

Case study series – GST Advance Ruling

Crux of the case:

Whether GST is applicable on parental insurance recovery and monetary compensation recovered for not serving notice period from employees?

Authority	Maharashtra Authority for Advance Ruling
Legal name of Applicant	M/s. Syngenta India Limited
Details of Application	GST-ARA, Application No. 25 Dated 09.09.2020

Facts of the case:

Case 1: Parental insurance recovery

1. Optional Parental insurance is being provided by the company to its employees through a third party insurance service provider.
2. The insurance service provider raises the invoice in the name of the applicant, the applicant pays the amount and makes subsequent recoveries from the employees at cost without any profit margin

Case 2: Notice pay recovery

3. There are also instances where the employees resign without serving the notice period, in respect of which an amount is deducted as compensation for breach of terms of the terms of the employment agreement.

Applicants View:

On parental insurance recovery

1. Providing parental insurance is not a business activity of the applicant. It is also not incidental or ancillary to the main business. The company is only a facilitator in the transaction between the employee and the third party insurance provider.

On notice pay recovery

1. The notice pay is not recovered by the applicant in lieu of or in return for any activity performed by the Applicant (employer). Therefore, it cannot be treated as consideration for the activity by the applicant.
2. 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 does not amount to consideration for tolerating an act to qualify as supply of service.

Departments view:

On parental insurance recovery

1. The department has agreed with the view of the client with regard to the parental insurance recovery.

On notice pay recovery

1. With regard to the notice pay recovery, it is to be regarded as a consideration for tolerating an act of the employee to not serve the notice period.
2. Service of tolerating an act is covered under clause 5 (e) to schedule II of CGST Act.
3. In this case, GST is applicable @ 18% under “Services not elsewhere classified”.

Discussion and finding:

On parental insurance recovery

1. The authority relied upon its past rulings and decided that GST is not applicable on parental insurance recovery.

On notice pay recovery.

2. In the present case, the employer is being compensated for the employee’s sudden exit. Merely because the employer is being compensated does not mean that any services has been provided by him or that he has tolerated any act of the employee for premature exit.
3. The employee opting to resign, has acted in accordance with the contract and that being the case, no question of forbearance or tolerance arise.
4. Further, the employee is free to tender his resignation anytime and is not subject to any acceptance or approval of the employer. Hence there is no activity nor any passive role played by the employer.
5. It also has to be noted that there is no consideration as per section 2(31)(b) flowing from an act of forbearance, as a question of consideration for forbearance would arise only in case of breach of contract. No breach of contract is being observed in this case.
6. Based on the above discussions, the authority held that GST is not applicable on the notice period recovery.

Order:

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

Answered in the negative

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

Answered in the negative

Key takeaways:

1. GST is not leviable on recoveries made from employees on account of transactions not related to or not forming part of the employer’s business.
7. Notice pay recovery should not be considered as consideration for a “service of tolerating an act”, in cases where there is no breach of contract.