

GST Saga on Health Care Services - Classification of various items used by Healthcare Industry

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.

Supply of Prepared Laboratory Reagents/ Pharmaceutical Reference Standards taxable at 12%

Facts:

M/s. Kaustubha Scientific Research Laboratory Private Ltd., ("**the Applicant**") is a science-based organization conceptualized to cater to the growing analytical and regulatory requirement of the pharmaceutical industries and to provide solutions to the new challenges in separations and purifications faced in the Pharmaceutical and Research Institutions worldwide. The Applicant intends to import Prepared Laboratory Reagents/ Pharmaceutical Reference Standards from various official pharmacopoeias like US Pharmacopoeia, European Pharmacopoeia, British Pharmacopoeia or any other suitable pharmacopoeia and to further supply them to pharmaceutical companies in India.

Issue:

Whether the Prepared Laboratory Reagents/ Pharmaceutical Reference Standards shall be covered under Sl. No. 80 of Schedule-II (i.e., all diagnostic kits and reagents) or Sl. No. 453 of Schedule-III (i.e., residuary entry) to **Notification No.1/2017-Integrated Tax (Rate) dated June 28, 2017 (“Goods Rate Notification”)**, attracting a levy of 12% and 18% respectively?

Held:

The AAR, Karnataka, in the matter of **M/S. Kaustubha Scientific Research Laboratory Private Ltd. [Advance Ruling No. KAR ADRG 24/2021, dated April 16, 2021]** held that, the Prepared Laboratory Reagents/ Pharmaceutical Reference Standards imported and supplied by the Applicant and classified under HSN 3822 00 90 under First Schedule of the Customs Tariff Act, 1975 (“CTA”) is covered under Sl. No. 80 of Schedule-II to Goods Rate Notification as “All diagnostic kits and reagents”, attracting a levy of Integrated Tax at the rate of 12%.

Micromanipulator classifiable under HSN 9011 as ‘microscope’, taxable at 18%

Facts:

M/S. Shivani Scientific Industries Private Limited (“**the Applicant**”) is engaged in the supply of medical equipment viz. ‘Micro-manipulator System’ which is ‘Intracytoplasmic Sperm Injection (ICSI) with ejaculated, epidymal or testicular spermatozoa used in Assisted Reproductive Technology Procedures’, a device which is used to physically interact with a sample under a microscope.

Issue:

Whether ‘Micro-manipulator system’ is classifiable under HSN 9018 or 9011, and what is the applicable rate of tax on the same?

Held:

The AAR, Gujarat, in the matter of **M/S. Shivani Scientific Industries Private Limited [Advance Ruling No. GUJ/GAAR/R/22/2020, dated July 2, 2020]** held that ‘Micro-manipulator System’ falls under the tariff heading 9011 of the First Schedule to the CTA as ‘Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection’, and are covered under Sl. No. 184 of

Schedule-IV of Goods Rate Notification upto November 14, 2017 and covered under Sl. No. 411F of Schedule-III of Goods Rate Notification November 15, 2017 onwards, on which the rate of GST applicable would be 28% upto November 14, 2017 and 18% GST w.e.f. November 15, 2017.

Ayurvedic-product used to ward off mosquitoes not ‘medicament’, but ‘repellant’, attracts 18% GST

Facts:

M/S. Shukla Ashar Impex Private Limited (“**the Applicant**”) is engaged in the manufacturing of ayurvedic mosquito repellent, made from all-natural plant extracts and does not contain DEET (N, N-Diethyl-meta-toluamide), with the brand named ‘Aayudh-Mosx’, used for prevention of the body from being infected by the bite of the mosquitos.

Issue:

Whether the product ‘Aayudh-Mosx’ classifiable under HSN 30049011 as ‘Medicaments’ or 38089191 as ‘Repellents for insects’?”

Held:

The AAR, Gujarat, in the matter of ***M/S. Shukla Ashar Impex Private Limited [Advance Ruling No. GUJ/GAAR/R/80/2020, dated September 17, 2020]*** held that, the product ‘Aayudh-Mosx’, is a mosquito repellent used on the skin toward off mosquitoes and, hence, same is classifiable under HSN 3808 91 91 of the First Schedule of the CTA and not as a ‘medicament’ under HSN 3004 and being a mosquito repellent, it attracts GST @18%, as per Sl. No. 87 of Schedule-III to the Goods Rate Notification.

