**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 | | **27AAECS94234P1ZN** |
| Legal Name of Applicant | | **M/s. Syngenta India Limited** |
| Registered Address/Address provided while obtaining user id | | Amar Paradigm, S. No. 110/11/3, Baner Road, Pune. |
| Details of application | | GST-ARA, Application No. 25 Dated 09.09.2020 |
| Concerned officer | | PUN-VAT-E-622, PUNE LTU-02 |
| **Nature of activity(s) (proposed/present) in respect of which advance ruling sought** | | |
| A | Category | **Service Provision** |
| B | Description (in brief) | (1) The Applicant has entered into a contract with a third-party insurance service provider for providing parental insurance to its employees. Insurance service provider is raising invoices on Applicant, who makes recoveries from its employees for the providing parental insurance.<br>(2) The Applicant, in case the employee does not serve the mandated notice period before resigning, in part or in full, deducts a certain amount (notice pay recovery), from the employee's salary payment. |
| Issue/s on which advance ruling required | | ➢ Determination of the liability to pay tax on any goods or services or both |
| 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" respectively ] by **M/s. Syngenta India Limited,** the applicant, seeking an advance ruling in respect of the following questions.

**(a) Whether the GST would be payable on recoveries made from the employees towards providing parental insurance?**

**(b) Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?**

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 FACTS:**

*2.1 M/s Syngenta India Limited, the Applicant, manufactures/sells pesticides, herbicides & various types of seeds and offers various incentives to its employees as a part of its employment policy, like group insurance policy for its employees, Parental Insurance Policy, etc.*

*2.2 Applicant issues employment letter ("**Employment Agreement**") to its employees, which contains various terms and conditions of employment. Applicant, in its General Employment Conditions ('**HR Policy**') also mentions the terms and conditions related to work, responsibility, termination, etc.*

***Parental Insurance***

*2.3 Voluntary Parental insurance is provided to employees & whereas premium of the group insurance policy of the employees is completely borne by Applicant, the amount of the Parental Insurance Policy, is recovered from the salary of the employee who opts for it. The Applicant has entered into an arrangement with the insurance company to provide the said parental insurance cover where the Applicant initially pays the entire premium along with the applicable taxes to the insurance company and the insurance company issues the premium receipt in the name of the Applicant. Applicant recovers full amount paid to the insurance company, in respect of the parental insurance and no profit element is involved while recovering the premium of the policy.*

*2.4 The claims, by employees under the parental insurance policy, are directly filed with the insurance company. Thus, Applicant is only a facilitator and is not providing any service to its employees.*

***Notice Pay Recovery***

*2.5 There are various instances where the employees decide to resign and leave the employment without serving the complete notice period. In case the employee does not serve the mandated notice period, in part or in full, the Applicant is entitled to monetary compensation, hereinafter referred to as "**Notice Pay Recovery**" from the employee's salary payment. Such amount is deducted by the Applicant as a compensation for breach of the terms of the Employment Agreement by the employees. Applicant feels that the notice pay recovery so charged and collected by them is in the nature of compensation on account of business loss suffered by the Applicant. Further, in respect of Notice pay recovery, the Applicant deducts the salary of the employees based on the Employment Agreement and as per the HR Policy of the Applicant.*

***Applicant's Interpretation with respect to the recoveries made from the employees on account of providing the benefit of parental insurance scheme to its employees are provided in the below grounds which are without prejudice to each other.***

***2.8 The employee recoveries for providing the benefit of parental insurance scheme is not covered under the ambit of "supply" under Clause (a) of Section 7 (1) of the CGST Act.***

*2.8.1 Applicant is engaged in business of crop protection and seed only. The parental insurance scheme is being provided in order to reduce the financial burden of the employees and not to*

*undertake any business activity. Even in case where the said parental insurance scheme would not be provided or facilitated, the crop protection and seed business of the Applicant would still be continuing. The parental insurance is provided by a third-party insurance company for which the insurance company is raising an invoice to the Applicant and charging GST on the same. Therefore, the service of parental insurance is provided by the third-party service provider only.*

