

**ALLOWABILITY OF ITC ON GST PAID
ON GROUP MEDICAL INSURANCE, HEALTH
OR MEDICAL INSURANCE COVER FOR ALL
CATEGORIES OF EMPLOYEE ?**

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In this presentation, vexed issue as whether GST Paid on Medical/Health Insurance cover in respect of all employees (including employees drawing salary more than Rs.21,000/-) is allowable as ITC in view of the provisions of Section 17(5)(b)(i) of GST – in the light of the provisions of Section 16(1) GST Act. Under Section 38 ESI Act, it is obligatory to take insurance cover in respect of workmen (workmen mean an employee drawing salary upto Rs.21,000/- pm.). However, sometimes, corporates takes Group Insurance/Medical/Health Insurance coverage for all employees irrespective of their salary coverage/cap.

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2: In order to find answer to this question, one has to go through the provisions of Section 17(5) carefully. I find that Section 17(5)(ab) speaks of “services of general insurance”. The Sec. 17(5)(b)(i) reads as under:-

The Sec.17(5)

- (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 or 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): talks of “membership of a club, health and fitness center; and
- (iii): travel benefits extended to employees on vacation such as leave or home travel concession;

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 in being force;

3: The proviso clearly says where it is obligatory for an employer to provide the same to its employees under any law, the ITC would undoubtedly be available to the Registered Person. Though, the proviso is given below Sec.17(5)(b)(ii) and (iii), yet it shall have to be read along with Section 17(5)(b)(i), because Sec.17(5)(ii)& (iii) does not speak of any goods but only speaks of “services” and, therefore, proviso is clearly intended to cover the situation envisaged under Section 17(5)(b)(i).

4: We may have to examine the from stand point of “The Industrial Employment (Standing Orders) Act, 1946”, which makes it obligatory for employer of an industrial establishment where 100 or more workers are employed, to clearly define the conditions of employment, by way of standing orders/services rules and to make them known to the workmen employed. However in the N.C.T. of Delhi, the Act applies to an industrial establishment where 50 or more workmen are employed or were employed in the preceding 12 months. Under the provisions of this Act, any industrial establishment can provide better terms and conditions – than what is provided under the law, by amending the existing provisions. Sometimes the employer has provided for the benefit of “Health/Medical Insurance”, under their Standing Orders, to their employees. However, if not

already provided for earlier, the same can be done by amending the existing Standing Orders and law also permits amendment with retrospective effect. In that event, employer may provide for 1.1.2021 or may go backward – but the possibility of availment of ITC are bleak due to time issue. The amended standing orders will have to be certified by Certifying Officers under this Act.

5: The employer is required to prepare draft standing order, which he propose to adopt and submit the same to the Certifying Officers for certification – all Deputy Labour Commissioners are Certifying Officers. The employer is required to act in conformity with the certified standing orders in dealing with the day-to-day affairs of the workmen. The certified standing orders have the force of the law like any other enactment.

6: As per Section 13(2) of Act, the employer is liable to be punished if they acts in contravention of the provisions of Standing Orders. In the case of Glaxo Laboratories (I) Ltd. vs. PO, Labour Court, [MANU/SC/0247/1983 : (1984) 1 SCC 1], the Hon'ble Supreme Court has held that Standing Orders providing for punishment, should be strictly construed.

7: The whole issue can be seen from the touchstone of Workmen Compensation Act as well also. Section 2(n) of the Act reads as under:-

Section 2(n) of Workmen Compensation Act define Workmen.

Every **employee** (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employer's business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for **compensation under the Act.**

8: The Hon'ble Supreme Court in K Sivaraman Vs. P Sathishkumar in Civil Appeal No.9046 of 2019 (date of Decision 13.2.2020) has observed as under:-

Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs 4000 even where an employee was able to prove the payment of a monthly wage in excess of Rs 4,000. **The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether.**

9: Therefore, there is no monetary limit/cap for calling a employee as a workmen. In other words, compensation grantable under Section 3 of the Workmen Compensation Act, 1923, is grantable to an employee irrespective of salary cap.

10: The Hon'ble Supreme Court Jyoti Ademma Vs. Plant Engineer MANU/SC/3328/2006, has observed as under:-

"Under section 3(1), it has to be established that there was some casual connection between the death of the workman and his employment. If the employment is contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable."

11: Therefore, Section 3 read with 4 of Workmen Compensation Act, mandatorily requires payment of compensation to the employees, in the event of death or injury to the employee arising out of employment. This is a mandatory liability to pay compensation to the employee and there is absolutely no option – hence to over come this situation, the company takes insurance cover. This, in my view, is fully covered by the proviso below Section 17(5)(b)(ii)(iii) – the liability to pay is obligatory.

12: However, I may refer to some of the landmark judgments during pre-GST regime, where Cenvat Credit has been allowed though there

was no legal obligation and more particularly in respect of retired employees.

13: I may refer to the most celebrated judgment in the case of Karnataka High Court in CCE vs. Micro Labs Ltd. : MANU/KA/1086/2011, in relation to Group Insurance Policy – though not mandatory, yet allowed the Cenvat Credit of Service Tax paid.

