

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax (Member)
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax (Member)

GSTIN Number, if any/ User-id		271800000739ARB 27 AADCP 2555 R125
Legal Name of Applicant		POSCO INDIA PUNE PROCESSING CENTER PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		TALEGAON MIDC, PLOT A-9, VILLAGE-NAVLAKH UMBRE, TALUKA-MAVAL, DIST-PUNE - 410507
Details of application		GST-ARA, Application No. 36 Dated 12.06.2018
Concerned officer		Range - Talegaon Division - PUNE-1, Kendriya Sadan, Near Akurdi Railway Station, Akurdi, Pune - 35
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing, Service Provision, Office/Sale Office, Service Recipient
B	Description (in brief)	The Applicant is primarily engaged in distribution of steel coils. In certain cases, the Applicant also performs low value added processing function in respect of some of the traded goods based on customer's requirements The Applicant has two plants at Pune, one plant at Hyderabad and distribution centres at Pune, Bangalore and Hyderabad.
Issue/s on which advance ruling required		(iii) determination of time and value of supply of goods or services or both (iv) admissibility of input tax credit of tax paid or deemed to have been paid (v) determination of the liability to pay tax on any goods or services or both (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



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"] by POSCO INDIA PUNE PROCESSING CENTER PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following ISSUE. .

- 1) Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager and Managing Director of the Applicant?
- 2) Whether invoice for quality claim raised by the Applicant on POSCO Daewoo Corporation located in Korea will be treated as "export of service"?
- 3) Whether recovery of Parents Health Insurance expenses from employee in respect of the insurance provided by the Applicant amounts to "supply of service" under Section 7 of the Central Goods and Service Tax Act, 2017?

4) If the said recovery amounts to "supply", what will be the time of supply and value of the said supply?

Whether the Applicant can claim input tax credit of GST charged by the insurance company?

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-
Statement of relevant facts having a bearing on the question(s) raised
QUESTION 1:

Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager and Managing Director of the company?

FACTS OF THE CASE

1. We, M/s POSCO-India Pune Processing Center Pvt. Ltd. (hereinafter referred to as the Applicant") are South Korea based company. The Applicant is situated at Talegaon, MIDC, Taluka Maval, village Navlakh Umbhre. District Pune. The Applicant is primarily engaged in distribution of steel coils. In certain cases, the Applicant also performs low value-added processing function in respect of some of the traded goods based on customer's requirements. The Applicant has two plants at Pune, one plant at Hyderabad and distribution centers at Pune, Bangalore and Hyderabad. The Applicant is also paying GST under reverse charge mechanism under import of services, transport of goods by road, legal service etc.
2. As per POSCO group policy, key personnel are deputed to the Indian POSCO group companies. Accordingly, Managing Director (hereinafter referred to as "the MD") and General Manager (hereinafter referred to as "the GM") of POSCO-IPPC are deputed from POSCO overseas entity.
3. In the present case, both the above key personnel have relocated to India without family. Therefore, as per the terms of deputation, instead of making payment in cash, the MD and the GM are provided with perquisite in the nature of rent-free accommodation.
4. The MD and the GM are provided accommodation in a hotel and the cost of the same is borne by the Applicant. (Copy of hotel accommodation invoice is enclosed and marked as "Annexure - A")
5. The rent-free accommodation provided to the MD and the GM are a part of cost to the Applicant (i.e. CTC) and is included as perquisites in the salary as per the provisions of Income Tax Act, 1961.
6. The Applicant would like to know whether it can claim input tax credit in respect of the GST charged by hotel on the stay expenses of the MD and the GM as per the provisions of the Central Goods and Service Tax Act, 2017 (CGST Act 2017) and Rules made thereunder.

QUESTION - 2

Whether invoice for quality claim raised by the Applicant on POSCO Daewoo Corporation located in Korea will be treated as "export of service"?

