POSCO INDIA PUNE PROCESSING CENTER PRIVATE LIMITED

Authority for Advance Ruling — Maharashtra

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

Q Questions Before the Authority

- Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to the General Manager and Managing Director of the company?
- Whether an invoice for quality claim raised by the Applicant on POSCO Daewoo Corporation, located in Korea, will be treated as 'export of service'?
- 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 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?

F Facts

The Applicant, a Pune-based distributor of steel coils that also performs some low value-added processing, deputes its Managing Director and General Manager from its overseas POSCO group entity and provides them rent-free hotel accommodation, treated as a perquisite in salary. The Applicant also imported goods from POSCO Daewoo Corporation, Korea, found them defective, and recovered the resulting loss by raising a tax invoice payable in foreign currency. Separately, it provides mediclaim cover to employees and their parents, pays the full premium, and recovers 50% of it from employees monthly.

H Ruling

ITC on GST charged on hotel stay of MD and GM under rent free accommodation	**Answered in the negative.**	The hotel was used as residential accommodation for the personal comfort of the MD and GM, so the personal consumption bar applies.
Whether invoice for quality claim on POSCO Daewoo Corporation, Korea, is 'export of service'	**Refrained from answering.**	Incomplete details: the Authority noted gaps on the status of the defective goods, the IGST credit availed, and whether goods were sold as such or after processing.
Whether recovery of parents' health insurance expenses from employees is 'supply of service' under Section 7 CGST	**Does not amount to supply of service under GST laws.**	The 50% recovery is passed on to the insurer and the Applicant is not an insurance company, so no supply arises.
Time of supply and value of the said supply, if the recovery is a supply	**Answered in the negative.**	No supply was found, so the time and value questions did not arise.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Whether Applicant can claim ITC on GST charged by the insurance company	**Answered in the negative.**	Follows from the finding that there is no supply of insurance services by the Applicant.

The Authority answered the hotel stay question in the negative, holding that the hotel accommodation was used for the personal comfort of the MD and GM and so fell within the personal consumption bar. It declined to answer the export of service question because the transaction details were incomplete. It held that recovery of the parents' insurance premium is not a supply of service under the GST laws, so the time and value questions did not arise, and that the Applicant cannot claim ITC on the insurer's GST charge.

R Reasoning

On the hotel question, the Authority accepted that ITC under Section 16(1) requires goods or services used in furtherance of business, but held that Section 17(5)(g) excludes goods or services used for personal consumption. It treated the hotel stay as residential accommodation for the MD and GM, which is personal use, and relied on the comparison with ordinary residential rent, which GST does not reach. On the export question, it declined to decide because the factual record was incomplete. On the insurance question, it held that the recovered 50% of premium is paid over to the insurer, so there is no consideration for a service and no supply under Section 7. It also observed that the Applicant had produced nothing to show it is an insurer, and treated the arrangement as an attempt to claim 100% ITC on the premium.

P Provisions Relied On

- Section 16(1) CGST Act, 2017 (ITC on goods or services used in furtherance of business)
- Section 17(1) CGST Act, 2017 (apportionment of credit)
- Section 17(5)(g) CGST Act, 2017 (goods or services used for personal consumption)
- Section 2(102) CGST Act, 2017 (definition of services)
- Section 7 CGST Act, 2017 (supply)
- Section 2(6) IGST Act, 2017 (export of services), discussed in the submissions but not decided

! For the Practitioner

The order helps practitioners on the point that hotel accommodation provided to senior personnel as a residential perquisite is blocked under Section 17(5)(g). It also shows that an employer's recovery of part of a group mediclaim premium from employees was not treated as a supply by this Authority. It does not decide the export of services question, and it does not settle whether an employer's recovery of insurance cost from employees can ever be a supply, since the ruling rests on the Applicant's facts. It is an advance ruling binding only on the applicant and is subject to appeal.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> maha-gst-ara-36-b-110_dt._07.09.18_pippcpl.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com