

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

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN, if any/ User-id	27AABCJ6665J1Z6
Legal Name of Applicant	JOTUN INDIA PVT. LTD
Registered Address/Address provided while obtaining user id	601(11)/602, Fulcrum, 6th Floor, Sahar Road, Maharashtra, Mumbai 400099
Correspondence Address	The Chambers, Unit No 503 & 504, Plot No 4/12/13, Viman Nagar, Maharashtra, Pune 411014
Details of application	GST-ARA, Application No. 19 Dated 20.05.2019
Concerned officer	Dy. Commr. of State Tax (E-607) LTU-II, Mumbai
Nature of activity (proposed /present) in respect of which advance ruling is sought	
A Category	Manufacturing and Service Provision
B Description (in brief)	The Applicant has introduced parental insurance for employees' parents. It is an optional scheme provided to the employees. As per this scheme, the Applicant initially pays the entire premium along with taxes to the insurance company. 50% of the premium is recovered from the respective employees who opt for parental insurance scheme. The Applicant would like to know whether GST is payable on recovery of 50% of the insurance premium from the salary of the employees
Issue/s on which advance ruling required	Determination of the liability to pay tax on services
Question(s) on which advance ruling is required	As stated 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” respectively] by **M/s. JOTUN INDIA PVT LTD.** The applicant is seeking an advance ruling in respect of the following question.

“Whether recovery of 50% of Parental Health Insurance Premium from employees, amounts to supply of service under Section 7 of the Central Goods and Service Tax Act, 2017?”

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, a reference to “GST Act” would means CGST Act / MGST Act.

2. FACTS AND CONTENTION - AS PER THE APPLICANT

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

(I) Statement of relevant facts having a bearing on the question(s) raised

- (A) M/s Jotun India Private Limited (hereinafter referred to as "the Applicant"), is a leading manufacturer, supplier and exporter of paints and powder coatings. The Applicant supplies paints and coatings that are specially designed for unique conditions to the various customers.
- (B) The Applicant has introduced parental insurance scheme for employees' parents. It is an optional scheme provided to the employees. As per this scheme, the Applicant initially pays the entire premium along with taxes to the insurance company. The insurance company issues the premium receipt in the name of the Applicant.
- (C) In case of the employees who opt for the parental insurance scheme, the Applicant recovers 50 per cent of the premium in one to three instalments from the salaries and the balance 50 per cent amount is borne by the Applicant.
- (D) The Applicant would like to know whether GST is payable on recovery of 50% of the insurance premium from the salary of the employees.

(II) Statement containing the applicant's interpretation of law and or facts as the case may be, in respect of the aforesaid question(s)

- (1) The Applicant approached the insurance company to provide parental medical policy to its employees. Accordingly, the Applicant entered into an agreement with the insurance company to receive the services in respect of coverage of parental health of its employees and accordingly, the insurance company has issues premium receipt in the name of the Applicant on payment of the entire premium to the insurance company. Thus the amount of insurance premium is a cost to the Applicant.

(2) As per the Applicant company's policy, the Applicant recovers 50% of the insurance premium amount from the employees who opt for the scheme and the balance 50% premium cost is borne by the Applicant. Thus, it is very clear that the applicant is not providing any service to its employees but recovering 50% of the cost of the premium for the service rendered by the insurance company.

(3) 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, 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.

(4) The term "supply" is defined under Section 7 of the CGST Act, 2017 which is reproduced below:
"7. (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) 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 services as referred to in Schedule II.
- (2) Notwithstanding anything contained in sub-section (1),
 - (a) activities or transactions specified in Schedule III; or
 - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
- (3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as
 - (a) a supply of goods and not as a supply of services, or
 - (b) a supply of services and not as a supply of goods
- (5) Thus, in order to constitute a 'supply', the following elements are required to be satisfied:
 - (i) there should be supply of "goods" and / or services";
 - (ii) supply is for a "consideration";
 - (iii) supply is made **"in the course or furtherance of business"**:
- (6) From the above, it is clear that any activity done against consideration is treated as supply however, such an activity must be in the course of business or for the furtherance of business.
- (7) The term "in the course of business" or "furtherance of business" is not defined under CGST Act. However, the term business has been defined in Section 2(17) of the CGST Act, 2017 which is reproduced below for ready reference:

