

GST Saga on Health Care Services- Scope of composite supply of health care services

Introduction

Good health and good sense are two of life's greatest blessings. The Indian Healthcare Industry is the largest producer for generics and now among of the major sectors with respect to revenue and to employment. The Pharma and Healthcare Industry has grown significantly and enjoys an important position in the global pharmaceuticals and medical field. As the population continues to grow, the need for better Healthcare Services is also growing and the expenditure on the same is increasing, so do revenues from taxes.

In the pre-GST regime, the health care services were not under the scope of levy of Service Tax. In the GST regime, the Government instead of giving full exemption to health care services, minimized the burden of tax by exempting certain health care services as a welfare measures for the citizen of the country.

Judicial Pronouncements

We bring you a capsule of the important judicial pronouncements under the GST regime related Health Care Services on various topics under the GST.

Whether wellness facilities provided by naturopathy center are exempt

Facts:

Nimba Nature Cure Village ("**Nimba**") is a unit of M/s. Oswal Industries Ltd. ("**the Applicant**") which is a Naturopathy Centers and offers physical, psychological and spiritual health overhaul with the help of power of nature. Further, the Applicant provide different types of wellness facilities at Nimba such as naturopathy, ayurveda, yoga and meditation, physiotherapy and special therapy. The packages offered by the Applicant from their website is strictly on a residence basis and the consideration is solely dependent on the type of room opted by the customer.

Issue:

Whether the supply is composite supply so as to get the benefit of exemption of health care services under Sl. No. 74 of **Notification No.12/2017-Central Tax (Rate) dated June 28, 2017** ("**Services Exemption Notification**")?

Held:

The AAR, Gujarat in **Re: M/S. Oswal Industries Ltd. [Advance Ruling Order No. GUJ/GAAR/R/25/2020, dated July 9, 2020]** held that, the supply of services provided by the Applicant is a composite supply wherein the principal supply is accommodation since the therapy can in no way be administered without accommodation. Further, there is no option available for the customer to avail the wellness package without opting for the accommodation. Therefore, it is classifiable under sub-heading 996311 under 'Room or unit accommodation services provided by Hotels, Inn, Guest House, Club and the like' and not under Sl. No. 74 of Services Exemption Notification which is applicable to services falling under the Heading 9993 i.e., health care services. Hence, the Applicant is not eligible for the exemption under Sl. No. 74 of Services Exemption Notification.

Our comments:

In our opinion, main supply must be seen for the purpose of determining the principal supply. In the above ruling, the main supply is that of wellness facilities/ therapies and not of accommodation. Further, the customers of the Applicant go to Nimba for wellness facilities/ therapies and not for the purpose of accommodation. Thus, the principal supply should have been of wellness facilities/ therapies only.

Medicines supplied to in-patients is ancillary to supply of exempted healthcare-care service

Facts:

M/s CMC Vellore Association ("**the Applicant**") has a multi-specialty tertiary care hospital providing health care services and categorized the patients as out-patients and in-patients for the administrative convenience. Medicines, drugs, stents, implants etc. are supplied through pharmacy to in-patients who are admitted into the hospital for the required treatment, under the prescription of the doctors which are incidental to the health care services rendered in the hospital. Further, the in-patients are provided with stay facilities, medicines, consumables, implants, dietary food and other surgeries/ procedures required for the treatment.

Issues:

Whether tax is liable to be paid on the medicines, drugs, stents, implants etc. administered to in-patients during the medical treatment or procedure?

Held:

The AAR, Andhra Pradesh in the matter of *M/S. CMC Vellore Association [AAR No. 03/AP/GST/2020 dated February 17, 2020]* has held that, the health care services provided by the Applicant are exempt under Sl. No. 74 of Services Exemption Notification and the supply of medicines and the consumables are integral part of the treatment extended to the in-patients by the hospital.

Hence, the services rendered by the Applicant is a composite supply as defined under Section 2(30) of Central Goods and Services Tax Act, 2017 (“CGST Act”), in which the principal supply is health care services, being predominant and the supply of medicines, drugs, implants, stents, and other consumables, come under ancillary supplies and accordingly tax liability has to be determined under Section 8 of the CGST Act, which is exempt under Sl. No. 74 of Services Exemption Notification.

Medicines, consumables, etc. supplied to in-patients, being naturally bundled, classifiable as composite ‘health-care’ service

Facts:

M/S. Shifa Hospitals (“**the Applicant**” or “**the Hospital**”) is a polyclinic providing health care services to both out-patients and in-patients. Presently, the Applicant do not have an in-house pharmacy and the medicines required to be administered for the in-patients are purchased by the patients from Shifa Pharmacy which is a separate entity. The Applicant presently do not charge anything for the medicines as the medicines prescribed are procured by the patients outside the Hospital. The Applicant intends to procure and store the medicines in addition to the consumables, implants, etc. in the name of the Hospital and supply the same to the in-patients and all such supplies would be included in patient’s bills. The doctors who treat the in-patients prescribe the medicines, and consumables and implants are used in their treatment and diagnostics, for which patients are charged when they are admitted to the hospital which provides services to the in patients.