2.8.2 *Hence, providing the parental insurance scheme is not a business activity of the Applicant and hence, the provision of such insurance to the employees cannot qualify as supply. Further, Applicant does not hold a license to carry out insurance business under the IRDA Act.*

2.8.3 *Applicant is neither a "insurance company" nor the Applicant qualifies as a "insurer". Therefore, the Applicant cannot be said to be engaged in the business of providing insurance services.*

2.8.4 *The Applicant submits that any activity which is incidental and ancillary to the main business activities should only be covered with the ambit of the definition of the term 'business'. In the present case, the parental insurance scheme is merely a facility extended to the employees. Hence, the said activity cannot be treated as 'business' as defined in Section 2(17) of CGST Act.*

2.8.5 *In this regard, reliance can be placed on the decision of Apex Court in the case of* ***State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966)*** *wherein the Petitioner was engaged in the business of manufacturing and selling cotton textiles. The Petitioner purchased coal for usage in business of cotton textiles. The said coal was later sold by the Petitioner. The Supreme Court held that the Petitioner was not engaged in the business of coal.*

2.8.6 *The activities which are having direct nexus with the main business can be said to be ancillary or incidental. One of such examples of the same could be sale of by-products. However, the providing an option to avail parental insurance is not related to or connected with the principle business of supply of crop protection goods in that manner. Hence, the same cannot be construed as incidental or ancillary to the main business of the Applicant.*

2.8.7 *In support of the above contention, the Applicant relies on the case of* ***Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd. [1967 (20) STC 287 Mad].***

2.8.8 *In the case of* ***Panacea Biotech Limited vs. Commissioner of Trade and Taxes [(2013) 59 VST 524 (Del.)]*** *the issue was related to whether the selling of used cars is ancillary or incidental to the pharmaceutical business. The Hon'ble Delhi High Court held that:* ***the selling of used cars cannot by any stretch of the imagination be characterized as "ancillary" or incidental to the business of a pharmaceutical company.***

2.8.9 *Based on the above, the parental insurance scheme provided by the Applicant to its employees cannot be said to be principle or ancillary or incidental business activity of the Applicant. Thus the said act of providing parental insurance cannot be taxed under GST.*

**2.9** ***Without prejudice to the above, the parental insurance provided by Applicant is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.***

2.9.1 *Applicant also submits that parental insurance provided by the Applicant is specifically excluded from the coverage of 'supply' under GST as per Clause (a) of Section 7 (2) of the CGST Act. It is a part and parcel of the employment terms. The parental insurance has a direct nexus with the employment of the employee with the Applicant. Therefore, by virtue of Section 7 (2) read with Entry (1) of Schedule III, the recovery made in lieu of parental insurance does not amount to supply.*

2.9.2 *Applicant recovers the amount of parental insurance scheme from the employees as per the standard terms and conditions agreed between them.*

2.9.4 *Also, the Press release issued by the Ministry of Finance dated 10 July 2017 states that, any services provided by the employer to the employees in terms of the contractual agreement entered into between the employer and employee will not be subjected to the GST. Therefore, Applicant submits that the parental insurance provided by the Applicant to its employees cannot be treated as 'supply' and therefore, GST should not be applicable.*

**2.10 Without prejudice to the above, it is settled position under GST regime that employee recoveries do not amount to 'supply'.**

2.10.1 *The Applicant submits that it is a settled legal position that the employee recovery would not qualify as 'supply' under GST and hence, not taxable. Reliance is placed in the case of* ***M/s Jotun India Private Limited, [2019-TIOL-312-AAR-GST]*** *and* ***M/s POSCO India Pune Processing Centre Private Limited [2019 (2) TMI 63]***

2.10.2 *The understanding of the Applicant is supported by the aforesaid rulings that the Applicant is not involved in the business of providing insurance, and is only a facilitator in the transaction between the employee and the third-party insurance service provider. Therefore, the said activity does not qualify as service and hence, GST is not applicable on the same.*