Further held that, the product is not known in the market as an ‘Ayurvedic medicine’ and the same is also not ordinarily prescribed by a physician as a medicine for prevention of the body from being infected by the bite of the mosquitos. Therefore, the description under HSN 3808 91 91, i.e., “Repellents for insects such as flies, mosquito” is far more specific as compared to the description under the other heading under consideration, i.e., HSN 3004 90 99 which is “Other” (meaning medicaments other than all those explicitly specified in the other sub-headings of HSN 3004).

Medical instruments used to measure height of patients fall under CH 9018, not as 'measuring rods'

Facts:

M/S. Medi Waves Inc (“**the Applicant**”) is a manufacturer of Stadiometer, Infantometer & other hospital/medical equipments etc. Stadiometers are diagnostic medical equipments used to measure the height of the adult patient and Infantometers are diagnostic medical equipments used to measure the height of the infant patient in hospitals/medical centres and rural child care centres/anganwadis.

Issue:

Whether Stadiometer and Infantometer, being diagnostic medical equipments should be covered in 12% GST slab?

Held:

The AAR, Haryana in the matter of *M/S. Medi Waves Inc [Advance Ruling No. HAR/HAAR/R/2018-19/52, dated April 26, 2019]* held that Infantometer and Stadiometer are described as useful for research, clinical and hospital purpose and piece of medical equipment, and are used in routine medical examination and for clinical tests and experiments. Both Stadiometer and Infantometer are medical instrument used exclusively for clinical and medical experimental purposes and are diagnostic instruments and apparatus, not scale rods or divided scales of general nature. Hence, these are covered under HSN 9018 90 19 (other category) with rate of tax being 12% under Sl. No. 218 of Schedule II of the Goods Rate Notification (i.e., instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electromedical apparatus and sight-testing instruments)

Joint replacement implant liable to GST at 5%, not 12%

Facts:

Veena Chemicals (“**the Applicant**”), is a retail dealer of implants for handicapped patients inter alia, engaged in the distribution and trading of implants for Joint Replacement purchased by the Applicant, falling under HSN 90213100

Issue:

Whether the joint replacements products attract GST at the rate of 5% or 12%?

Held:

The AAR, Haryana in ***Re: Veena Chemicals Order No. CT/4683/2018-C3, dated May 29, 2018*** held that, joint replacements falls under HSN 90213100 and are covered under the Sl. No. 257 of Schedule I of the Goods Rate Notification (i.e., assistive devices, rehabilitation aids and other goods for disabled, specified in List (E(9) of List 3- instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement), therefore, the joint replacements would attract GST @ of 5% and not @12%.

'Cast Protector' used to keep wounds dry cannot be considered as a pharmaceutical product

Facts:

M/s Dynamic Techno Medicals ("**the Applicant**") is a manufacturer and supplier of medical devices including orthopaedic appliances, surgical dressings, silicone foot care products, disposables etc. Cast Protector is one among such products, which is a reusable waterproof plastic covering used to keep casts, bandages, burns, wounds, abrasions, dressings, ulcers etc. dry during bathing and showering.

Issue:

Whether Cast Protector falls under HSN 9021.10.00 as a fracture appliance?

Held:

The AAR, Kerala in the matter of ***M/S. Dynamic Techno Medicals Pvt. Ltd. [Advance Ruling No. KER/94/2020, dated May 20, 2020]*** has held that, the cast protector cannot be classified under the category of fracture appliances falling under HSN 9021 solely for the reason that it is used by persons to keep the casts dry while bathing. It can only be considered as a covering made of plastic, which can be used to keep the portion dry during bathing. Therefore, the product cannot be considered as a pharmaceutical product. It is a reusable waterproof plastic covering that keep the casts / wounds dry while coming to

contact with water. Hence, it comes under the classification HSN 3926 90 99 'Other articles of plastics and articles of other materials of headings 3901 to 3914 -Other'.

Lyophilizer, a machinery meant for manufacturing lifesaving drugs, taxable at 18% GST

Facts:

M/s. Lyophilization Systems India Private Limited (“**the Applicant**”) is a manufacturer of machinery in the name of Lyophilizers, a machinery is used/ meant for Drug & Pharmaceutical Industry for manufacture of vaccines which are life-saving drugs.

Issue:

What is the rate of tax applicable as on Lyophilizers machinery?

Held:

The AAR, Telangana in the matter of *M/s. Lyophilization Systems India Private Limited [TSAAR Order No. 5/2018, dated July 2, 2018]* held that goods Lyophilizers are classifiable under HSN 84198990 of the GST Tariff and as per Sl. No. 320 to Schedule-III of Goods Rate Notification (i.e., machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system), and shall be taxable at 18%.

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