

**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	27AAACT0054A121
Legal Name of Applicant	M/s. The TATA Power Company Limited
Registered Address/Address provided while obtaining user id	34, Sant Tukaram Road, Carnac Bunder, Mumbai – 400009.
Details of application	GST-ARA, Application No. 99 Dated 30.01.2020
Concerned officer	Div II-Mumbai Central
<b>Nature of activity(s) (proposed/present) in respect of which advance ruling sought</b>	
A Category	<b>Factory /Manufacturing, Service Provision</b>
B Description (in brief)	Applicant is engaged in generation, transmission and distribution of power to the customers. .
Issue/s on which advance ruling required	➤ 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.

NO.GST-ARA- 99/2019-20/B- 92

Mumbai, dt. 10.11.2021

**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. **The TATA Power Company Limited**, the applicant, seeking an advance ruling in respect of the following questions.


**Whether the recovery of an amount towards Top-up and parental insurance premium from the employees, amounts to a supply of any service under Section 7 of the Central Goods & 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, the expression ‘GST Act’ would mean CGST Act and MGST Act.

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

The submissions made by M/s. The TATA Power Company Limited, the, applicants are as under:

- 2.1 *The applicant having its office at 34, Sant Tukaram Road, Carnac Bunder, Mumbai - 400009 is engaged in power generation, transmission and distribution to the customers and as a part of its employee policies, it provides certain facilities to its employees such as insurance, transport, etc.*
- 2.2 *The applicant has an arrangement with New India Assurance Co. Ltd. (hereinafter referred to as "insurance company") for providing insurance cover for its employees, in pursuance of which, the insurance company issues a master insurance policy to the applicant for providing group insurance to the applicant's employees.*
- 2.3 *Further, the applicant has formulated a 'Health & Wellness Policy' for the welfare of its employees under which, its employees can opt for an additional insurance (hereinafter referred to as "Top-up Insurance") apart from the insurance cover provided under the group insurance. Therefore, the applicant has taken a 'Top-up policy' from the insurance company. The said policy contains the number of employees who have opted for such top-up insurance.*
- 2.4 *Further, under the Insurance cover provided to employees under the Group Insurance policy, the employee is only eligible to claim the expenses incurred for medical treatment availed in respect of his own health. As per the 'Health & Wellness Policy of the applicant, the employees have an option to include their parents under such policy (hereinafter referred to as "parental insurance").*
- 2.5 *To avail the aforesaid additional insurance cover by way of Top-up insurance and Parental Insurance, employees are required to contribute an additional amount as premium which is recovered by the applicant from the employees' salary. The amounts recovered by the applicants from the employees as premium towards Top-up insurance and Parental insurance is as under:=-*



Sl. No.	Name of Policy	Premium Contribution
1.	Group Medclaim Policy – Parental Insurance	The Applicant recovers from its employees 50% of the premium paid towards the insurance cover of the either set of dependent parents or parents-in-law. The remaining 50% premium is borne by the applicant. (Please refer Para 2.1 (a) of the Health and Wellness Policy enclosed as Appendix-B)
2.	Top-Up Insurance	The Applicant recovers from its employees the entire premium payable towards the top-up insurance cover. (Please refer Para 2.2(c)/(d) of the Health and Wellness Policy enclosed as Appendix-B)

- 2.6 *The amount of premium recovered from the employees for Top-up insurance and Parental insurance is shown as a deduction on the pay-slips of the employees. Further, in respect of the parental insurance, the employees are also given a card in the name of parent for whom such parental insurance cover is opted.*
- 2.7 *The applicant has not availed input tax credit of GST charged by the insurance company.*