***Applicant's Interpretation with respect to notice pay recoveries made from employees for not serving the notice period, are provided below which are without prejudice to each other.***

2.11 ***The notice pay recovery made by the Applicant does not qualify as "consideration" and hence, does not come under the ambit of "supply" under Clause (a) of Section 7 (1) of the CGST Act.***

2.11.1 *In order to constitute a supply under Section 7 (1) (a) of the CGST Act, there must be a supply of goods or service which shall be made for a consideration. 'Consideration', would necessarily mean any payment made or to be made in respect of supply of goods or services or both by the recipient or any other person to the supplier of goods or services. Notice pay recovery is not a consideration which is being received by the Applicant towards any activity carried out. Rather, the employee is providing employment services to the Applicant. It is not the case that the Applicant is entering into the employment agreement to provide the notice pay terms. Hence, notice pay cannot be seen in isolation and should be treated as a mere non-compliance of the terms of the agreement only.*

2.11.2 *The notice pay recovery is clearly recovery of amount on account of damage due to unforeseen action on the employee resigning from the employment. Applicant recovers notice pay from the employees as a reasonable estimate of the loss caused to it due to the sudden termination of the employment by the employees, which may be waived off at the discretion of the Applicant.*

2.11.3 *In the present case, the notice pay is not recovered by the Applicant in lieu of or in return for any activity performed by the Applicant. Therefore, it cannot be treated as a consideration for performing any activity by the Applicant. Since, there is no consideration involved in the notice pay recoveries, the said transaction will not amount to supply as per Section 7 (1) (a) of the CGST Act. and hence, no GST would be payable by the Applicant on this transaction.*

**2.12 Without prejudice to the above, it is settled position under GST regime that employee recoveries do not amount to 'supply'.**

2.12.1 *The Applicant submits that the submission made by the Applicant in respect of parental insurance recovery equally applies so far as the notice pay recovery is concerned.*

2.13 ***Notice pay collected by the Applicant from its employees are in the nature of compensation for damages for breach of contract.***

2.13.1 *As per Section 73 & 74 of the Indian Contract Act any breach of contract or non-compliance of any terms of the contract would result into payment of compensation as a legal course of action. Therefore, upon default on the part of the employees in complying with the employment agreement, the Applicant shall be entitled to receive damages compensation stipulated in the employment agreement in accordance with Section 73 and 74 of the Indian Contract Act, 1872.*

2.13.2 *The above provisions also cover the case of notice pay recovery. Therefore, the notice pay recovered by the Applicant can at best be treated as compensation towards the loss of the Applicant for the breach of the contract by the employee.*

2.13.3 *Reliance is also placed on Para 2.3.1. of 'Education Guide' dated 20.06.2012 issued by CBEC, Ministry of Finance, wherein it has been clarified that fines and penalties which are legal consequences of a person's actions are not in the nature of 'consideration' for an activity.*

2.13.4 *In the present case that the Applicant is not carrying on any activity for a consideration. The money received by the Applicant is merely in the form of a fine or penalty for failure to serve the notice period and cannot be in the nature of consideration. The penalty imposed by the employer on its employee is a part of the contract made between the employer and the employee. The agreement between the employee and the employer is a legal document and is binding on both the parties. The penalty prescribed under the agreement for failure to give proper notice is a legal consequence of the employee's actions. The employee is legally required to abide by the conditions of the contract to which he is a party.*

2.14 ***Without prejudice to the above, the notice pay recovery does not amount to "supply" under Section 7 (1) (c) read with Schedule I to the CGST Act.***

2.14.1 *The Applicant submits under the GST regulations, even in case of absence of consideration, the supply between 'related persons' may qualify as 'supply' under Section 7 (1) (c) of the CGST Act to attract GST. However, it is submitted that the transaction of notice period recovery does not amount to 'supply' and hence, GST is not applicable.*

2.14.2 *In respect of any transaction wherein any amount is charged as penalty or liquidated damages towards non-compliance of certain terms and conditions, the same cannot be equated to be an activity. Therefore, in absence of any activity carried out in any given transaction which is in the nature of recovering penalty, it cannot amount to service under the GST regulations as well.*