FACTS OF THE CASE

1. The Applicant had imported goods from POSCO Daewoo Corporation, Korea. Upon receipt of the said goods, the Applicant availed input tax credit of IGST. Subsequent to the import of goods, the Applicant sold the said goods to the customer under the cover of Tax Invoice on payment of applicable GST. (Copy of Bill of Entry is enclosed and marked as "Annexure - B")
2. Subsequent to the sale, it was observed that the said goods were defective and did not meet the customer requirements and therefore, the Applicant raised a Credit Note on the customer and subsequently, the customer also raised Debit Note.
3. As per the terms of the contract with POSCO Daewoo Corporation, Korea, the Applicant was required to charge back the loss incurred in the above said transaction. The Applicant had paid to POSCO Daewoo Corporation, Korea against their invoice and therefore, as per the POSCO group policy, the Applicant was required to recover the loss by raising Tax Invoice. It is worth to note that the Applicant has received payment in foreign currency against Tax Invoice raised towards recovery of loss. (Copy of Tax Invoice and marked as "Annexures C")
4. The Applicant would like to know whether Tax Invoice raised by the Applicant on POSCO Daewoo Corporation located in Korea for quality issue will be treated as "export of service" in terms of Section 2(6) of the Integrated Goods and Services Tax Act, 2017.

QUESTION - 3

1. Whether recovery of Parents Health Insurance expenses from employee in respect of the insurance provided by the Applicant amounts to "supply of service" under Sec. 7 of the Central Goods & Service Tax Act, 2017(CGST Act,2017) ?
2. If the said recovery amounts to "supply", what will be the time of supply and value of the said supply?
3. Whether the Applicant can claim input tax credit of GST charged by the insurance company?



FACTS OF THE CASE

1. It is the practice of the Applicant to provide mediclaim cover to the employees as well as to their parents.
2. In case of Parent Insurance facility, the Applicant initially pays the entire premium along with taxes and then 50% of the premium is recovered from the respective employees on a monthly basis. (Copy of the Company Policy is enclosed and marked as "Annexure - D")
3. The Applicant would like to know whether GST is payable on recovery of 50% of the insurance premium from the salary of the employees. If yes, then what is time of supply and the value on which GST is payable. Also whether the Applicant can claim input tax credit of GST charged by the insurance company.

Additional submissions on 10th July, 2018

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).
APPLICANT'S SUBMISSION FOR QUESTION 1:

As per Section 16(1) of the CGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, 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.

By going through the above legal provisions, it becomes important to understand the meaning of the terms "in the course of business".

The word 'business' has been defined in the GST law. Broadly it means any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Any activity ancillary or incidental to these activities are also covered as business. It has also been provided that any activity or transaction falling in above categories would be business whether or not there is volume, frequency, continuity or regularity in transactions.

However, the terms in the course of business' has not been defined under the GST Law and therefore, the Applicant has to rely on the dictionary meaning.

As per Oxford Dictionary, "in the course" means during and as a part of the specified activity. Accordingly, any expenses incurred during and as a part of carrying out the business activity will be considered as incurred in the course of business".

In the present case, as per POSCO group policy, the MD and the GM are deputed to India considering the business requirement and smooth functioning of business for the Applicant using the skill sets of the MD and the GM. Therefore, considering the following, the Applicant is of the view that the said hotel expenditure has been incurred in the course of business".

