

**APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA**  
**PROCEEDINGS OF THE APPELLATE AUTHORITY**  
**FOR ADVANCE RULING**  
**U/s.101 OF THE KERALA STATE / CENTRAL**  
**GOODS AND SERVICES TAX ACT, 2017.**

*Members present:*

- 1. Pullela Nageswara Rao IRS**  
**Chief Commissioner,**  
**Central Tax, Central Excise and Customs**
- 2. Rajan N.Khobragade IAS**

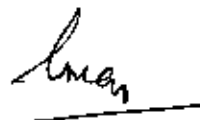
*Principal Secretary & Commissioner*  
*State Taxes, Kerala*

**Sub: GST Act, 2017-Appellate Authority for Advance Ruling**  
**U/s. 99 of the Kerala State/Central Goods and Services Tax Act,**  
**2017 -**

- (i) Whether the placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, for a specific period constitute supply;**
- (ii) Whether such movement of goods constitutes otherwise than by way of supply under GST - Orders issued- reg.**

**Read: 1. Order No.KER/15/2018 dated 26-09-2018 of the Authority for Advance Ruling U/s.98 of the GST Acts 2017.**  
**2. Appeal dated 29.10.2018 filed by M/s. Abbott Healthcare Private Limited.**





## ORDER No. AAR/04/2018

**Abbott Healthcare Private Limited, (hereinafter called 'the appellant')** is a company engaged in the sale of pharmaceutical products, diagnostic kits etc. The appellant has adopted the business model of placing their own medical instruments at the premises of unrelated hospitals or laboratories and supplied the pharmaceutical products, reagents, diagnostic kits etc., to be used in such equipments by executing an agreement.

### BRIEF FACTS OF THE CASE

2. The appellant had preferred an application for advance ruling on whether the placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, for a specific period constitute supply and whether such movement of goods constitutes otherwise than by way of supply under GST. During the advance ruling proceedings, the authorized representative had stated that the applicant had placed its own specified medical equipment at identified hospitals or laboratories by executing an agreement. They place the equipment in the premises of hospitals or laboratories without receiving any consideration. The employees of the hospitals or laboratories, where the equipment is installed have the full right to use the machine during the period of contract. But the title and ownership of the instrument continues to be with the applicant. The users of the instruments only possess a non-transferable right to use the said instruments during the tenure of agreement. These medical or diagnostic equipments are transferred from the warehouse located in Ahmedabad to Kerala against delivery challan.

3. The hospitals or laboratories at which the instruments are installed are bound to procure specified quantity of reagents, calibrators, disposals etc., from the applicant till the tenure of agreement. The price of these products is also specified in the agreement. These products are supplied against tax invoice. If the hospital fails to purchase specified minimum quantity of the products such as reagents, calibrators, disposals etc., the applicant is entitled to recover the same from the hospital, equal to the volume of deficit purchase. As the applicant has faced certain difficulties, while transporting the instrument against delivery challan, this clarification was sought.



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4. The Authority for Advance Ruling had deliberated on the issue raised and after hearing the authorized representative of the applicant elaborated as follows:

5. The applicant is providing two components to the respective hospitals or laboratories. One is the medical instrument and the other one is the products like reagents, calibrators, disposals etc., to be used in that machine. The terms and conditions of the agreement reveal that it is an indivisible contract for the supply of instrument and the products to be used in the instrument. The customer can avail the service provided by the applicant only, if both the instrument and reagent are available simultaneously. Further, if an instrument is to be placed in a hospital or laboratories, the customer has a monthly minimum purchase obligation to procure specified quantity of the products like reagents, calibrators, disposals etc., from the instrument provider.

6. The applicant supplies instrument to the premises of the customer free of cost. This instrument as such has no utility. It becomes usable only after using the products like reagents, calibrators, disposals etc. As far as a customer is concerned, service or functionality of the equipment is available only when both the components come together. Hence the supply of instrument and reagent is naturally bundled and becomes a composite supply. The medical instrument is taxable @18% GST vide HSN 9027 whereas the products like drugs or medicines including their salts and esters and diagnostic test kits are taxable @5% GST vide HSN 30. Supply of instrument is a onetime activity and supply of reagent is a continuous activity, till the termination of the agreement. This transaction being a composite supply, the applicable tax rate is the tax rate of instrument, which is the principal supply. Receipt of individual consideration for each component in a contract has no significance. Whatever the consideration derived out of such agreement is the supply receipt exigible to tax. This being a composite supply, applicable tax rate is @18% GST.

7. But the applicant established a business model, in such a way to split the supply by independent transactions. One transaction is the supply and installation of instrument owned by the applicant, at the premises of the customer on free of cost, till the tenure of contract. The 2<sup>nd</sup> transaction is supply of pre-defined minimum quantity of consumables like reagents, calibrators,

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disposals etc., on the pre- fixed prices. The applicant has designed such a *modus operandi* with the ultimate objective to avoid payment of tax at higher rate, which is applicable for composite supply. The Advance Ruling Authority held that this colourable business model of free supply of instrument accompanied with a monopoly purchase obligation to procure reagents, calibrators, disposals etc., is a contrivance to keep out of the ambit of composite supply.