2.15 ***Without prejudice to the above, the notice pay recovery by Applicant is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.***

2.15.1 *The Applicant also submits that the notice pay recovery by the Applicant is specifically excluded from the coverage of 'supply' under GST as per Clause (a) of Section 7 (2) of the CGST Act*

2.15.2 *Entry (1) of Schedule-III covers services provided by employee to its employer in the course of employment or in relation to employment. It can be noted that the any activity or transaction which is undertaken in the course of employment or in connection with employment has been specifically excluded from the ambit of supply. Notice pay recovery is nothing more than deduction of the salary of the employees. Therefore, the same is an integral part of the salary*

*benefits and deduction which is provided in the course of employment services. Hence, GST will not be payable on such recovery made by the Applicant.*

2.15.3 *Further, the Hon'ble Tribunal in the case of* ***HCL Learning Ltd. [2019 (12) TMI 558]*** *has also held that notice pay recovery is not liable to service tax.*

2.15.4 *Further, on perusal of the employment agreement, it can be clearly inferred that it is not the case that the agreement is entered into for providing notice pay terms and conditions. Hence, the agreement should be appreciated in its true spirit and to construe that the agreement is to provide the employment services by employee to the Applicant.*

2.15.5 *The Applicant relies on the case of* ***Ishikawajima-Harima Heavy Industries v CIT [2007, 288 ITR 408, 440 (SC)]****, and* ***Sundaram Finance Limited v State of Kerala [AIR 1966 SC 1178]****.*

2.15.6 *Reliance is also placed on the Income Tax case law of* ***Nandhino Rebello vs. DCIT, [Circle-14, ITA No. 2378/Ahd/2013]****, decided on 18.04.2017 wherein the Hon'ble Tribunal held that notice pay recovery is a part of the salary only.*

2.15.7 *Therefore, in light of the above submission, GST cannot be demanded on the notice pay recovery collected by the Applicant as the same is not a supply as per Section 7 (2) (a) read with Schedule III to the CGST Act.*

2.15.8 *Further, it is submitted that Schedule II of the CGST Act provides that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act would be treated as service. Applicant, by collecting notice pay for defaults of the employees under Employment Agreement, cannot be said to have provided the service of 'agreeing to the obligation to tolerate an act'.*

2.15.9 *Therefore, based on the above cited cases, the notice pay recovery collected by the Applicant are in the nature of penalty, and there is no obligation on the part of the Applicant to tolerate the act of non-compliance by the employees. Hence, the notice pay recovery does not amount to toleration an act to qualify as supply of service and hence, GST cannot be levied.*



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

The submissions of the jurisdictional officer are as under:-

3.1.1 QUESTION 1: Whether the GST would be payable on recoveries made from the employees towards providing parental insurance?

3.1.2 ANSWER: GST is not payable on recovery of cost of parental insurance from employees towards providing parental insurance.

It is observed that to provide parental insurance service is not the business of applicant. The activity of recovery of cost of insurance premium can't be treated as an activity done in course of business or furtherance of business. The applicant is not rendering any service of health insurance to their employees and hence there is no supply of services in this case. Recovery of parental insurance premium from employees not amount to supply of service under section 7 of CGST ACT 2017. Hence GST is not liable in this case

3.2.1 QUESTION 2: Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

3.2.2 GST is liable on recoveries made from the employees on account of not serving the full notice period. Notice pay is the sum mutually agreed between the employer and the employee for

breach of contract. It can be regarded as a consideration to the employer for 'tolerating the Act' of the employee to not serve the notice period. The condition to pay an amount as notice pay in lieu of notice period for the employer forms part of terms & conditions of employment. These activities covered under clause 5 (e) to schedule 11 of CGST as a declared service and GST is applicable on supply of taxable services u/s 7 (1) of CGST Act 2017. In this case GST is applicable @ 18% under the entry of "Services Not Elsewhere Classified" on amount of recovery of notice pay from employee. Notice pay recovery should be subjected to GST ACT of 'Non Compliance' of employment contract wherein employer is receiving consideration from employee for toleration of Act. Such a toleration of Act is defined as 'Supply of Service' in schedule 11 of CGST Act 2017.