1. Hotel accommodation is provided as per the terms of deputation contract & POSCO group policy so as to provide strong incentive so that the MD & the GM can continue the convenience of comfortable life in their home country.
2. Both the MD as well as the GM are staying alone in India and therefore, providing an accommodation with all good facilities is pre-requisite for working efficiently in India.
3. Considering the language constraint, finding a good accommodation is a stressful and time consuming activity and requires local assistance. If the Applicant asks the MD and the GM to arrange for accommodation on their own, it would become a stressful activity for the MD and the GM would definitely have a bearing on the business activities for which they have been deputed to India. Accordingly, considering the cost of the hotel accommodation vis-à-vis the benefit that would arise if the MD and the GM concentrate on only business activities, the Applicant has itself arranged one-bedroom apartment in the hotel and all the cost and related compliances with respect to the same are taken care by the Applicant so that the MD and the GM can concentrate mainly on business activities.
4. Providing rent-free accommodation to the expatriate employees is generally accepted business practice across most of the businesses in India.
5. The said expenditure is included as a part of salary of the MD and the GM as per the Income Tax Act, 1961. It is worth important to submit here that the Income Tax Department has also allowed the said salary expenditure as a business expenditure while computing the profit of the Applicant under the Income Tax Act, 1961.
6. If the MD and the GM would have come on business trips to India and would have stayed in hotel, the said stay would have been considered as "expenditure incurred in the course of business and accordingly, the input tax credit would have been allowed.
7. Deputation of employees from foreign countries is a POSCO group policy and accordingly, foreign key personnel have also been deputed to other POSCO group companies in India. The POSCO entities are spread around different areas in and around Pune i.e. Talegaon, Mangaon and Kharadi area. The minimum distance between these areas is around 50-60 km. Since, the POSCO group as a whole have common business policies and are interlinked to each other in terms of business, the key personnel are often required to discuss important and common business related issues. If they are to meet at a common point, they would be required to travel minimum 1-2 hours one-way. Considering this scenario, staying in a common area/ locality is useful since, they can have group discussions for managing business smoothly without having to spend their productive time on travelling. Considering this aspect, it is worth important to submit here that deputed key personnel of other POSCO group companies in India stay in the same hotel. Separately, since the hotel is also used by executives of other business enterprises as well, it aids in developing new business connections and thereby contributes to the growth of the business.

Considering the above submissions, the Applicant is of the view that the primary objective of providing hotel accommodation is purely business growth. Therefore, GST paid on such hotel expenses should be allowed as input tax credit under Section 16(1) of the CGST Act, 2017.



APPLICANT'S SUBMISSION FOR QUESTION - 2

In respect of the transaction mentioned above, the Applicant incurred losses where the goods imported from POSCO Daewoo Corporation, Korea did not meet the customer expectation or were defective. The Applicant had paid to POSCO Daewoo Corporation, Korea against their invoice and therefore, as per the contract, the Applicant was required to recover the loss by raising Tax Invoice. It is worth to note that the Applicant has received payment in foreign currency against Tax Invoice raised towards recovery of loss.

Further, as per the provisions of Section 34 (1) of the CGST Act, 2017, where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note. Text of Section 34 (1) is reproduced below for your ready reference:

34. (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

The term "registered person" is defined u/s 2 (94) of the CGST Act, 2017. As defined, "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number.

In the present case, the foreign supplier had supplied the goods to the Applicant and therefore, legally and technically speaking, such foreign supplier cannot be considered as a "registered person" for the purpose of GST law and therefore, provisions of Section 34 (1) of the CGST Act, 2017 cannot be applicable. Further, as per the contract, the Applicant was required to recover the loss by raising Tax Invoice. Accordingly, the Applicant raised a Tax Invoice and has also received payment in foreign currency against the said Tax Invoice.

Further, in the present case, it is very clear that there is no supply of goods by the Applicant to the foreign supplier and therefore, in terms of Section 2 (102) of the CGST Act, 2017, any amount recovered for anything other than for goods is to be treated as "service".

Further, as per point 5(e) of Schedule - II to the CGST Act, 2017, tolerance of act or situation is considered as a service and accordingly, GST is leviable on the same. In the present case, the Applicant has tolerated the act of loss on defective goods. This loss was quantified by the Applicant and raised Tax Invoice for such quantified value of loss.

Thus, the Applicant is of the view that the Applicant is "agreeing to the obligation to tolerate an act or a situation and against the said "service", has recovered the damages from POSCO Daewoo Corporation, Korea. Accordingly, the said transaction will be treated as a supply of service in terms of Section 7 of the CGST Act, 2017.

Further, Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act 2017) has defined the term "export of services". Definition is reproduced below for your ready reference:

Export of service" means the supply of any service when, -

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8

The Applicant is of the view that the above service classified under agreeing to the obligation to tolerate an act or a situation will qualify as 'export of service since,

- i) The supplier of service i.e. the Applicant is located in India;
- ii) The recipient of service i.e. POSCO Daewoo Corpn/POSCO Asia Company Ltd is located in Korea i.e. outside India;
- iii) As per the provisions of Section 13 of the IGST Act, 2017, this service is not covered under any of the provisions & therefore, as per general clause mentioned under Section 13(2) of the IGST Act, 2017, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. In the present case, the recipient of service is located in Korea & therefore, the place of supply is Korea i.e. outside India;
- iv) The payment of such service has been received by the Applicant in convertible foreign exchange; and
- v) The Applicant and POSCO Daewoo Corporation, Korea are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.

