

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27MUMGO7406A1DS (URD)
Legal Name of Applicant		M/s. Executive Council of Insurers
Registered Address/Address provided while obtaining user id		3 rd Floor Jeevan Seva Annexe, S V Road, Santacruz West, Mumbai 400054.
Details of application		GST-ARA, Application No. 77 Dated 18.02.2021
Concerned officer		Commissionerate-Mumbai-West, Division-V
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	M/s. Executive Council of Insurers are quasi-judicial authority established under Insurance Ombudsman Rules, 2017 by Department of Financial Services, Government of India and work on No profit No loss basis and receive funds from member insurance companies through LI and GI Councils.
Issues on which advance ruling is required		<ul style="list-style-type: none"> ➤ Applicability of a notification issued under the provision of the Act ➤ Admissibility of input tax credit of tax paid or deemed to have been paid ➤ Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



NO.GST-ARA- 77/2020-21/B- 73

Mumbai, dt. 31.05.2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. Executive Council of Insurers**, the applicant, seeking an advance ruling in respect of the following questions.

- 1. Whether services provided by ECOI and 17 ombudsman officers are exempt from GST?**

2. *Whether GST is applicable to Executive Council of Insurers (ECOI) and 17 Offices of Insurance Ombudsmen which are governed by the ECOI?*
3. *Whether payment received by the Life Insurance Council and General Insurance Council on behalf of Executive Council are exempt from GST?*
4. *The above amount received by Executive Council of Insurers from the Life Insurance Council and General Insurance Council are also exempt from GST*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

The submissions made by M/s. Executive Council of Insurers, the applicant are as under:-

- 2.1 *The applicant is a Quasi-Judicial authority established under Redressed of Public Grievances Rules 1998 & Ombudsman Rules, 2017, framed by the Central Government and notified in Gazetted vide GSR 670(E)on 11/11/1998. This is an administrative body set up to facilitate the functioning of offices of Insurance Ombudsmen in India.*
- 2.2 *As per Insurance Ombudsman Rules 2017, the life Insurance Council and the General Insurance Council should collect the necessary funds from the Insurance Companies and remit it to Executive Council of Insurers for the expenses related to managing the offices of ECOI and 17 Insurance Ombudsmen in the Country.*
- 2.3 *Applicant has seventeen Ombudsman Offices (Bima lokpals) across India and being a quasi-Judical forum applicant does not charge any fees from the complainants to resolve their issues. Services are rendered on a "No profit & No Loss basis". Applicant does not earn any income from activities undertaken.*
- 2.4 *Applicant's day to day expenses including salaries and other offices maintenance expenses are met through the funds received from the 58 insurers. These funds are received through the "Life Insurance Council" and the "General Insurance Council". The funds so received are distributed to the 17 Centres for taking care of the salaries, office maintenance and their day to day expenses. All such amounts thus received conform to the guidelines of Insurance Ombudsman Rules, 2017.*



Written submissions dated 19.04.2022:-

- 2.5 Applicant has its origin in **Section 114 in The Insurance Act, 1938** and came into existence through Redressal of Public Grievance rules, 1998 framed by the Central Government & notified in gazette vide GST 670(E) on 11/11/1998. The Government in suppression of Redressal of Public Grievance rules 1998 came out with Insurance Ombudsman Rules, 2017 and as per these rules, Governing Body of insurance Council (GBIC) was redefined as the 'Executive Council of Insurers' (ECOI). The said rules were further amended on 02.03.2021 and ECOI has been redefined as 'Council for Insurance Ombudsmen' w.e.f. 02/03/2021

Purpose and Analysis of Procedural part:

- 2.5 The Insurance Ombudsman scheme was created by the Govt of India for individual policyholders to have their complaints settled out of the courts system in a cost-effective, efficient and impartial way. The complaint to the Ombudsman can be about: (a) Delay in settlement of claims, beyond the time specified in the regulations framed under the IRDAI Act, 1999 ; (b) Any partial or total repudiation of claims by the Life insurer, General insurer or the Health insurer; (c) Any dispute about premium paid or payable in terms of insurance policy, etc.



- 2.6 Applicant has submitted that it differs from the conclusions drawn by the jurisdictional officer on the following grounds:

Learned D.R. in Para 7 has stated 3 parameters but failed to appreciate the fact that two main ingredients out of the same i.e. "consideration" and "being in the course of furtherance of business" are absent in the case for Advance Ruling.