"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”.*
- (8) From the above definition, the term "business" broadly 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.
- (9) The applicant wishes to highlight that providing parental medical insurance service is not mandatory under any law for the time being in force. Also, providing / not-providing of the parental medical insurance service is not going to affect the business of the Applicant in any way.
- (10) Also, the applicant is engaged in manufacture of paints and powder coating. Providing parental medical insurance service is not the business of the Applicant. The service of insurance is actually provided by the Insurance Company for which the Insurance Company is charging GST. The Applicant is just paying the parental insurance premium amount to the insurance company and recovering 50% of the premium amount from the employees.
- (11) Thus, it is crystal clear that firstly, Applicant is not in the business of providing insurance coverage. Secondly, to provide parental insurance cover is not a mandatory requirement under any law for the time being in force and therefore, non-providing parental insurance coverage would not affect its business by any means. Therefore, activity of recovery of 50% of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.
- (12) Accordingly, based on the reading of Section 7 and Section 2(17) of the CGST Act, 2017, the Applicant is of the view that providing parental medical insurance service and recovery of 50% amount is not in the course or furtherance of business. Hence, providing parental medical insurance services and recovery of 50% of the premium amount cannot be considered as "supply of service".
- (13) Further, this authority, in the case of M/s POSCO India Pune Processing Center Private Limited (POSCO IPPC) vide Order NO.GST-ARA-36/2018-19/B-110 Mumbai dated 07-09-2018, who had facts similar to that of the Applicant, has ruled that:

“50 % of the premium amount recovered from the employees cannot be treated as amount received for services rendered, since the entire amount is paid to the insurance company which is providing mediclaim facilities to the employees and their parents. Such recovery of 50% premium amount by the applicant from their employees cannot be supply of

service 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 the Medclaim 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 GST 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, we find that they are not rendering any service of health insurance to their employees and hence, there is no supply of services in the instant case”.

- (14) Considering the above order pronounced by this authority, the applicant seeks ruling on taxability of parental medicaid insurance recovery from the employees under GST.”

3. CONTENTION – AS PER THE CONCERNED OFFICER

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

“The notice under Advance ruling provisions was issued to this office, as the dealer, M/s. Jotun India Pvt. Ltd., GSTIN: - 27AABCJ6665J1Z6, who is assigned to this office under case allocation, has applied for advance ruling under section 97 of CGST/MGST Act, 2017. The dealer has mentioned its nature of activity as factory manufacturing & in brief it says "we supply paints and coatings that are specially designed for unique conditions". The dealer has requested whether recovery of 50% of Parental Health insurance premium from employee amount to supply of services" u/s 7 of CGST Act, 2017. The Section 7 of CGST Act, 2017, the Schedule III specifies the activities or transactions, that are treated neither as a Supply of Goods or a Supply of Services, as follows;

- “(1) Services by an employee to the employer in the course of or in relation to his employment.
(2) Services by any Court or Tribunal established under any law for the time being in force.
(3)(a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity: or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
(4) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.



(5) Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(6) Actionable claims, other than lottery, betting and gambling”.

In present scenario, Applicant M/s Jotun India Pvt. Ltd has paid the entire premium to the insurance company and further recovered 50% of the insurance premium amount from the employees and balance 50% premium cost is borne by himself. The said service was given in the course of or in relation to his employment and are not in the course or furtherance of business. Further with respect to recovery of parental medical insurance premium from the employee, the ARA Ruling (Advance Ruling NO.GST-ARA-36/2018-19/B-110, Dated 7th September, 2018) need to be observed. As per this ruling it is observed as follows;

"The applicant has brought nothing on record to show that they are 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".

Therefore, considering the provision of Section 7 of CGST Act, 2017 and ARA Ruling No: GST-ARA 36/2018-19/B-110, Dated 7th September, 2018, there is no supply of services and also credit cannot be claimed of GST paid on such medical insurance policy.

4. HEARING

Preliminary hearing in the matter was held on 20.09.2019. Shri Manas Joshi, Consultant and GST Practitioner appeared and made written submissions and requested for admission of their application. The application was admitted and taken up for final hearing as per applicant's request. Jurisdictional Officer was not present but his written contention is taken on record. The matter is heard as per submission put forth before us.