3.2.3 REFERENCE:

1) AMNEAL PHARMACEUTICALS PVT LTD (AAR GUJRAT)
2) CALTECH POLYMERS PVT LTD (KERALA AAR)

**04. HEARING**

4.1 Preliminary hearing was held via virtual mode on 13.07.2021. Authorized representatives of the Applicant, Shri. Sandeep Sachdeva, Advocate, Shri. Sanjay Raut, Shri. Shankar Rochlani, Shri Pranav Mundra and Shri. Prashant Walwaikar were present. Jurisdictional officer Shri. Babasaheb Shedge, Deputy Commissioner, PUN-VAT-E-622, LTU-2 was also present. The Authorized representative made oral submissions with respect to admission of their application.

4.2 The application was admitted and called for final online hearing on 28.12.2021. Authorized representatives of the Applicant, Shri. Sandeep Sachdeva, and Shri Pranav Mundra were present. The Jurisdictional officer was also present. The Authorized representative made oral submissions with respect to their application. We heard both the sides.

**05. OBSERVATIONS AND FINDINGS:**

5.1 We have perused the documents on record and considered the oral and written submissions made by the applicant. The jurisdictional officer has also made submissions in the matter which are taken on record.

5.2. **Question 1: -** Whether the GST would be payable on recoveries made from the employees towards providing parental insurance?

5.2.1 This issue has already been decided by this Authority in the case of M/s Jotun India Private Limited wherein the question raised was similar viz. "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?

Vide Order No. GST- ARA- 19/2019-20/B-108 Mumbai dated 04-10-2019 this authority had ruled that recovery of 50% of Parental Health Insurance Premium from employees, did not amount to supply of service under Section 7 of the Central Goods and Service Tax Act, 2017. The only difference between the matter in the subject case and the matter in the Jotun case is that, in the subject case, the applicant is recovering 100% of Parental Health Insurance Premium from employees whereas in the Jotun case the said applicant was recovering only 50% of Parental Health Insurance Premium from employees.

5.2.2 Further, a similar question was also raised by M/s POSCO India Pune Processing Centre Private Limited in their application before this Authority viz "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? This Authority had answered the question as follows:- *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*. Even in the case of M/s POSCO India Pune Processing Centre Private Limited, they were recovering only 50 % premium from their employees and in the subject case entire 100% is recovered from the employees of premium paid by the applicant to the Insurance Company.

5.2.3 Since the facts, in the case of M/s Jotun India Private Limited and also in the case of M/s POSCO India Pune Processing Centre Private Limited are similar to the facts of the present case with respect to recovery of premiums from the employees, paid by the applicant on Parental Insurance Policy, there is no reason or us to deviate from the decisions taken in both the said cases and therefore we hold that, in the instant case, **GST would not be payable on recoveries made from the employees towards providing parental insurance.**

**5.3** Question No. 2: Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

5.3.1 We have considered the applicant's submissions, the relevant facts and interpretation of GST Laws made by the applicant with respect to the question whether the applicant is liable to pay GST on recovery of Notice Pay from the employees who are leaving the Applicant company without completing the notice period as specified in the Employment Letter entered into, by both the Applicant as well as the concerned employees.

5.3.2 Similar issue was before the Madhya Pradesh Advance Ruling Authority in an application filed by M/s Bharat Oman Refineries Limited, wherein the applicant had queried whether GST was applicable on payment of notice pay by an employee to the applicant-employer in lieu of notice period under clause 5(e) of Schedule II of GST Act. On this point the Ld. AAR found that the applicant employer was tolerating the act by relieving the employee without following the notice period clause upon payment of an amount and therefore the situation was covered under clause 5(e) of the Schedule II of the CGST Act i.e. (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; which is liable to GST.

