

2022 (2) TMI 1043 - AUTHORITY FOR ADVANCE RULING, RAJASTHAN**IN RE: M/S RSWM LIMITED,**

RAJ/AAR/2021-22 /14

Dated: - 08 September 2021

Input tax credit - GST charged by the Medical/ Health Insurance Company in respect of insurance done for employees - requirement prescribed under Section 17(5)(b) stands satisfied or not - HELD THAT:- On perusal of section , it is observed that the following two condition is required to avail ITC to medical/health insurance.-

(i) outward taxable supply should be same category.

(ii) Inward supply should be an element of a taxable composite or mixed supply.

It is a fact that the applicant is a manufacturer of textile item and supply is also taxable items. We find that, neither applicant is a supplier related to health insurance service nor this service has an element of supply of textile - In view of the above the applicant cannot claim ITC of GST charged by the Medical/Health insurance company in respect of insurance done for employees, as provided under section 17(5)(b)(i) of the CGST Act, 2017.

Judgment / Order**J.P. MEENA AND M. S. KAVIA, MEMBER****Present for the applicant : Keshav Maloo (CA).**

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 SGST Act. further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGS I Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s RSWM Limited, Post Box No 28, Kharigram. Gulabpura. Bhilwara. Rajasthan, 311021, - (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (d) & (e) given as under: -

(d) Admissibility of input tax credit of tax paid or deemed to have been paid;

A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:**Statement of Applicant's Interpretation of Law/ Facts****1. Medical/ Health Insurance of employees is mandatorily required by MHA Order dated 15.04.2020**

Applicant understands that as per Section 16(1) of the CGST Act, 2017 "Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."

Exceptions to the above provision have been provided in Section 17(5) of the CGST Act, 2017 wherein inter alia Section 17(5)(b) provides for restriction of input tax credit on Health insurance services subject to certain conditions which reads as under:

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(a)

(aa).....

(ab).....

(b) the following supply of goods or services or both,-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply:"

(ii)

(iii)

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force."

As per applicant's understanding, a perusal of the above provisions makes it clear that if it is obligatory to provide such Medical/ Health insurance to employees/ workers or such Medical/ Health Insurance services have been availed for making outward taxable supplies of health insurance services, then input tax credit can be availed in respect of Health Insurance services.

As regards, the condition that input tax credit on Health Insurance Services can be availed if it is obligatory to provide such insurance under any law. applicant wishes to submit that in view of the Covid-19 pandemic and to implement measures to prevent the spread of Covid-19 disease at the work place. Ministry' of Home Affairs (MHA) vide its Order No. 40-3/2020-DM-I (A) dated 15th April 2020 made it obligatory' for organizations to provide medical insurance cover to its employees.

Further MHA has issued clarification via ref: IRDAVHLT/CIR/MISC/093/04/2020 dated 16th April 2020. In the said reference the Government has stipulated all industrial and commercial establishments, workplaces, offices, etc. shall make arrangements for the implementation of Standard Operating Procedure (SOP) before starting their functioning. As per Clause No. 5 of Annexure-II for the purpose of social distancing for offices, workplaces, factories, and establishments Government has made medical insurance for the workers mandatory.

Though, the above said order of MHA was issued on 15th April 2020, i.e. a year back but the fact remains that with the second wave of Covid-19 and consequential widespread outburst of the pandemic all the SOPs mentioned in MHA Order dated 15.04.2020 has become much more relevant. Every government agency including Hon'ble Supreme Court is spreading this message for all such measures like social distancing, sanitising, etc. Further, all states government are also declaring lockdown from time to time. This all shows that the SOP prescribed under MHA Order dated 15.04.2020 is still very relevant and it is merely a technical formality whether it is extended or not because in all respective State Government orders, the follow of such SOP is being made mandatory. A copy of Order of Ministry of Home Affairs Rajasthan dated 14.04.2021 and 18.04.2021 is enclosed as Appendix-1 and Appendix-2 respectively for the sake of reference highlighting and enforcing all such measures in public safety. In such circumstances, applicant submits that SOP dated 15.04.2020 is still very much under force and among other things it prescribes for Medical/ Health Insurance of Employee also and therefore, in the interest of public at large same can be still considered as mandatory and hence, it is submitted that the requirement prescribed under Section 17(5)(b) stands satisfied and therefore. ITC of GST paid on Medical/ Health Insurance of Employees is available.