## **B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW**

- 2.8 In the GST regime, the taxable event is "supply" of goods and/or service. The definition of "supply" under Section 7(1) of the CGST Act covers all supplies made by a person **in course or furtherance of his business** for a consideration, and includes the activities mentioned in Schedule-I without a consideration.
- 2.9 Sl. No. 2 of Schedule I to the CGST Act states that supply of services between 'related persons' shall be treated as supply even if made without consideration, provided such supply **is made in course or furtherance of business**.
- 2.10 As per explanation to section 15 of the CGST Act, employer and employee are deemed to be related persons.
- 2.11 Further, Sl. No. 1 of Schedule III to the CGST Act deals with services provided by an employee to the employer and states such transactions shall be treated neither as supply of goods nor of services and. The said Sl. No. 1 does not deal with supplies made by employer to employees and therefore the same is not relevant for the present purpose.
- 2.12 On a combined reading of the above-stated provisions, it can be observed that supplies made by the employer to the employee, without consideration, would qualify as supply under Section 7(1) of the CGST Act, **only if it is made in the course or furtherance of business**.
- 2.13 Thus, a supply of service by the employer to the employee would not qualify as supply of goods or services if it is not made in the course or furtherance of business of the employer.
- 2.14 The definition of 'business' provided under Section 2(17) of CGST Act means any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Further, any activity ancillary or incidental to the above-stated activities are also covered as business. Furthermore, as per definition, any activity undertaken by the supplier irrespective of the volume, frequency, continuity or regularity of such activity will be treated as "business."
- 2.15 In the present case, the applicant is engaged in the activity of power generation and its transmission and distribution to the customers. The applicant has arranged for insurance cover for its employees, whereby the employees are given an option to take additional insurance cover by way of Top-up insurance or parental insurance. The applicant is not primarily engaged in the business of providing health insurance. In fact, the service of insurance is being provided by the Insurance Company. The applicant is only arranging for the insurance cover for its employees in accordance with its company policy and recovering the amount towards premium to be paid to the insurance company.
- 2.16 Further, it is not mandatory for the applicant to provide insurance services to its employees under any law for the time being in force in India. Therefore, the applicant is not obliged to provide insurance service to its employees.
- 2.17 Therefore; not arranging for insurance cover by the applicant for its employees would not affect the applicant's business in any way. Thus, mere recovery of an amount towards insurance premium cannot be treated as supply of any service **in the course or furtherance of business**.
- 2.18 Reliance is placed on the advance ruling given by the Authority for Advance Ruling, Maharashtra ("AAR") in case of **POSCO India Pune Processing Center Private Limited reported at 2019-VII-25-AAR** wherein, the Applicant was primarily engaged in distribution of steel coils and provided



Mediclaim cover to its employees as well as to their parents. In case of Parent Insurance facility, the applicant recovered 50% of the premium from the respective employees on monthly basis. The AAR held that the amount recovered by the applicant from the employees was paid to insurance company, therefore, it was the insurance company which was providing insurance services. Further, the AAR held that the applicant was not even registered as an insurance company. Hence, the recovery of 50% premium amount from the employees cannot be treated as amount paid for rendering insurance service to the employees.

2.19 The ratio laid down in aforesaid case of POSCO India Pune Processing Center Private Limited has been reiterated by Maharashtra AAR in the case of **Jotun India Private Limited** reported at **2019 (29) G.S.T.L. 778 wherein** the applicant was a manufacturer, supplier and exporter of paints and powder coatings and had introduced an optional parental insurance scheme for employees' parents and in case an employee opted for the scheme then the applicant recovered 50% of the premium amount from the salary of the employee. The AAR held that applicant assessee was not engaged in the business of providing insurance services and it was not mandatory for the applicant assessee to provide insurance coverage to its employees under any law for the time being in force. Therefore, non-provision of parental insurance coverage would not affect applicant's business by any means. Hence, recovery of premium amount from the employees could not be treated as an activity in the course or furtherance of business. Thus, the activity of providing parental insurance coverage to the employees neither satisfied the conditions of Section 7 of the CGST Act to qualify as 'supply of service' nor it was covered under the definition of the term "business" laid under Section 2(17) of the CGST Act. Hence, there was no supply of insurance service between the employer and the employee.

2.20 Thus, in the light of the submissions made above and decision of the Ld. AAR, the recovery of amount towards insurance premium for top-up insurance and parental insurance by the applicant from the employees does not qualify as supply of service in course or furtherance of business under Section 7 of the CGST Act. Therefore, the applicant would not be liable to discharge GST on the said amount recovered from its employees.

### 03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional/concerned officer has reproduced the provisions of Section 7 of the CGST Act, 2017 which defines the term 'supply'; Schedule I to the CGST Act, 2017 which specifies the activities which are to be treated as supply even if made without consideration; Explanation to Section 15 of the CGST Act, 2017 which defines deemed persons to be 'related persons' and has submitted that, as per the submissions made by the applicant it is evident that the provision of the specific service to the employees appears to be in the course of furtherance of business. The jurisdictional/concerned officer has concluded that, from the statement of facts of the applicant as mentioned in the subject application, the conditions specified in above sections are met and the transactions appear to be treatable as 'Supplies' under Section 7 of the CGST Act, 2017.

