

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/S.
98 OF THE GOODS AND SERVICES TAX ACT, 2017

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 08.07.2019 (ARN No. – AD090719001464Y) from M/s ION Trading India Private limited, Building No. 2, Infospace, 4-6th Floor, Block-B, Plot-2, Sector-62, Noida, Uttar Pradesh- 201 309. - Order- Reg.

- 1). M/s ION Trading India Private limited, Building No. 2, Infospace, 4-6th Floor, Block-B, Plot-2, Sector-62, Noida, Uttar Pradesh (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAECA4325R1Z9.
- 2). The applicant is a private limited company, wholly owned subsidiary of M/s ION Trading UK Limited and engaged in the business of software development which is exported to the overseas company.
- 3). As per the application for advance ruling filed by the applicant, they provide group mediclaim coverage to all of its employees, their spouse and three children, cost of which is borne by the applicant. In addition to this any employee can opt for mediclaim coverage for their parents also for which the employee has to pay an amount of Rs 5,000/- for both the parents. The amount of premium recovered from the employee by the applicant is restricted to Rs. 5,000/- for both the parents and anything in excess of Rs. 5,000/- is bear by the applicant. Accordingly the applicant pays the recovered amount to the insurance company against the increased insurance premium of next year's insurance policy.



4). As per applicant, there would be no GST implication on the medical insurance premium paid by the them for their employee, spouse and their children in terms of employee-employer relationship. As regard to the mediclaim insurance of parents of the employee, the following questions have been posted by the applicant, in its application dated 08.07.2019 (received by the Authority on 15.07.2019), before the Authority: -

- i. Whether amount recovered from the employees towards parental insurance premium payable to the insurance company would be deemed as "Supply of service" by the applicant to its employees?
- ii. If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a "Pure Agent"? If valuation is not accepted as NIL, what would be the value of such supply?
- iii. If GST is payable on the such amount recovered from the employees, whether the proportionate GST paid by the applicant to insurance company towards parental insurance would be admissible as input tax credit against supply of insurance services for employees' parents ?

5). The applicant has further submitted that as per their view they are in the business of development and export of software which is its business activity in terms of the definition of business in the section 2(17) of the CGST Act. Facilitating insurance services for employees' parents is definitely not an activity which is incidental or ancillary to the activity of developing software, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function and which will take the business activity forward. If mediclaim facility for employees' parents is not provided, there will definitely be some inconvenience to the employees but it would not facilitate the business activity of developing software. Accordingly the applicant has concluded that facilitating the medical insurance for employees' parents, is



not an activity by them in the course of or in furtherance of its business of software development.

6). The applicant also paid reliance on various case laws including the Advance ruling pronounced by the Maharashtra Authority for Advance Ruling in the case of M/s. Posco India Pune Processing Center Private Limited to vindicate their stand.

7). The applicant was granted a personal hearing on 24.09.2019. Shri Ravi Jain, CA, and Shri Saket Batra, CA, Authorized representatives of the applicant, appeared for hearing. Sh. Diwakar Singh Bisht, Superintendent Range-IX, Division-II, Noida, represented the department in personal hearing.

During the personal hearing the authorized representative stated that they would like to submit few more documents viz. copy of "Employee Handbook", Trail of financial transactions, "Offer letter/Employee Contract" to support their case. The said documents were emailed by the applicant vide email dated 30.09.2019.

8). The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter, which were received in this office vide letter C. No. V (30) Tech./Div-II/Adv. Rule/37/2019-20/8880 dated 18.09.2019, wherein it has been reported that the applicant is not rendering any service of insurance hence as per law there appears no supply of service and the said activity of the applicant appears to be non taxable under GST.

DISCUSSION AND FINDING

9). *At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

10). *We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(e) of the CGST Act 2017 being a matter related to determination of the liability to pay tax on any goods or services or both. We therefore, admit the application for consideration on merits.*

11). We observe that the questions sought by the applicant are-

- i. Whether amount recovered from the employees towards parental insurance premium payable to the insurance company would be deemed as "Supply of service" by the applicant to its employees?
- ii. If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a "Pure Agent"? If valuation is not accepted as NIL, what would be the value of such supply?
- iii. If GST is payable on the such amount recovered from the employees, whether the proportionate GST paid by the applicant to insurance company towards parental insurance would be admissible as input tax credit against supply of insurance services for employees' parents ?