Thus, based on the above submissions, the Applicant is of the view that the above transaction is covered under "export of service" in terms of Section 2(6) of the IGST Act, 2017.

APPLICANT'S SUBMISSION FOR QUESTION - 3

As per company policy, the Applicant recovers 50% of the insurance premium amount from its employees.

As per Schedule-III of the CGST Act, 2017, services by an employee to employer in the course of or in relation to his employment are not treated as a supply of service. However, if employer provides any services, we are of the view that the same will be considered as supply of service by employer. Since the Applicant recovers certain amount from its employees against the insurance premium, doubt is raised whether the same will result in supply of service under Section 7 of the CGST Act, 2017 and GST will be required to be paid on the same.

Further, since the Applicant is recovering the insurance premium amount from its employees on the monthly basis, the Applicant is of the view that GST, if payable, should be paid on the same amount monthly in terms of Section 13(2)(a) of the CGST Act, 2017.

Since the Applicant is of the view that GST will be payable on the said recovery, the value on which GST is to be paid needs to be determined in terms of Section 15 of the CGST Act, read with Central Goods and Services Tax Rules, 2017 (CGST Rules 2017).

As per Section 15(5)(a)(iii) of the CGST Act, 2017, employee and employer are treated as "related persons" and hence, valuation of the supply needs to be determined as per Rule 28 of the CGST Rules, 2017

As per Rule 28 of the CGST, Rules, 2017 'the value of the supply of goods or services or both between distinct persons as specified in sub-Section (1) and (5) of Section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Based on the above Rule, the Applicant is of the view that GST should be levied on the entire amount of premium paid by the Applicant and not just on the premium amount recovered from its employees.

Further, as per Section 17(5)(b)(iii) of the CGST Act, 2017, input tax credit is allowed in respect of health insurance only when such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply.

Since, the Applicant may be liable to pay GST on the recovery from its employees, the

Applicant is of the view that the insurance premium is paid by the Applicant to the insurance company to provide output insurance service to its employees. Accordingly, the Applicant should be entitled to 100% input tax credit on the insurance premium paid to the insurance company in terms of Section 17(5)(b)(iii) of the CGST Act, 2017.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

Brief facts of the case & comments on the questions raised by the applicant in the Notice of Advance Ruling Authority are

Brief Facts of the case:

M/s POSCO India Pune Processing Centre Pvt. Ltd. situated at Plot No. A-9, MIDC, Talegaon Industrial Area, Navlakh Umbre, Tal Maval, Dist. Pune, Maharashtra, PIN 410506 having GSTIN No. 27AADCP7555R1Z engaged in distribution of Rolled Grain Oriented Electrical Steel Sheets in Coils have filed application dated 12.06.2018 in Form GST ARA 01 for Advance Ruling with Advance Ruling Authority, Mumbai and have raised the following questions; Question No. 1: Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free accommodation provided to General Manager (GM) and Managing Director (MD) of the company? Question No. 2: Whether invoice for quality claim raised by the applicant on POSCO Daewoo Corporation located in Korea will be treated as "export of service"? Question No. 3: Whether recovery of Parents health Insurance expenses from employees in respect of the insurance provided by the applicant amounts to "supply of service" under Section 7 of the Central Goods and Services Act, 2017? If the said recovery amounts to "supply", what will be the time of supply and value of the said supply? Whether the applicant can claim input tax credit of GST charged by the insurance company?

The question wise comments are submitted as under:

Question No. 1: Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free accommodation provided to General Manager (GM) and Managing Director (MD) of the company?

Comment on Question No. 1: No Input Tax Credit (ITC) is admissible in respect of hotel stay/Loading-Boarding/Accommodation service as the same is meant for personal consumption. As per the provisions of Section 17(5)(9) of Central Goods and Services Act, 2017, input tax credit is not be available in respect of the "goods or services or both used for personal consumption".

Question No. 2: Whether invoice for quality claim raised by the applicant on POSCO Daewoo Corporation located in Korea will be treated as "export of service"?