Issue:

Whether the medicines, consumables and implants used in the course of providing health care services to in-patients for diagnosis or treatment would be considered as 'Composite Supply' and accordingly eligible for exemption under the category 'health care services'?

Held:

The AAR, Tamil Nadu in the matter of *M/S. Shifa Hospitals Order No. 42/AAR/2019, dated September 23, 2019* held that, the Hospital cannot provide such health services without the help of medicines to be taken during treatment, implants and consumables used during their stay in the hospital and the same only will complete the treatment be. Hence, supply of medicines, implants and consumables are natural bundled with the supply of health services, where the principal supply is health services, due to the reason that in-patients get admitted to the hospital instead of buying the medicines or consumables and using on themselves, therefore, the said supply is in the course of their treatment is a composite supply of health services. Hence, exempted from GST as per Sl. No. 74 of the Services Exemption Notification.

AAR: Medicines, surgical goods supplied to in-patients exempt as composite supply of health care services

Facts:

M/S. Baby Memorial Hospital Limited ("**the Applicant**") is a multi-specialty hospital engaged in providing health care service to patients, supply of medicines and other allied services. In order to provide health care services, the applicant is maintaining facilities; like full-fledged hospital with all infrastructure, pharmacy, clinical laboratory, x-ray and scanning facility, ambulance services, dietary services etc. and further undertakes in-patient and out-patient treatments.

Issues:

- Whether the Applicant is liable to pay GST on supply of medicines, drugs and other surgical goods from its pharmacy to in-patients or out-patients?
- Whether the Applicant is liable to pay GST on supply of incidental services as x-ray, Clinical laboratory etc. rendered as part of health care service?
- Whether the Applicant is liable to pay GST on supply of implants and artificial limbs made during course of treatment to patients?

Held:

AAR, Kerala in the matter of *M/S. Baby Memorial Hospital Limited [Advance Ruling No. KER/57/2019, dated September 5, 2019]* held that, the supply of medicines, drugs and other surgical goods from its pharmacy to in-patients and incidental services as x-ray, Clinical laboratory etc. are in the course of providing health care services which are indispensable and naturally bundled, would be considered as 'composite Supply' and eligible for exemption under the category 'health care services', whereas the same supply to out-patients as part of health care services is a taxable supply of goods and thereby GST is applicable. Further, held that, the supply of artificial body parts / devices which are implanted in the body essentially by means of a surgical procedure can be classified as a composite supply where the principal supply is of healthcare services. The nature / taxability of supply has to be determined on a case-to-case basis considering the facts and circumstances in case of artificial body parts/devices which are worn/attached/fitted/fastened to the body for which a surgical procedure may or may not be required. The supply of goods like wheelchairs, tricycles etc. to the patients cannot be considered as a composite supply and accordingly will be liable to GST as individual supply of goods.

Medicines supplied to out-patients not being 'composite' to health care service, taxable**Facts:**

Ernakulam Medical Centre Pvt. Ltd. ("**the Applicant**") is rendering medical services with professionals like doctors, nursing staff, lab technicians etc. Further, a pharmacy has been maintained for providing medicines to patients (in-patient and out-patient) who consult the medical officers on appointment. No medicine is supplied to any customer from outside without consulting the doctors in the hospital after taking admission as per the hospital card.

Issue:

Whether the supply of medicines and allied items to out-patients through the pharmacy of the hospital run by them attracts GST liability?

Held:

The AAAR, Kerala, in the matter of ***M/S. Ernakulam Medical Centre Pvt. Ltd. [Order No. AAR/03/2018, dated December 14, 2018]*** upheld the order passed by the AAR, Kerala [***Order No. KER/16/2018, dated September 19, 2018***] and held that supply of medicines and allied items like food as advised by doctor/nutritionist provided by hospital through pharmacy to in-patients shall be treated as composite supply of health care treatment under the GST regime and, therefore, cannot be taxed separately. But the supply of medicines and allied items provided by hospital through pharmacy to out-patients is taxable as the doctor's consultation and supply of medicines are not bundled together and it is the choice with out-patients to follow medical advice given by doctor or not and such patient cannot be coerced to follow medical advice given by doctor.

'Phytotherapy' is not 'health-care' services by clinical establishment

Facts:

M/S. OPTM Health Care Private Limited ("**the Applicant**"), is registered as a clinical establishment and providing a form of treatment called "Phytotherapy" to cure osteoarthritis and disorders of similar nature. According to the Applicant, they have invented the medicines that have been approved by the Drug Control Department under the category of 'Ayurvedic Medicine;' and the Applicant administers certain plant-based medications for treatment and the medicaments are not supplied on stand-alone basis but are ancillary to health-care services.

Issue:

Whether the service of Phytotherapy provided by the Applicant is exempted under Sl. No. 74 of the Services Exemption Notification as health care services?

