevant paragraphs from the Circular examining the scope of entry 5(e) of Schedule II are hereby provided below for reference:

"6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/ contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/ agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand- alone contract or may form part of another contract. Thus, a person (the first person) can be said to

be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

7. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation.

b. Therefore, for an activity to be taxable under Para 5(e) of Schedule II of CGST Act, it can be inferred that:

- One party must be under a contractual obligation to either refrain from an act, or to tolerate an act or a situation or to do an act and some 'consideration' must flow in return from the other party to the first party for such refraining or tolerating or doing of an act.

- There must be a necessary and sufficient nexus between the supply (i.e., agreement to do or to abstain from doing something) and the consideration.

- Such contractual arrangement must be an independent arrangement in its own right. Moreover, said agreement can be under a separate standalone contract or it may form part of another contract.

Para 7.5 specifically clarifies GST implication in case of forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period. The relevant extract of the circular is reproduced below:

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

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up

employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. ***Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.'***

c. Therefore, from aforesaid clarification, it can be very well established that the amount recovered from employee on account of bonus, WFH allowance or amount under TAP is not as a consideration for tolerating the act of employee of not serving the pre-agreed period in the organization but a mere recovery for dissuading the non-serious employees from taking up the employment. Thus, the employer is not required to discharge GST on the amount recovered from employee on account of bonus/ allowance recovery.

6.2 The applicant relies on the judgment of the Hon'ble Madras High Court in the matter of *M/s GE T & D India versus Deputy Commissioner of Central Excise,* CESTAT, Ahmedabad in the matter of *M/s Krishak Bharti Co Operative Ltd versus C.C.E. & S.T.-Surat,* CESTAT Allahabad in the matter of *'M/S HCL LEARNING LIMITED VERSUS COMMISSIONER OF CENTRAL GOODS & SERVICE TAX, Noida* , CESTAT Bangalore in the matter of *M/s XL Health Corporation India Pvt Ltd versus Commissioner of Central Tax, Bengaluru South Commissionerate.*

In light of legal and factual grounds and judicial precedents discussed in preceding paragraphs, it can be concluded that no service is rendered by employer or employee while making recovery of bonus/ allowance. Employer is merely facilitating an early exit of employee by imposing a cost in lieu of unserved period. There exists no activity for consideration and thus, the recovery of bonus/ allowance is not chargeable to GST.

6.3 The applicant has also relied on the Advance rulings under GST:

i. The Haryana Authority for Advance Ruling (HAAR) in the matter of **'M/S. RITES LIMITED'** wherein reliance has been placed on the Circular No. 178 dated 03 August 2022 issued by CBIC and held that notice pay recovery and bond Forfeiture of the contractual employees is outside the scope of ' supply' and thus, not Chargeable to GST.
ii. The **Authority for Advance Ruling Maharashtra** in the matter of **'Emcure Pharmaceuticals Limited'** relied upon the ruling pronounced by the Madhya Pradesh Appellate Authority for Advance Ruling.
iii. Further, the **Authority for Advance Ruling, Maharashtra** in the matter of **'M/S. SYNGENTA INDIA LIMITED'**, held that GST shall not be leviable on notice pay Recoveries made from employee for not serving the complete notice period.

6.4 In light of aforesaid deliberations and discussions, the applicant is of the view that bonus/ allowance recovery shall not be leviable to GST on account of following key aspects:

a) There is no explicit contractual agreement between the applicant and employee for toleration of act. In the present case, the applicant is merely exercising his own contractual right arising out of the original 'Retention Bonus Letter', 'Joining Bonus Letter', 'TAP Policy' and 'Work from Home –Benefit Policy' without carrying out any Activity per seat his and as a reciprocal gesture, which would have entitled the applicant to receive the said amount from the employee.

b) The applicant has simply accepted the resignation and exercised his right in pursuance of the employment documents viz. retention bonus letter/ joining bonus letter/ TAP policy/work from home benefit policy to recover the bonus /allowance as pre-determined cannot be alleged to have agreed to any kind of obligation to 'tolerate any situation' in pursuance of any separate and distinct activity contract, which does not exist.

c) There is no option available with the employer to enforce the continuation of employment on the employee and thus, as mentioned in the employment documents/existent policy at the time of disbursement of such amount, the employer merely recovers such amount to compensate for early exit. Further, it was already known to both employer and employee at the time of disbursement of this amount that the option is always available for early termination. Therefore, there is no question of any tolerance of act on part of the employer.

d) Merely because the applicant is being compensated does not mean that any service has been rendered by him or he has tolerated an act for premature exit.

e) The compensation received by the applicant is not related to any service rendered by employer to employee and vice-versa. The applicant has merely facilitated early exit of employee in lieu of compensation for premature termination of contract.

f) In any case, bonus / allowance recoveries are nothing but recovery from amounts already paid to the employee under or in connection with his / her employment contract with the Applicant. It is only recovery of bonus / allowance paid in advance and hence not liable to GST.

g) Bonus / allowance recovery emerges as a compensation for early exit to discourage the non-serious candidates from taking up employment and thus, cannot be equated to consideration.

h) Bonus / allowances received by employee is outside the purview of GST. In this regard, where recovery is made from such bonus / allowance already paid, the same cannot be leviable to GST.