Comments on Question No. 2: The applicant's act of "tolerating the act of loss on defective goods" would be treated as supply of service as provided in point no. 5(e) of Schedule II under the provisions of Section 7(1) of Central Goods & Services Act, 2017. Further, "export of service" have been defined under the Section 2(6) of Integrated Goods & Services Act, 2017. If all 5 conditions of the Section 2(6) are fulfilled, the supply of service would be treated as "export of service".

Question No. 3: Whether recovery of Parents health Insurance expenses from employees in respect of the insurance provided by the applicant amounts to "supply of service" under Section 7 of the Central Goods and Services Act, 2017? If the said recovery amounts to "supply", what will be the time of supply and value of the said supply? Whether the applicant can claim input tax credit of GST charged by the insurance company?



Comments on Question No. 3:

- (i) As per Section 2(102) of the Central Goods and Services Act, 2017, "services" means anything other than goods. Accordingly, the applicant's act of recovery of 50% of insurance premium from its employees would be treated as consideration against supply of service. As such, GST is applicable on the amount recovered from the employees on accounts of recovery of 50% insurance premium.
- (ii) For time of supply, as per the Section 13(2) of Central Goods and Services Tax Act, 2017 the "time of supply of services" shall be the earliest of the four dates, namely
 - (a) the date of issue of invoice by the supplier,
 - (b) the date of provision of service and
 - (c) the date on which the recipient shows the receipt of services in his books of account. In the case represented by the applicant, time of supply would be the date of provision of service and GST have to be paid in one time on entire 50% amount of insurance premium. The applicant would not be allowed to pay GST monthly installment basis as they claimed recovery the premium amount monthly in installment from its employees.
- (iii) For Input Tax Credit, again provisions of Section 17(5)(9) of Central Goods and Services Tax Act, 2017 are important. Insurance services for employee's parents are meant for personal consumption. And as per the provisions of Section 17(5)(9) of Central Goods and Services Act, 2017, input tax credit is not be available in respect of tile "goods or services or both used for personal consumption",

04. HEARING

The case was taken up for Preliminary hearing on dt. 18.07.2018 when Sh. Manoj Joshi and Sh. Kedar Joshi, consultants along with Sh. Suraj Maske, A.G.M., appeared and requested for admission of application as per contentions in their ARA and made written submissions. Jurisdictional Officer, Sh. Rishi Prakash, Inspector, Pune -I Commissionerate appeared and made written submissions .

The application was admitted and called for final hearing on 21.08.2018, Sh. Manoj Joshi, consultants along with Sh. Suraj Maske, A.G.M., appeared and made oral and written submissions. Jurisdictional Officer, Sh. V. V. Sonar, Supdt., Pune -I Commissionerate appeared and stated that they have already made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the department. The applicant has raised four question in the subject application. We shall deal with each question as under:-

1) **Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager and Managing Director of the company?**

The applicant has submitted that as per POSCO group policy, key personnel like the Managing Director (MD) and General Manager (GM) are deputed to the Indian POSCO group companies from POSCO overseas entity. The MD and the GM are provided accommodation in a hotel and the cost of the same is part of cost to the Applicant and is included as perquisites in the salary as per the provisions of Income Tax Act, 1961. The Applicant would like to know whether they can claim ITC in respect of the GST charged by the hotel on the stay expenses of the MD/GM as per the provisions of the GST Law.

We find that Chapter V (Section 16 to 21) of the CGST Act, 2017, deals with Input Tax Credit (ITC). Section 16 (1) says that "Every registered person shall, subject to, 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 of

furtherance of his business and". Hence it is clear as per this Section that ITC is available on the tax charged on any supply of goods or services or, both to the applicant which are used or intended to be used in the course of furtherance of their business.

Now we discuss the provisions of Section 17 of the said Act, which deals with Apportionment of credit and blocked Credits and which will be applicable in the present case. Accordingly, the said Section 17 of the Act is reproduced as under:-

Section 17 --- Apportionment of credit and blocked Credits

(1) *Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*

(2)

(3)

(4)

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

(a)

(b)

(c)

(d)

(e)

(f)

(g) *goods or services or both used for personal consumption;*

(h)

(i) *any tax paid in accordance with the provisions of sections 74, 129 and 130.*

(6)

It is seen from a reading of the provisions of Section 17 (5) (g) as mentioned above that, credit cannot be availed when *goods or services or both used for personal consumption*. In the present case it is the submission of the applicant that the Hotel is used as a residential accommodation by the MD/GM which implies that the same is used for the personal consumption of the MD/GM.