Now, since, the Government has made medical insurance mandatory for the workers of offices, workplace, factories, and establishments, and Section 17 (5) (b) of CGST Act. 2017 clearly states that the taxpayer is eligible to avail input tax credit if Government has made any service obligatory for an employer. Applicant is of the view that input tax credit can be availed on the premium paid on medical insurance of employees as per proviso to Section 17(5)(b) of the CGST Act, 2017.

B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

Whether the applicant can claim input tax credit of GST charged by the Medical/ Health Insurance Company in respect of insurance done for employees?

C. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 03.09.2021 at Room no. 2.11 NCRB, Statue Circle, Jaipur. Sh. Keshav Maloo (CA) Authorised Representative of applicant appeared for PH. During the PH. he reiterated the submissions already made in the written application. She also made additional submission during the PH.

D. FINDINGS, ANALYSIS & CONCLUSION:

1. We have gone through the facts of the case, written contentions made by the applicant at the time of preliminary hearing.
2. Applicant has submitted that input tax credit on Health Insurance Services can be availed if it is obligatory to provide such insurance under any law. applicant wishes to submit that in view of the Covid-19 pandemic and to implement measures to prevent the spread of Covid-19 disease at the work place, Ministry of Home Affairs (MHA) vide its Order No. 40-3/2020-DM-I (A) dated 15th April 2020 made it obligatory for organizations to provide medical insurance cover to its employees.
3. Further MHA has issued Clarification via ref: IRDAI/HLT/CIR/MISC/093/04/2020 dated 16th April, 2020. In the said reference the Government has stipulated all industrial and commercial establishments, workplaces, offices, etc. shall make arrangements for the implementation of Standard Operating Procedure (SOP) before starting their functioning. As per Clause No. 5 of Annexure-II for the purpose of social distancing for offices, workplaces, factories, and establishments Government has made medical insurance for the workers mandatory.
4. Though, the above said order of MHA was issued on 15th April 2020. i.e. a year back but the fact remains that with the second wave of Covid-19 and consequential widespread outburst of the pandemic all the SOPs mentioned in MHA Order dated 15.04.2020 has become much more relevant. Every

government agency including Hon'ble Supreme Court is spreading this message for all such measures like social distancing, sanitizing, etc. Further, all states government are also declaring lockdown from time to time. This all shows that the SOP prescribed under MHA Order dated 15.04.2020 is still very relevant and it is merely a technical formality whether it is extended or not because in all respective State Government orders, the follow of such SOP is being made mandatory. A copy of Order of Ministry of Home Affairs Rajasthan dated 14.04.2021 and 18.04.2021 is enclosed as Appendix-1 and Appendix-2 respectively for the sake of reference highlighting and enforcing all such measures in public safety. In such circumstances, applicant submits that SOP dated 15.04,2020 is still very much under force and among other things it prescribes for Medical/ Health Insurance of Employee also and therefore, in the interest of public at large same can be still considered as mandatory and hence, it is submitted that the requirement prescribed under Section 17(5)(b) stands satisfied and therefore. ITC of GST paid on Medical/ Health Insurance of Employees is available.

5. Section 17(5)(b)(i) provides for restriction of input tax credit on Health Insurance services subject to certain conditions which reads as under:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18. input tax credit shall not be available in respect of the following, namely:-

(b)

(aa);

(ab).....;

(b) the following supply of goods or services or both,-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

6. on perusal of the above section, we observed that the following two condition is required to avail ITC to medical/health insurance.-

(i) outward taxable supply should be same category.

(ii) Inward supply should be an element of a taxable composite or mixed supply.

It is a fact that the applicant is a manufacturer of textile item and supply is also taxable items. We find that, neither applicant is a supplier related to health insurance service nor this service has an element of supply of textile. In view of the above the applicant cannot claim ITC of GST charged by the Medical/Health insurance company in respect of insurance done for employees, as provided under section 17(5)(b)(i) of the CGST Act, 2017

7. In view of the foregoing, we rule as under: -

ORDER

Q. Whether the applicant can claim input tax credit of GST charged by the Medical/ Health Insurance Company in respect of insurance done for employees?

Ans:- No.