5.3.3 M/s Bharat Oman Refineries Limited, preferred an appeal before the Madhya Pradesh Appellate Authority for Advance Ruling (MPAAAR) against the order of the AAR, Madhya Pradesh. The MPAAAR ***[Advance Ruling No. MP/AAAR/07/2021 dated November 8, 2021]*** observed as under:-

*3. We find that Clause 5(e) of the Schedule II of the CGST Act is similar to the earlier Service Tax law i.e. Section 66E(e) of the Finance Act, 1994. With reference to the said earlier Act, the Central Board of Excise and Customs (CBEC) had issued a guidance note dated 20.6.2012. Para 2.9.3 of the said guidance note reads as under:-*

*2.9 Provision of service by an employer is outside the ambit of service*

*2.9.3 Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to Service Tax?*

*No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of the employment. Hence, amounts so paid would be chargeable to Service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.*

*4. The said query raised pertains to the opposite situation i.e. where the employer pays the employee for premature termination of service and in this situation it was clarified that premature termination was treatable as amounts paid in relation to services provided by the employer in the course of employment. As regards the present situation where the employee had paid the employer for waiver of notice period, the matter had come up before the Hon'ble Madras High Court in W.P. Nos 35728 to 35734 of 2016 in the case of GE T&D India Ltd Vs Deputy Commr of Central Excise, LTU, Chennai - 2020-VIL-39-MAD-ST. The Hon'ble high court applying the CBEC's clarification observed that "the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit". The Hon'ble Court further held that 'the definition in clause (e) of Section 66E is not attracted to the scenario before me as, in my considered view, the employer has not 'tolerated' any act of the employee but has permitted a sudden exit upon being compensated by the 'employee in this regard. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non-compete. Notice pay, in lieu of sudden termination however, does not give rise to the rendition of service either by the employer or the employee."*

*5. In the GST era also services provided by an employee to the employer is treated as neither supply of goods or services under Schedule III of the CGST Act. Schedule III pertains to activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Clause 1 reads as under -*

*1. Services by an employee to the employer in the course of or in relation to his employment.*

*6. Thus services by an employee to the employer in the course of or in relation to his employment have been placed out of the purview of GST. In present case also the said compensation which accrues to the employer is in relation to the services provided by the employee. Such compensation is related to the services not provided by him to the employer during the course of employment. In other words, the employer is being compensated for the employee's sudden exit. Merely because the employer is being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for premature exit.*

*7. We are of the considered view that the ratio the decision of the Hon'ble Madras High Court in GE T&D India Ltd Vs Deputy Commr of Central Excise, LTU, Chennai quoted above, is squarely applicable to the present case. Though the said judgment pertains to the Service Tax period we do not find any change in the position of law in this regard after introduction of GST. In view of the above finding, we hold that the Ld. AAR had erred in concluding that such activity was leviable to GST.*

5.3.4 The relevant provisions of law are reproduced and analysed below.

**Section 7 of CGST ACT, 2017 : Scope of Supply**

*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, 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) Omitted vide Notification No. 02/2019-CT dated 29.01.19*

*1(A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II." (amended retrospective effect from 1.7.2017)*

*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. xxxxxxx*

***SCHEDULE III of Section 7 –** Activities or transactions which shall be treated as neither supply of goods nor supply of services.*

*1. Services by an employee to the employer in the course of or in relation to his employment.*

*2.xxxx*


From the above, it is clear that the levy under **CGST Act, 2017** is on **"supply"** of goods or services or both. The word "such as" used preceding the words sale, transfer, barter, exchange, etc. indicates that the forms of supply shall be those which are enumerated therein or of similar character but not of other dissimilar forms of supply. The expression "such as" indicates the character of the transactions.

Furthermore, the CGST (Amendment) Act, 2018 introduced sub section (1A) to Section 7 of the CGST Act, 2017 with retrospective effect 01-07-2017 in place of Section 7 (1)(d), which seeks to levy tax on certain declared "supply" of goods or services referred to in Schedule II of the CGST Act, 2017. As per Section 7 (1A), where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II wherein it has been prescribed that, a particular activity shall be treated either as Supply of goods or as Supply of services. However, Schedule II comes into play only if an activity is qualifies as supply under Sec 7 of CGST Act.