We find that providing residential accommodation in a Hotel is not in furtherance of their business. The MD/GM could have been provided with any other residential accommodation and still would have performed their duties for the applicant. In the case of a residential accommodation, as per the provision of the GST laws, GST is not liable to be paid on the rent received. It is the intention of the Govt. not to tax the rent paid by any person, when the rent is paid for any place of residence. In this case if the MD/GM were staying at any residential place or society, the applicant would have paid only rent without GST.

It is seen that the applicant has made various submissions supporting their contention that Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to GM/MD of the company. However in view of the above discussions we find that the Hotel Accommodation is being used by the applicant as a residential premises of their MD/GM which is for the personal comfort of both and therefore in view of the provisions of Section 17(5)(g) we hold that they are not eligible to claim the ITC for the same.



2) Whether invoice for quality claim raised by the Applicant on POSCO Daewoo Corporation located in Korea will be treated as "export of service"?

The applicant has submitted that they had imported goods from POSCO Daewoo Corporation, Korea and upon receipt of the said goods, the Applicant availed input tax credit of IGST paid. Thereafter they sold the said goods to their customer under the cover of Tax Invoice on payment of applicable GST. Subsequently it was found that the said goods were defective, did not meet the customer requirements and therefore, the Applicant raised a Credit Note on the customer and subsequently, the customer also raised Debit Note on the applicant. To make good the loss, as per the terms of the contract with POSCO Daewoo Corporation, Korea, the Applicant was required to charge back the loss incurred in the above said transaction by raising Tax Invoice and the said payment was received in foreign currency. The applicant has made detailed representation in the additional submissions dated 10.07.2018 and stated that in the present case, there is no supply of goods by the Applicant to the foreign supplier and therefore, in terms of Section 2 (102) of the CGST Act, 2017, any amount recovered for anything other than for goods is to be treated as "service". They have submitted that they had tolerated the act of loss on defective goods and as per point 5(e) of Schedule - II to the CGST Act, 2017, tolerance of act or situation is considered as a service and accordingly, GST is leviable on the same. In the present case, therefore they have rendered services and since the act of tolerance, etc is with respect to a company located outside India and also because all the conditions of Section 2(6) of the IGST Act 2017 (which defines the term "export of services"), are fulfilled such services rendered by them was not taxable being export of services.

We find that the applicant has not divulged the entire details on this aspect. We find that the applicant, after importing goods and after paying IGST thereon and further after claiming credit of IGST, has sold the goods to their customer who has found the goods to be defective. Accordingly credit notes and debit notes have been exchanged by them but it is not known as to what has happened to the so found defective goods, whether the same was returned back to the applicant or not. The goods were imported by the applicant from POSCO, Korea, and at the time of receipt of goods no defect seems to have been noticed by the applicant and therefore there is no reason for them tolerating any act. Further the defect has been noticed by their customer and therefore it is their customer who is tolerating their act of having sent defective goods. It is also seen that the applicant has availed credit of IGST paid on such imported goods. They have not stated what is the status of such credit availed. It has also been submitted by them in Annexure -I to their application that they are primarily engaged in distribution of steel coils. In certain cases, they also perform low value-added processing function in respect of some of the traded goods based on customer's requirements. In the present case in respect of the so called defective goods they have not stated whether the goods were sold as such to their clients or whether the goods were sold to their customers after they have carried out "low value-added processing function in respect of some of the traded goods based on customer's requirements".

In view of the above we find that complete details regarding the transaction have not been submitted by them and therefore we refrain from answering this Question No 2 of theirs.