What is rendered by the applicant may be a service, but for the purposes of GST laws to make it taxable, it has to fulfill all criteria mentioned therein. The definition and explanation cannot be read in part, clause wise but has to be read as a whole to arrive at a logical conclusion.

- (ii) **The concerned officer has concluded that funds received from insurance company are covered under definition of 'consideration' paid for the supply of services as they come under the scope of 'by any other person'.**

It is very much necessary that 'consideration' has to be mutually decided upon between supplier of service and recipient of service, irrespective of the fact that it may be paid by recipient or any other person.

In case on hand, no charges, court fee etc. are to be paid the applicant when approached for grievance redressal. Thus, there is no element of consideration for the services given

by the applicant. Since the applicant forum has to incur some expenses or overheads but does not have source of income, as such, the Rules have embedded in them, provision and procedure to procure these funds. As per the relevant Insurance Ombudsman Rules 2017, the salary, allowances and perquisites payable to the staff of the Insurance Ombudsman secretariat and all expenses incurred in connection with administration, including expenses to be incurred by the Executive Council of Insurers, fees of professional experts engaged under sub-rule (3) of rule 15 and expenses towards Advisory committee constituted under rule 19 shall be borne by the Life Insurance Council and the General insurance Council in such proportion as the Executive Council of Insurers may, by a general or special order specify, from time to time, in this behalf. By no stretch of imagination, the funds received from 55 insurance companies can be said to be consideration. Further, Clause 5 of the Guidelines dated 15/02/2021 specifically states that CIO (erstwhile ECOI) will refund the amount received in excess from Life Insurance Council and General Insurance Council or will recover in case of shortage from them by single remittance after comparing both the amounts that were received in advance in the beginning of the Financial year & actual expenses at the end of the financial year.



Without prejudice it is stated that the amount received by the applicant is totally based on administrative decision as per Rule 12, especially sub rules 2 and 3. **It is not a case that the charges recovered are based on complaints attended.** The officer in his submissions has erred to conclude that reimbursements of administrative expenses received as per Rule 12 are 'Consideration'. It is clear that one of the important facets being missing, the supply by the applicant fails the touch stone of being supply as per GST law as explained in the Flyer.

- (iv) **The officer has concluded that Clause (a) of the definition defines business whether or not for a pecuniary benefit. Hence supply of services by the applicant even it is for 'No profit Or No Loss' basis it is squarely covered under the definition of the business.**

The applicant is a quasi-judicial forum formed with specific objective of attending to complaints of customers. There is no commercial aspect in the activities conducted and hence the applicant is not into any business at all.

Applicant relies following Supreme Court decision for this submission.

State Of Tamil Nadu And Another vs Board of Trustee of the Port of Madras decided on 26 March, 1999 [4 SCC 630] [114 STC 520] wherein Supreme Court has stated, "That brings us finally to the question whether the Port Trust was established under the Major Port Trusts Act, 1963 for 'carrying on business'? . The observations of this Court in Trustees of Port of Madras vs. M/s Aminchand Pyarelal & Others [1976 (1) SCR 721] in connection with the earlier Madras Port Trust Act were strongly relied upon by the learned senior counsel for the respondent - Port Trust. It was observed as follows: "Port Trusts do not do the business of warehousing goods and the rates which the Board charges for storage of goods are not levied as a means of collecting revenues. The Board is under a statutory obligation to render services of various kinds and those services have to be rendered not for the personal benefit of this or that importer but in the larger national interests."

The above observations clearly show that Port Trusts are not established for carrying on business.". The applicant submits that these observations are applicable on all fours to the case on hand. The applicant is a forum created in order to safeguard interests of Customers who are insured by Insurance Companies but have grievance to be attended to in respect of the claim settlement. "Council for Insurance Ombudsman" has been created with this noble and holistic attitude and not with any business agenda.



03

CONTENTION – AS PER THE CONCERNED OFFICER:

The submissions made by the jurisdictional officer vide letter dated 25.10.2021, are as under:-

- 3.1 Applicant is an administrative body set up to facilitate the functioning of officers of Insurance ombudsman in India.
- 3.2 The applicant, being a quasi-judicial forum decides on complaints filed by any person who has a grievance against insurer. As per Rule 12(3) of Insurance ombudsman Rule their day to day expenses including salaries and office maintenance are met through the funds received from the 58 insurers which are received through 'Life insurance Council' and General Insurance council"
- 3.3 To determine taxability reference is made to Section 7(1) of CGST Act which specifies scope of supply & it is to be seen whether activity of the applicant falls within the ambit of scope of supply.
- 3.4 Section 7(1) of CGST Act which deals with scope of supply reads as follow

(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business ;

(b), (c)

3.5 From subsection 1 (a) of above provision, it is seen that the scope of supply mainly depends on:

1) Whether the activity undertaken is supply of goods or service

2) Whether the activity is made or agreed to be made for a consideration

3) And whether the said activity is in the course or furtherance of business.

