

# TAX FLASH NEWS

4 February 2019



## Recovery of parent's health insurance expenses from an employee is not the supply of services – AAR, Maharashtra

### Background

Authority for Advance Ruling, Maharashtra<sup>1</sup> in case of Posco India Pune Processing Centre Pvt. Ltd. (the applicant) have recently held that since the applicant is not in the business of providing insurance services, the reimbursement of expenses from employees attributable to the health insurance of their respective parents is not a supply of services.

Further, the ruling also held that input tax credit (ITC) of the GST paid on hotel accommodation for providing residential accommodation of the Managing Director / General Manager shall not be available as the same is used for personal consumption.

### Facts of the case

POSCO – India Pune Processing Center Pvt. Ltd. (the applicant) is a South Korea based company which is primarily engaged in the distribution of steel coils. The applicant has a plant in Pune and in Hyderabad and also distribution centres in Pune, Hyderabad, and Bengaluru.

As per the POSCO group policy, key personnel (Managing Director and General Manager) are deputed to the Indian company. These key personnel are provided with perquisite in the nature of rent-free accommodation. The key personnel are provided accommodation in a hotel and the cost of the same is borne by the applicant.

Further, applicant provides mediclaim cover to its employees as well as their parents. Out of the total premium paid (including GST) for parents insurance, the applicant recovers 50 per cent of the same from the salary of the respective employee.

Basis the above facts, the applicant filed an application to seek a ruling on the following

- Whether the applicant would be eligible to claim ITC on the stay expenses incurred for its key personnel
- Whether recovery made towards parent health insurance expenses amount to supply of service

### AAR ruling

On the question of whether the applicant can avail ITC on the hotel stay expenses incurred for a stay of its key personnel, the AAR observed and held that –

The residential accommodation in the hotel is not towards any furtherance of business. The key personnel even if were provided with any other residential accommodation, would have still performed their duties for the applicant. Thus by virtue of restriction imposed by the provision of section 17(5)(g), it was held that the applicant would not be eligible to claim ITC on the same.

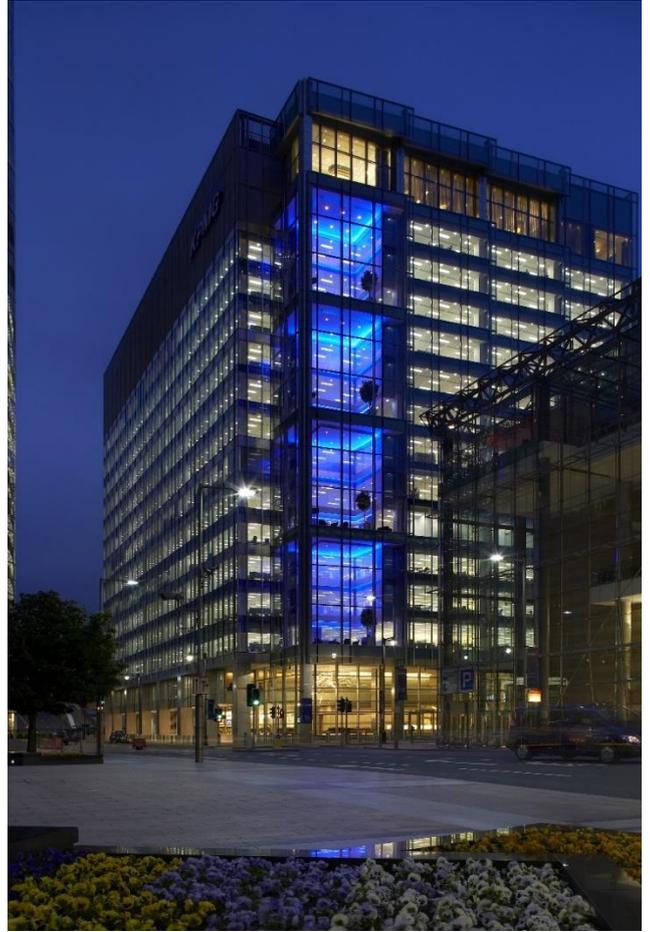
Further, with respect to recovery of parents medical insurance premium from the employee, the AAR observed and held that –

In light of the fact that it is the insurance company which provides the services of insurance, the activity of recovering 50 per cent of the premium amount cannot be treated as recovery made towards the supply of any services. Accordingly the same is not liable to GST, also credit cannot be claimed of GST paid on such medical insurance policy.

<sup>1</sup> Advance Ruling No. GST-ARA-36/2018-19/B-110 dated 7 September 2018

## Our comments

The ruling has gone beyond the general understanding that all recoveries from employees are subject to levy of GST. One of the interesting observations has been with respect to the fact that the levy can only be triggered if the employer is themselves in the line of business of which recoveries have been made from the employee. Mere reimbursement without actual supply cannot be covered within the definition of the scope of supply, though previously in case of Caltech Polymers Pvt. Ltd., AAR, Kerala<sup>2</sup> had ruled that recovery from employees for canteen services are subject to levy of GST.



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<sup>2</sup> Caltech Polymers Pvt. Ltd. order no. CT/531/18-CE dated 26 March 2018

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