Besides above, Services by an employee to the employer in the course of or in relation to his employment are activities or transactions which shall be treated as neither supply of goods nor supply of services under **Schedule III of Section 7 of CGST Act 2017**.

**Clause 5(e) of schedule (II) to Section 7 of CGST Act is reproduced below.**

**"The following shall be treated as supply of services, namely: –**

**(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;"**

Whether any activity or transaction in question can be said to be covered under clause 5(e) of Schedule II to section 7 which seeks to declare agreeing to the obligation to refrain from an act or tolerate an act or a situation or to do an act, as declared supply of services.

The said clause 5(e) has the following ingredients: –

- one party is under obligation, as agreed, to refrain from an act;
- one party is under obligation, as agreed, to tolerate an act or situation;
- one party is under obligation, as agreed, to do an act; all against consideration

The clause 5(e) treats an act of forbearance (refrain) or tolerating an act or situation where one of the parties is under obligation, as agreed upon, to forbear, refrain or tolerate an act or situation, against consideration.

**Section 2(31)(b) of CGST Act 2017 defines consideration** in relation to supply of goods and services or both and includes the monetary value of any act or forbearance. The word "Service" defined under Section 2(102) of the CGST Act, 2017 means anything other than goods, money and securities. It is pertinent to understand before levy ;

(i) whether the receipt or deduction of salary in lieu of notice period by an employee can be said to be consideration for an act of forbearance and

(ii) whether the act of accepting the resignation without contractual period of notice from an employee can be said to be an act of toleration.

The employee opting to resign by paying amount equivalent to month of salary in lieu of notice, has acted in accordance with the contract and that being the case no question of any forbearance or tolerance does arise. Further, as per the agreement, the resignation by the employee is not subject to any acceptance or approval and employee is free to tender his resignation, make payment of notice period salary to leave. Hence, there is neither any activity nor any passive role played by the employer. It must be noted here, that there is no consideration within the meaning of Sec.2(31)(b) of the CGST Act, 2017 flowing from an act of forbearance in as much as there is no breach of contract, as a question of any consideration for forbearance would arise in case of breach of contract.

5.3.5 So, by taking into account the decisions as well as analysis, made in detail as above, it may be concluded that, recovery of notice pay from dues of employee / payment of notice pay by the employee who could not serve the notice for the period as per contractual agreement / appointment letter does not amount to supply and therefore as per Section 7 (1A) of the CGST Act, 2017, the provisions of Schedule II does not come into play. Thus, also relying on the reasoning and decision given by the MPAAAR, mentioned above and the decision of the Hon'ble Madras High Court in W.P. Nos 35728 to 35734 of 2016 in the case of GE T&D India Ltd Vs Deputy Commr of Central Excise, LTU, Chennai - 2020-VIL-39-MAD-ST, we hold that, the notice pay recovered by the applicant from its employees is not liable to GST.

5.4.1 Finally, in the case of M/s Emcure Pharmaceuticals Limited which was before this Authority, a similar question was raised and this Authority has held that **GST would not be payable on the notice pay recoveries made from the employees on account of not serving the full notice period. (Order No. GST-ARA-119/2019-20/B-03 dated 04.01.2022)**

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)**

**NO.GST-ARA- 25/2020-21/B-** 05 **Mumbai, dt.** 19.01.2022

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

**Question 1: -** Whether the GST would be payable on recoveries made from the employees towards providing parental insurance?

**Answer:-** **Answered in the negative.**

**Question 2: -** Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

**Answer:-** **Answered in the negative.**

PLACE - Mumbai
DATE - 19.01.22

MEMBER ADVANCE RULING AUTHORITY ★ MAHARASHTRA STATE, MUMBAI ★ सत्यमेव जयते

**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 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. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.