3.6 Activity undertaken by the applicant clearly does not fall under supply of goods. Therefore, we will refer to the definition of services as per section 2(102) of CGST Act which reads as follows :

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

3.7

Applicant acting as quasi-judicial forum, is providing services to aggrieved persons by resolving their disputes with insurance companies, who, being party to such disputes are also availing the services of Ombudsman. And as per Rule 17(8) of Insurance ombudsman Rule, the award of insurance Ombudsman is binding on the insurer. Hence activity of applicant is 'supply of services'.

3.8

For 'Supply of services' to come under the scope of supply, such supply shall be made or agreed to be made for consideration. Consideration is defined under CGST Act in section 2(31) as below
(31) "Consideration" in relation to the supply of goods or services or both includes— (a) **any payment** made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient **or by any other person** but shall not include any subsidy given by the Central Government a State Government;

(b)

3.9 Applicant has claimed that they are receiving funds from 58 insurance companies through Life Insurance Council and General Insurance Council to manage their salaries and other administrative expenses and not from complainants. Applicant being an administrative body set up to decide on complaints filed by any person who has a grievance against insurer, it can be



construed that, funds received are utilized for supplying services. And also, under sub-section (a) of section 2(31) of the CGST Act 2017, consideration for supply of goods or services may be paid by the recipient or by any other person. Hence, even if it is assumed that only complainants are recipient of the services, funds received from insurance company are still covered under definition of 'consideration' paid for supply of services as they come under the scope of 'by any other person'.

3.10 Further, Applicant has submitted that they do not carry out any commercial activity or business and do not have any income of its own. Their services are rendered on a 'No profit & No Loss' basis. To check whether the activity of the applicant is business or not we will have to refer to definition of business as per subsection 17 of section 2 of CGST Act which is as below

17) "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) (e), (f), (g)

Clause (a) of the above definitions defines business whether or not for a pecuniary benefit. Hence supply of services by the applicant even it is for 'No profit Or No Loss' basis, is squarely covered under the definition of the business.

From the above discussions and relevant provisions of the law it is clear that, activity undertaken by the applicant is the supply of services and amount received by the applicant is not exempt from GST. Hence both questions of the applicant can be answered in affirmative.

04 HEARING

4.1 Preliminary e-hearing in the matter was held on 26.10.2021. The Authorized representatives of applicant, Shri, Kiran Garkar, CA and Smt. Poornima Gaitonde, Secretary, ECOI/ CIO were present. Jurisdictional Officer Shri. Prashant Nerkar, Deputy Commr, MUM-VAT-D-919 was also present.

4.2 The application was admitted and called for final e-hearing on 12.04.2022. The Authorized representatives of the applicant, Shri. Kiran Garkar, CA & Smt. Poornima Gaitonde, Secretary



were present. The Jurisdictional officer Shri. Prashant Nerkar, AC-MUM-VAT-D-919, was also present.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have gone through the facts of the matter, documents on record and submissions made by the applicant as well as the jurisdictional officer.
- 5.2 The applicant has submitted that they are an administrative body set up to facilitate the functioning of officers of Insurance ombudsman in India which decides on complaints filed by any person who has a grievance against insurer.
- 5.3 The first thing to find out in the subject case is, whether there is any supply rendered by the applicant in the subject case and if it is found that the applicant is undertaking a supply, then in such a case whether there is a supply of goods or services or both. Hence, we reproduce and discuss the relevant Sections of the CGST Act, 2017 herein below.
- 5.4 Section 7(1) of CGST Act which deals with scope of supply reads as follow

(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business ;

(b)

(c)

- 5.5 The definition of the term 'supply' is an inclusive definition and has to be understood as encompassing a wide range of activities and keeping the same in mind we find that in the instant case, the applicant entertains complaints made by any person or persons against an insurer and after listening to all the concerned parties, decides on such complaints filed by any person/persons who has a grievance against insurer. This is nothing but services rendered to the said person/persons and therefore can be considered as supply as defined under the GST provisions.