6.5 Thus, the applicant is of the view that GST shall not be leviable in case where the following recoveries are made from employees:

1) Joining / retention bonus where employee leaves the organization (or department in case of retention bonus) without serving the pre-agreed period.
2) Work from home one time set up in case where the employees exit before serving the pre-defined period from the payout date.
3) Amount paid as financial assistance to employees under TAP policy in case where the employee exits before serving the pre-agreed period in the organization.

PERSONAL HEARING / PROCEEDINGS HELD ON 13.07.2023

7. Ms. Smritikona Dutta, Duly Authorised Representative appeared for personal hearing proceedings held on 13.07.2023 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and also their submissions made during the time of hearing.

10. The Applicant states that they are providing Retention Bonus, Joining Bonus, Tuition Assistance Program and Work from Home allowance to incentivize employees and retain them for longer duration in the organization. However, the same will be recovered if the employee wishes voluntarily to exit the organization within the stipulated time period. The Applicant wants to know the applicability of GST on the recovery of the above-mentioned bonus/allowance.

11. Now let us discuss about the bonus/allowance provided by the Applicant to their employees one by one.

a) **Retention bonus**: The applicant states that the Company, in addition to the existing annual total consideration, offers a retention bonus to incentivize the employees and retain them for a longer duration. Such disbursement of retention bonus is associated with a condition which demands serving of pre-defined period by the employee in the organization. In case where the employee wishes to voluntarily exit the organization within the stipulated period from the payout date, such retention bonus is recovered from the employee.

In case where the employee voluntarily moves to a different role through an IJP ('Internal Job Posting') within stipulated period from the payout date, such retention bonus is recovered from the employee.

b) **Joining bonus**: The applicant states that similar to retention bonus, the Company, in order to incentivize an employee to join the organization, offers a one-time joining bonus which is payable with the first salary of the employee. Such disbursement of joining bonus is subject to a condition which demands serving of pre-defined period by the employee in the organization. In case where the employee wishes to voluntarily exit the

organization within the stipulated time from the date of joining ('DOJ'), such joining bonus is recovered from the employee.

c) **Work from home ('WFH') allowance**: The applicant states that to enable employees to undertake work effectively and efficiently at home, a one-time work from home set up allowance amounting to INR 22,000/- was provided to employees by the applicant. The said allowance is disbursed subject to a condition which demands serving of pre-defined period from the date of payout in the organization. In case where the employee wishes to exit before serving the stipulated period, the amount so paid as one-time setup allowance is recovered by the applicant.

d) **Tuition Assistance Program ('TAP') :** The applicant states that the eligible employees are allowed to pursue further education in the form of graduate/ post graduate degree/ diploma or specific certificate courses through TAP. The applicant shall reimburse INR 50,000/- in a year either in full or in part. The course so selected by the employee should be relevant to the employee's existing job role or towards the approved company assignments that he/ she may be required to undertake in future.

The amount is expensed on employee to make him technically proficient and upgrade his skill so that he/ she may contribute more towards the growth of the organization. The amount under TAP is paid with a pre-agreed condition that in case the employee wishes to exit the organization, the Company has a right to recover all such payments made to the employees in the preceding 12 months from the date of certification.

12. The Applicant relies on the Circular No. 178/10/2022-GST dated 03rd August 2022 stating that it has clarified the scope of entry 5(e) of Schedule II of CGST Act 2017, i.e., agreeing to the obligation to refrain from an act or to tolerate an act or situation, or to do an act.

12.1 Para 7.5 of the above-mentioned circular is reproduced below for reference:

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

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

does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

13. The Applicant is recovering retention bonus, joining bonus, work from home allowance and expenses under TAP, only when the employee wishes to voluntarily exit the organization within the stipulated time period as mentioned in the terms and conditions laid out with respect to each bonus/allowance. The intention behind such bonus/allowance is to incentivize and motivate the employee to remain in the organization.

Thus, the recovery of bonus/allowance by the applicant is in same lines with that of the forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period which is not taxable under GST as per para 7.5 of Circular No. 178/10/2022-GST dated 03.08.2022 mentioned supra in para12.1.

14. Taxability on Perquisites provided by employer to the employees as per contractual agreement is discussed in Sl. No.5 of Circular No. 172/04/2022-GST dated 06.07.2022 and the same is reproduced below:

S.No.	Issue	Clarification
5	*Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?*	*1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.* *2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.*

Retention bonus, joining bonus, work from home allowance and expenses under TAP are also in the nature of perquisites provided by the employer to its employees in

terms of contractual agreement entered into between the employer and employee and hence not taxable under GST as per the circular mentioned supra.

In view of the above discussions, the recovery of joining bonus, retention bonus, work from home allowance and expenses under TAP are not taxable under GST.

15. In view of the foregoing, we pass the following

RULING

i. *GST is not applicable on recovery of joining bonus and retention bonus on account of employee's inability to serve the organization (or a particular department, in case of retention bonus) for a pre-agreed period.*

ii. *GST is not applicable on recovery of work from home one-time setup allowance paid to employees in case where the employees exit before serving the pre-defined period from the payout date.*

iii. *GST is not applicable on recovery of amount paid as financial assistance to employees under Tuition Assistance Program (TAP) policy in case where the employee exits before serving the pre-agreed period in the organization.*

(**Dr. M.P. Ravi Prasad**)
Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

(**Kiran Reddy T**)
Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place: Bengaluru

Date: 02.07.2024

To,
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bengaluru East GST Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-36, Bengaluru.
5. Office Folder.

Authority For Advance Ruling Karnataka, Bengaluru