**04. HEARING**

- 4.1 Preliminary e-hearing in the matter was held on 10.12.2020, Smt. Nupoor Agarwal, Advocate, Shri. Pradip Rao & Shri Sanjay Mahadik, (Employees of the Applicant) appeared for the hearing and requested for admission of the application. The Jurisdictional Officer was absent.
- 4.2 The application was admitted and called for final e-hearing on 21.09.2021, Smt. Nupoor Agarwal, Advocate, appeared and made oral and written submissions. The Jurisdictional Officer was absent, but the written submissions are on record.
- 4.3 Heard the matter.

**05. DISCUSSIONS AND FINDINGS:**

- 5.1 We have gone through the facts of the case, documents on record, written and oral contentions made by the applicant at the time of preliminary as well as the final hearings and written submissions made by the jurisdictional officer.
- 5.2 The applicant has submitted that they are engaged in power generation, transmission and distribution to the customers. Further, as a part of employee policy, the applicant provides certain facilities to its employees such as insurance, transport, telephone expenses, canteen, etc.
- 5.3 We have gone through the relevant documents submitted on record by the applicant and it is observed that the applicant has an arrangement with New India Assurance Co. Ltd for providing group insurance (mediclaime) cover to their employees for which a master insurance policy is issued by the insurance company to the applicant. Further, the applicant has also formulated a 'Health and Wellness Policy' wherein, employees are given an option to opt for an additional insurance for themselves as well as for their parents, for which the applicant company has taken a separate top-up insurance and Parental Insurance from the insurance company. After going through the sample copies of master insurance policy and the top-up policy submitted by the applicant, we find that the applicant initially pays the entire premium along with taxes and then the said premium is recovered from the respective employees as mentioned supra. The Applicant has contended that the applicant is not in the business of providing insurance coverage. Secondly, providing of employee insurance or parental insurance cover is not a mandatory requirement (under any law) for the time being in force and therefore, non-providing employee insurance or parental insurance coverage would not affect its business by any means. Therefore, as per the applicant, the activity of recovery of an amount towards insurance premium from the employees cannot be treated as an activity done in the course of business or for the furtherance of its business. The applicant has also submitted that, they have not availed input tax credit of GST charged by the insurance company.
- 5.5 The term "supply" is defined under Section 7 of the CGST Act, 2017 which is reproduced as under:  
*"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*

5.6 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**";

5.7 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.

5.8 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".*

- 5.9 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.
- 5.10 As per the applicant, providing of Top Up Insurance/Parental Insurance is not mandatory under any law for the time being in force. Also, providing / not-providing of the Top Up Insurance/Parental Insurance is not going to affect the business of the Applicant in any way. Further, the applicant is not engaged in providing insurance service. 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 insurance premium amount to the insurance company and recovering the premium amount from its employees. The applicant is not taken input tax credit of the GST paid to the Insurance Company. Non-providing of Top Up Insurance/Parental Insurance coverage will not affect applicant's business by any way. Therefore, activity of recovery of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.
- 5.13 From the above, we find that the activity undertaken by the applicant like providing of mediclaim policy for the employees and their parents (parents of the employees) through the insurance company neither satisfies conditions of section 7 to be held as "supply of service" (in the instant case, insurance service) nor is it covered under the term "business" of section 2(17) of CGST ACT 2017. Hence, we find that the applicant is not rendering any services of health insurance to their employees' parent and; hence, there is no supply of insurance services in the instant case of transaction between employer and employee.
- 5.14 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 had 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.
- 5.15 The applicant has also referred to the ratio laid down by the Maharashtra AAR in the case of M/s Jotun India Private Limited reported at 2019 (29) G.S.T.L. 778, dated 4/10/2019, which is applicable in the subject case as the facts of the matter are similar in both the cases.
- 5.16 In view of discussions above, we find that the recovery of the Top Up Insurance/Parental Insurance Premium from employees does not amounts to "supply of service" under Section 7 of the Central Goods and Service Tax Act, 2017.
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 :-** Whether the recovery of an amount towards Top-up and parental insurance premium from the employees, amounts to a supply of any service under Section 7 of the Central Goods & Service Tax Act, 2017?

**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, 15<sup>th</sup> floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on [gst.gov.in](http://gst.gov.in) for online appeal application against order passed by Advance Ruling Authority.