- 5.6 Further, as per section 2(102) of CGST Act, "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

In the subject case we observe that applicant is rendering services to the aggrieved persons who have grievances against insurance companies/insurers. The said service is provided by way of by



resolving the disputes of the said aggrieved persons with insurance companies. In fact, we find that the Insurers, being the persons against whom there is a grievance, are also interested in solving the relevant issues and in this context, it is seen that by deciding on the complaints of the aggrieved persons, the insurance company being party to such disputes are also availing the services of the applicant/Ombudsman. Hence, we are of the view that the impugned activity undertaken by the applicant amounts to 'supply of services'.

- 5.7 Now that we have found that, there is a supply of service in the instant case, the next thing to understand is whether there is consideration involved in the impugned transaction i.e. whether the applicant is receiving any consideration for the services rendered and from whom. As per section 2(31) of the CGST Act, 2017, Consideration is defined as under:-

(31) "Consideration" in relation to the supply of goods or services or both includes—

(a) **any payment** made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient **or by any other person** but shall not include any subsidy given by the Central Government a State Government;

(b)



5.8

Although the applicant has claimed that they do not receive any fess from the aggrieved complainants, we observe that, applicant receives funds from Life Insurance & General Insurance Councils. These funds are received by the applicant to perform their activities, by way of managing their salaries and other administrative expenses, which have already held to be a supply of services. Even though the aggrieved persons do not pay any fees to the applicant, and the amounts are received from Life Insurance and General Insurance Council, we can say that, in the subject case, the consideration for the impugned supply of services, instead of being paid by the aggrieved complainants are being paid by the said Councils/ insurance companies and satisfy sub-section (a) of the section 2(31) of the CGST Act 2017 i.e the consideration in the instant case, is not done by the recipient of service (i.e. even if, only the complainants are considered as recipient of the service), rather the payment is made by '**any other person**' i.e the **Life Insurance and General Insurance Council**. Therefore, funds received by applicant are covered under definition of 'consideration' paid for the supply of services as they come under the scope of 'by any other person'.

- 5.9 We therefore find that, impugned activities are supply of services, made for a consideration by the applicant. The final thing that is required to be found out is whether the said supply in the

course or furtherance of business, for which we reproduce the definition of the term 'business' which is as under:-

As per section 2 (17) of CGST Act, the term "business" includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, **whether or not it is for a pecuniary benefit;**
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d), (e), (f), (g)

5.10 The term business covers the mentioned or similar activities **whether or not it is for a pecuniary benefit**. In the subject case the activity undertaken by the applicant is covered under the definition of 'business', since the meaning of 'business' is very wide and enlarged due to the inclusive nature of the definition. Hence, the impugned activity undertaken by the applicant is a supply of services and the amounts received by the applicant from the Life Insurance and General Insurance Councils are not exempt from GST.

5.11 Finally, Notification No. 12/2017-CTR dated 28.06.2017 exempts the intra-State supply of services of description as specified in column (3) of the Table mentioned therein from payment of GST. The services rendered by the applicant does not specifically find mention in the said notification. Hence, in our view the activities of the applicant are not exempt under the said notification and consequently, the receipt of the amounts by the applicant from the Life Insurance and General Insurance Councils are also not exempt from the levy of GST.

5.12 With respect to the third question raised by the applicant we find that the payments are not received by the Life Insurance and General Insurance Council on behalf of the applicant, rather the amounts are paid to the applicant on behalf of the insurance companies. However, this question does not fall under the purview of Section 97 of the CGST Act, 2017 and is therefore not answered. Further, we have already held herein above that the concerned amounts paid by the Life Insurance Council and General Insurance Council to the applicant are taxable and not exempt.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1: - Whether services provided by ECOI and 17 ombudsman officers are exempt from GST?

Answer:- The services provided by ECOI and 17 ombudsman officers are not exempt from GST.

Question 2: - Whether GST is applicable to Executive Council of Insurers (ECOI) and 17 Offices of Insurance Ombudsmen which are governed by the ECOI?

Answer:- Answered in the affirmative.

Question 3: - Whether payment received by the Life Insurance Council and General Insurance Council on behalf of Executive Council are exempt from GST?

Answer:- Not answered in view of the discussions made above.

Question 4: - The above amount received by Executive Council of Insurers from the Life Insurance Council and General Insurance Council are also exempt from GST .

Answer:- Answered in the negative.




RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.