The Division Bench held that insofar as Insurance coverage to the employees is concerned in the course of employment if the employees suffer injury or dies, there is a vicarious liability imposed on the employer to compensate the employee. If the employer employs its own transportation facility in order to cover the risk which also includes the risk of workers who are covered in that statutory establishment, he has to take the insurance policy with which the vehicle cannot go on the road.

Even for entering into the premises to meet the obligations under the Workmen's Compensation Act he has to obtain the Insurance Policy covering the risk of the employees. The Employee State Insurance Act takes care of the health of the employees also and casts an obligation on the employer to provide insurance services. Under these circumstances, this Group Insurance Health Policy though is also a welfare measure is an obligation which is cast under the Statute that the employer has to obey. Section 38 of the Employees State Insurance Act, 1948, mandates that subject to the provisions of the Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. May be the employees also have to contribute but the employer is under an obligation to take an Insurance policy and contribute his share. Therefore, the said Group Insurance Health Policy taken by the Assessee is a service which would constitute an activity relating to business which is specifically included in the input service definition.

14: I may refer to another judgment in the case of Chhatisgarh High Court in the case of Union of India vs. Raipur Rotocast Ltd.: MANU/CG/0477/2013, has held as under:-

The Facts : M/s. Raipur Rotocast Limited (the Assessee) had utilised the Cenvat credit of the Service Tax on the insurance premium in respect of a Transit Insurance of induction furnace and transformer, **Group Personal Accidental Policy and Group Health Guard Policy of Company staff for the period from March, 2005 to December, 2005.**

Question of Law:

"Whether respondent can avail Cenvat credit of Service Tax paid on insurance services for discharging their duty liability? If not, then are the respondent liable to reverse the Cenvat Credit wrongly availed in the present case?"

RATIO: In view of above, the Tribunal committed no illegality in dismissing the appeal of the Department. The appeal has no merit. It is dismissed.

15: The Hon'ble CESTAT in Reliance Industries Ltd. vs. Commr. of C. Ex. and S.T. : MANU/CM/0013/2015, has observed as under:-

It further appeared to the Revenue that the appellant has availed and utilized **Cenvat credit of Service Tax paid on premium paid to insurance companies for group insurance/insurance of their employees including retired employees/mediclaim under category of 'insurance auxiliary services-general insurance'.** Accordingly, it was proposed to disallow the Cenvat credit availed in respect of the insurance premium so paid and it appeared to the department that the premium paid by the appellant in respect of group insurance/insurance of their employees including retired employees/mediclaim is not covered under the definition of 'input services' and it has no direct nexus with the manufacture of the final products and the clearances and storage

of the final products. The appellant contested the show cause notice, and made submissions wherein, among others, they submitted that the premium paid to insurance companies was group insurance and mediclaim which is nothing but component of the wages. These are part of the costing of the final product in terms of CAS-4. As per CAS-4, all non-monetary benefits extended to factory employees are regarded either as direct wages and salaries or as works overhead or administrative overhead, related to production activity and form part of cost of manufacture of final product. Once the expenditure in dispute forms part of the final product, it has to be presumed that the expenses are incurred in relation to such services in relation to manufacture of final product, as has been observed by the Hon'ble Bombay High Court in the case of Coca Cola India Pvt. Ltd. v. CCE, Pune-III reported in MANU/MH/0784/2009 : 2009 (15) S.T.R. 657 (Bom.) : 2009 (242) E.L.T. 168 (Bom.)

RATIO:

Having considered the rival submissions, I agree with the ruling of the Hon'ble Karnataka High Court in the case of Millipore India Ltd. (supra), wherein, after examining the CAS-4 Standards, the Hon'ble High Court accepted that all factors have to be taken into consideration while fixing the cost of the final products. The Hon'ble High Court further observed that the definition of 'input services' is too broad. Further it is not disputed in the facts of the case that the premium so paid in the present appeal has formed part of the cost of excisable goods on which Excise Duty has been paid on removal. Therefore, the appellant is entitled to avail, Cenvat credit for the insurance premium paid in respect of group insurance/insurance of employees including retired employees/mediclaim which are covered under the definition of 'input services' and have a nexus. Thus the appeal is allowed with consequential benefits.

16: The CESTAT in Hindustan Coca Cola Beverages Pvt. Ltd. vs. CCE : MANU/CK/0095/2016, has observed as under:-

It is observed from the case laws relied upon by the appellant that Group Insurance Services has been held to be admissible as Cenvat Credit. Hon'ble Karnataka High Court in the case of CCE & ST, LTU, Bangalore v. Micro Labs Ltd. [MANU/KA/1086/2011 : 2011 (270) ELT 156 (Kar.)] also held that such credit on Group Insurance Services is admissible.

17: The DB of Hon'ble CESTAT in the case of Hindustan Zinc Ltd. vs. Commissioner of Central Excise, Jaipur (04.03.2014 - CESTAT - Delhi) : MANU/CE/0642/2014, has held as under:-

As regards, the Group Insurance of all Employees against sickness or accident, the same has been held as Cenvatable by the judgments of Hon'ble Karnataka High Court in the cases of Stanzen Toyotetsu India (P) Ltd. (supra), Micro Labs Ltd. and M/s. Millipore India Ltd. (supra).

18:: In view of the above discussions, in case Group Insurance/Health/Medical Insurance cover, is taken for all employees and the case is fully covered either under paras 4, 5 or 6 hereinabove, then there is no doubt that ITC would be available to the Registered Person.