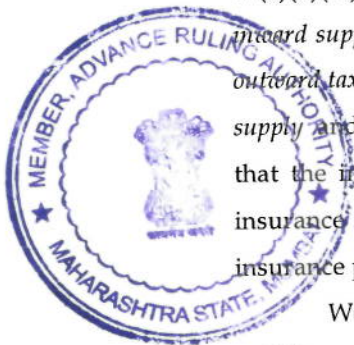
3) Whether recovery of Parents Health Insurance expenses from employee in respect of the insurance provided by the Applicant amounts to "supply of service" under Section 7 of the Central Goods and Service Tax Act, 2017(CGST Act, 2017) ?

--If the said recovery amounts to "supply", what will be the time of supply and value of the said supply?

--Whether the Applicant can claim input tax credit of GST charged by the insurance company?

We find that the applicant provides mediclaim cover to their employees as well as to their parents and initially pays the entire premium along with taxes and then 50% of the premium is recovered from the respective employees on a monthly basis and their query is whether GST is payable on recovery of 50% of the insurance premium from the salary of the employees. According to their submissions if employer provides any services to their employee, the same will be considered as supply of service by employer. The Applicant has further submitted that on such recovery made by them they appear to be liable to pay GST and the value on which GST is to be paid needs to be determined in terms of Section 15 of the CGST Act, read with Central Goods and Services Tax Rules, 2017 (CGST Rules 2017) and based on the same they are of the view that GST should be levied on the entire amount of premium paid by them and not just on the premium amount recovered from its employees. They have stated that as per Section 17(5)(b)(iii) of the CGST Act, 2017, input tax credit is allowed in respect of health insurance only when such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply and since, they may be liable to pay GST on the recovery from its employees, they are of the view that the insurance premium is paid by the Applicant to the insurance company to provide output insurance service to its employees. Accordingly, the Applicant should be entitled to 100% ITC on the insurance premium paid to the insurance company in terms of Section 17(5)(b)(iii) of the CGST Act, 2017.

We find that the applicant is paying the premium towards mediclaim taken for their employees and the parents of such employees. Against such payments made they are recovering 50% from their employees. There is no way that the 50% amount recovered can be treated as amounts received for services rendered, since this entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents . Such recovery of 50% premium amounts by the applicant from their employees cannot be supply of services under the GST laws. In fact what is happening in this case is that since the applicant is recovering 50% of the premium paid on mediclaim from their employees, they want to treat the same as rendering of insurance output service to their employees and therefore they are contending that they are entitled to 100% input tax credit on the insurance premium paid to the insurance company in terms of Section 17(5)(b)(iii) of the CGST Act, 2017, mentioned above. They have already submitted that they are primarily engaged in distribution of steel coils and also perform low value-added processing function in respect of some of the traded goods based on customer's requirements. The applicant has brought nothing on records to show that they are an Insurance Company and registered with such authorities. Hence it appears that the applicant is creating this fiction of providing health insurance to their employees only to avail 100% ITC of payments made to the insurance companies.



Hence we find that they are not rendering any services of health insurance to their employees and hence there is no supply of services in the instant case. Since there is no supply, we do not find the need to answer the second part of this question. In view of detailed discussions above, we find that the Applicant cannot claim input tax credit of GST charged by the insurance company.

05. 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)

NO.GST-ARA- 36/2018-19/B- 110 Mumbai, dt. 07.09.2018

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

Q.1. Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager and Managing Director of the company?

Answer :- Answered in the negative.

Q 2. Whether invoice for quality claim raised by the Applicant on POSCO Daewoo Corporation located in Korea will be treated as "export of service"?

Answer :- We refrain from answering this question for incomplete details.

Q 3. Whether recovery of Parents Health Insurance expenses from employee in respect of the insurance provided by the Applicant amounts to "supply of service" under Section 7 of the Central Goods and Service Tax Act, 2017(CGST Act, 2017) ?

Answer:- The recovery of Parents Health Insurance expenses from employee does not amount to "supply of service" under the GST Laws. Since there is no supply of services there is no question of time and value of the supply. The applicant cannot claim ITC of GST charged by the insurance company.

Q. 4. If the said recovery amounts to "supply", what will be the time of supply and value of the said supply?

Answer:- Answered in the negative.

Q. 5. Whether the Applicant can claim input tax credit of GST charged by the insurance company?

Answer :- Answered in the negative.



B. V. BORHADE
(MEMBER)

PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

**MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI**

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax
5. 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.