Held:

The AAR, West Bengal in the matter of ***M/S. OPTM Health Care Private Limited [Order No. 46/WBAAR/2019-20, dated March 20, 2020]*** held that, the Applicant could not clarify or claim that its plant-based preparations are manufactured exclusively in accordance with the formulae described in any authoritative book of Ayurveda specified in the First Schedule of the Drugs and Cosmetics Act, 1940, nor it claims that the persons administering the plant-based preparations are 'authorised medical practitioners' in Ayurveda within the meaning of Para No. 2(k) of the Services Exemption Notification. Therefore, it cannot be accepted that the Applicant's claim that it is a clinical

Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase -I, Delhi - 110091

Email: bimaljain@a2ztaxcorp.com; Web: www.a2ztaxcorp.com; Tel: +91 11 4242 7056

establishment offering treatment in the recognised ayurvedic system of medicine. Thus, supplies made by the Applicant are not health care service by a clinical establishment. Hence, the Applicant is not exempt under Sl. No. 74 of the Services Exemption Notification.

Supply of telemedicine with medical kit containing pulse oximeter, glucometer, constitutes a 'mixed supply'

Facts:

M/s Source of Life Technologies (India) Private Limited ("**the Applicant**"), is engaged in supply of individual and bundled sale of Medical Kit containing medical equipment like pulse oximeter, scale to measure human weight, blood pressure machine etc. and telemedicine services (medical advice by doctor through online video conferencing).

Issue:

Whether the bundled supply of medical kit and telemedicine, is a 'composite supply' or a 'mixed supply'?

Held:

The AAR, Haryana in the matter of *M/s Source of Life Technologies (India) Private Limited [Advance Ruling No. HAR/HAAR/R/2018-19/16, dated October 9, 2018]* held that, it is very common phenomenon that a physician giving medical advice to a patient and therefore, it cannot be said that telemedicine and the medical kit are having conjunction with each other in the ordinary course of business. Therefore, supply of these two together, being independent from each other constitutes 'mixed supply' instead of 'composite supply' as per Section 2(74) of the CGST Act. Hence, liable to GST @18%, in terms of Section 8(b) of the CGST Act, which provides that a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Diagnosis, counselling, disease prevention using sophisticated tests by clinical establishment constitutes 'healthcare services'

Facts:

M/s Sayre Therapeutics Pvt. Ltd., (“**the Applicant**”) is a healthcare company dealing with oncology and immunology therapy, diagnostics related products and counselling etc. in collaboration with various research centers across the globe, wherein the medical team of the Applicant is involved in complete cycle of testing process and in consulting the counterparts to determine the particular test relevant to the particular patient. Further, it provides comprehensive counseling services to the patient/their families, collects the samples from the patients, transport the samples for the relevant test, collect the test result, discuss with the oncologist and clarify the queries, based on which the oncologist recommend the treatment options to the patient.

Issues:

Whether the services provided by the Applicant qualifies to be health care services?

Held:

The AAR, Karnataka in the matter of *M/s Sayre Therapeutics Pvt. Ltd., [Advance Ruling No. KAR ADRG 5/2018, dated March 21, 2018]* held that, the Applicant is involved in providing the services of diagnosis, pre & post counseling therapy and prevention of diseases by providing tests that are sophisticated and relevant. The medical team of the applicant is involved in the complete cycle and hence they facilitate the diagnosis process and therefore the services provided by the applicant qualify to be health care services. Hence, exempt under Sl. No. 74 of the Services Exemption Notification.

Diagnostic services to hospitals, being a “health-care service”, exempt from GST

Facts:

Matrix Imaging Solutions India Private Limited (“**the Applicant**”) is engaged in the business of providing health care services and cater to the Government Hospitals only on PPP Model for a limited contract period. As per the contract, the Applicant has been allotted contract of providing diagnostic services in the Government Hospitals through a tender selection process in their premises for the patients referred to by the Government Hospitals. The Applicant only scrutinizes whether the payment is done or not and once the payment is done by patients to the Government Hospitals as per their schedule of charges, the Applicant carry out the diagnostic tests on the patients.

Issue:

Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase –I, Delhi - 110091
Email: bimaljain@a2ztaxcorp.com; Web: www.a2ztaxcorp.com; Tel: +91 11 4242 7056

Whether the Applicant, being a health care service provider, is exempted from liability of GST?

Held:

The AAR, Karnataka, in the matter of ***Matrix Imaging Solutions India Private Limited [Advance Ruling No. KAR ADRG 105/2019, dated September 30, 2019]*** held that, the service provided by the Applicant is to the Government Hospital and not to the patients and the consideration is also payable by the Government Hospital to the Applicant. Therefore, the Government Hospital is the recipient of the services, where the Applicant is not managing the service establishment of the Government Hospital but providing the diagnostic services by way of diagnosis for illness, deformity-, abnormality or pregnancy. Hence, covered under 'health care services' and 'clinical establishment'. Thus, the diagnostic services provided by the Applicant to Government Hospitals are exempt under Sl. No. 74 of the Services Exemption Notification.

We have recently released the 6th Edition of our GST Book titled **"GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES"**, in a set of 3 Volumes. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!

This book can be ordered online at: <https://rb.gy/benrpb>

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.