5. OBSERVATIONS

We have gone through the facts of the case, written contention of parties and documentary evidences produced on record. The issue put before us is in respect of whether an activity undertaken by applicant is supply of services or not. We have observed as follows;

- (1) M/s Jotun India Private Limited (hereinafter referred to as "the Applicant"), is a registered person under GST Act and is a manufacturer, supplier and exporter of paints and powder coatings. The Applicant supplies paints and coatings that are specially designed for unique conditions, to the various customers.
- (2) The applicant introduced Parental Insurance Scheme for employees' parents. It is an optional scheme provided to the employees. As per this scheme, the applicant initially pays the entire premium along with taxes to the insurance company. The insurance

company issues the premium receipt in the name of the applicant. The applicant thereafter recovers 50 per cent of the premium amount through salary in one installment in case of staff and in three installments in case of operators and balance 50 percent amount is borne by the applicant himself. The applicant is mainly engaged in manufacture of paints and powder coating. The parental medical insurance service is not the business of the applicant. This service of insurance is actually provided by the Insurance Company. The applicant is just paying the parental insurance premium amount to the insurance company and out of that, recovering 50% of the premium amount from the employees. Considering the activity carried out by the applicant to his employees, the applicant is seeking the ruling on the question, as follows –

“Whether recovery of 50% of Parental Health Insurance Premium from employees’ amounts to "supply of services" under Section 7 of the Central Goods and Service Tax Act, 2017”?

- (3) The issue put forth before us is very limited. We find from the documents of insurance scheme submitted on record that the applicant provides Mediclaim cover to their employees’ parents. There are four types of category of scheme wherein sum insured amount for family floater is at Rs. 300000/-and premium amount is fixed as per the number of parents involved therein. The applicant will bear 50% amount for maximum 2 members only and rest of money will be paid by respective employee. It is cashless Mediclaim insurance policy for the lock-in period of 3 years. The mediclaim insurance policy is made from “The Oriental Insurance Company Ltd”. Further we find from the sample copy of insurance policy submitted before us by the applicant that the applicant initially pays the entire premium along with taxes and then recovers 50% of the premium through salary in one installment in case of staff and in three installments in case of operators as the case may be. The Applicant is not in the business of providing insurance coverage. Secondly, to provide parental insurance cover, is not a mandatory requirement under any law for the time being in force and therefore, non-providing parental insurance coverage would not affect its business by any means. Therefore, activity of recovery of 50% of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.

- (4) We have referred to the term "Supply" described under Section 7 and the term “Business” defined in Section 2(17) of the CGST Act, 2017, which are reproduced in applicant’s contention above. From the reading of the above definition and section (supra), we find that the activity undertaken by the applicant like providing of mediclaim policy for the employees’ parent through insurance company neither satisfies conditions of section 7 to be held as “supply of service” nor it is covered under the term "business” of section 2(17) of CGST ACT 2017. Hence, we find that applicant is not rendering any



- services of health insurance to their employees' parent and hence there is no supply of services in the instant case of transaction between employer and employee.
- (5) Applicant has referred the ARA order in case of M/s POSCO India Pune Processing Center Private Limited (POSCO IPPC) vide Order NO.GST-ARA-36/2018-19/B-110 Mumbai dated 07-09-2018 wherein facts are identical and similar to that of the facts of applicant and ARA has ruled that, "they are not rendering any service of health insurance to their employees and hence, there is no supply of services in the instant case". Considering the similar nature of facts and earlier ruling, as referred above, the same ruling is confirmed in this matter also.
- (6) In view of detailed discussions above, we find that the recovery of 50% of Parental Health Insurance Premium from employees does not amounts to "supply of service" under Section 7 of the Central Goods and Service Tax Act, 2017.
6. 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- 19/2019-20/B- 108 Mumbai, dt. 4.10.2019

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

Question:- Whether recovery of 50% of Parental Health Insurance Premium from employees amounts to "supply of service" under Section 7 of the Central Goods and Services Tax Act, 2017?

Answer: - Answered in the negative.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
A. A. CHAHURE
(MEMBER)

CERTIFIED TRUE COPY

A. A. Chahure

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, Churchgate, Mumbai.
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.