12). The first question before us to decide is to whether the amount recovered from the employees towards parental insurance premium payable to the insurance company is a "Supply of service" by the applicant to its employees.

13). We observe that Section 7(1) of the CGST Act 2017 defines the term "Supply" as:



“ 7. (1) For the purpose of this Act, the expression “supply” includes-

- a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- b) import of services for a consideration whether or not in the course or furtherance of business; and;;*
- c) the activities specified in Schedule I, made or agreed to be made without a consideration;*
- d) the activities to be treated as supply of goods or supply of service as referred to in Schedule II.*

14). The term “Service” is defined, as per Sub-Section (102) of Section 2 of the CGST Act 2017, as:

“Service 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.”

15). Here we observe that while defining the “Supply” emphasis has been made upon the term *“in the course or furtherance of business”*.

Further, the term ‘Business’ has been defined under section 2(17) of the CGST Act, 2017, 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) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;”.

16). From the details/documents provided by the party we observe that the applicant is transferring whole amount (Rs. 5,000/- per employee for both the parents), collected from their employee towards parental insurance, to the insurance company, which in turn providing insurance cover to the parents of the employee. We also observe that the applicant, in its applicant has informed that anything in excess of Rs. 5,000/- is borne by the applicant. We further observe that the applicant is in the business of development and export of software to the Overseas Company and not in the business of providing insurance services.

17). We also observe that the Maharashtra Authority for Advance Ruling ('AAR'), in case of M/s. Posco India Pune Processing Center Private Limited', vide Order No. GST-ARA-36/2018-19/B-110 Mumbai, dated 07.09.2018 has ruled that:

“There is no way that the 50% amount recovered can be treated as amount received for service 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 service under the GST laws”.

Observing this, the Authority has ruled that:

“The recovery of Parents Health Insurance expenses from employee does not amount to “supply of Service” under the GST Law....”

18). From aforesaid discussion we observe that the recovery of premium amount from employee and subsequent deposit it with insurance company cannot be treated as supply of service in the course of furtherance of business. Providing insurance facility to employees’ parents is no where connected with the business of the applicant.

19). Accordingly, we are in unison with the applicant that facilitating insurance services for employees’ parents is definitely not an activity which is incidental or ancillary to the activity of developing software, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function.

RULING

20) The advance Ruling on question posed before the Authority is answered as under:

I. Whether amount recovered from the employees towards parental insurance premium payable to the insurance company would be deemed as “Supply of service” by the applicant to its employees?

Ans: Answered in negative.

II. If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a “Pure Agent”? If valuation is not accepted as NIL, what would be the value of such supply?



Ans: As the answer of question no. I is in negative this question doesn't need answer.

III. If GST is payable on the such amount recovered from the employees, whether the proportionate GST paid by the applicant to insurance company towards parental insurance would be admissible as input tax credit against supply of insurance services for employees' parents.

Ans: Answered in negative.

21). This ruling is valid subject to the provisions under Section 130(2) until and unless declared void under Section 104(1) of the CGST Act, 2017.


Vivek Kumar Jain
Member of Authority for Advance
Ruling


Sanjay Kumar Pathak
Member of Authority for Advance
Ruling

To,

M/s ION Trading India Private limited,
Building No. 2, Infospace, 4-6th Floor,
Block-B, Plot-2, Sector-62, NOIDA,
Uttar Pradesh- 201 309



AUTHORITY FOR ADVANCE RULING -UTTAR PRADESH

Order No. 41

Date: 25.09.2019

Copy to -

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & CX, Noida-I, C-56/42, Sector-62, Noida, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Division-II, Noida, Room No. 402, 4th Floor, C-56/42, Renu Towre, Sector-62, Noida, Uttar Pradesh- 201 307;
5. Through the Additional Commissioner, ^{Noida} Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow - 226010, within 30 days from the date of service of this order.