8. Even though there is a right to use the instrument to the customer, during the tenure of the contract, no consideration is shown to be charged from the customer with the sole objective to avoid payment of tax at higher rate. If any visible rent is realized from the customer for the right to use the machine / instrument, the transaction is of supply of service covered under Heading 9973. The transfer of the right to use of any goods for any purpose, whether or not for a specified period for cash, deferred payment or other valuable consideration falls under Sl No. 17 (iii) Heading 9973 of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 and attract same rate of tax on supply of like goods involving transfer of title of goods; in the instant case @ 18%.

9. Once the instrument is installed in the premises of a hospital, the hospital reserves the full control and right to use the equipment by applying the products like reagents, calibrators, disposals etc., supplied by the applicant. Neither the instrument nor the products like reagents, calibrators, disposals etc., provided by the applicant has any independent use or existence. Hence it is an undisputed fact that, the supply of instrument and the products are conjoined and inter-dependent, which constitutes a composite supply. The objective of creating a colourable business frame never alters the characteristics of combination of goods or utilities to provide specified service. In order to obtain the required service of diagnosis, the hospital / labs require two unique components such as instrument and the products like reagents, calibrators, disposals etc., By the combination of these two components, the desired output is generated and hence these two components are inter-dependent and not separable. As both these components are naturally bundled, the impugned supply of instrument and reagents based on an agreement constitute composite supply. In this composite supply the principal supply is the instrument. Hence the entire receipts covered

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under this agreement attract the tax rate of principal supply i.e. the instrument placed in the hospital by the applicant.

10. The name of the agreement executed between the parties is styled as the reagent supply and instrument use agreement. The applicant provides instrument for the use of the customer subject to a condition that customer shall procure agreed quantity of products as per the scheduled time limit. The customer is also responsible for the cost of any repairs required in connection with any damage caused to the instrument due to negligence or misuse. The agreement between the parties, establishes the fact that the supply of two components are indispensable for the fulfillment of contract and getting required output. Hence the supply of two components based on the strength of agreement qualifies the concept of combination of two or more 'naturally bundled' supply and becomes composite supply.

11. The supply of instrument and the products to a hospital/ laboratory is for monetary consideration. Being a composite supply, it is the discretion between the parties to fix the point of exchange of consideration. While supplying the instrument the applicant deferred the consideration and merged it with the price of products like reagents, calibrators, disposals etc. As the applicant has the monopoly to control the minimum quantity of procurement of consumables/ products, the rent/cost of the equipment for the particular period is merged with the price of products. But there is no visible or explicit demarcation of rent/cost of the equipment and cost of products. This veil can be lifted once specified quantity of consumable is not procured by the recipient hospital. In such scenario there is clear provision in the agreement to the effect that, if the customer fails to meet its exclusive purchase obligation or its minimum purchase obligation, the applicant shall have the right to recover the deficit amount from the customer. From this, it is clear that the price realized from the customer includes subsumed rent of the equipment also. That is why if the specified quantity of consumable is not used within the stipulated time frame, the customer hospital has the liability to pay the deficit amount.

12. The Advance Ruling Authority concluded that the essential nature of the transaction as evidenced by the agreement is the right to use the machine /

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instrument and the supply of goods, namely; reagents etc., are only incidental or ancillary to the right to use of the machine / instrument. The supply of goods namely reagents etc., have no independent existence severed from the supply of right to use the machine / instrument. Though as per the contract, consideration is charged only in respect of supply of the reagents etc., the consideration charged for the supply of reagents etc., is inextricably linked with the supply of the right to use the machine / instrument as the transaction of supply of reagents have no legs to stand without being accompanied by the right to use the machine / instrument. Therefore, the different elements of the transaction as evidenced by the agreement; namely the provision of the right to use the machine / instrument without consideration and the supply of reagents etc., for consideration with a clause that a minimum amount / quantity of such reagents etc., shall be procured are integral to an overall supply namely, the right to use the machine instrument, which is the principal supply. Hence as per provisions of Section 8 of the GST Acts, 2017, the entire transaction is liable to GST under Sl No. 17 (iii) – Heading 9973 – Transfer of the right to use any goods for any purpose (whether for a specified period) for cash, deferred payment or other consideration.

13. Based on the above deliberations, the Advance Ruling Authority ruled vide paper read 1<sup>st</sup> above that;

*“The placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, against an agreement containing minimum purchase obligation of products like reagents, calibrators, disposals etc., for a specific period constitute composite supply, the principal supply being the transfer of right to use any goods for any purpose liable to GST under Sl No. 17 (iii) – Heading 9973 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.”*

14. Aggrieved by the said Advance ruling, the appellant preferred appeal vide paper read 2<sup>nd</sup> above, before the Appellate Authority for Advance Ruling and submitted that the ruling by the advance ruling authority is incorrect on facts as well as in law. The appellant was heard. During the personal hearing, the Appellant's legal representative Shri. Kalpesh Shah, Executive partner,

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M/s. Lakshmikumaran & Sridharan, Mumbai, reiterated the submissions made in the Appeal Memorandum and also made the following submissions;

***"We submit that the only question before the AAR was as under;***

***"Whether in the facts of the present case, the provision of specified medical instruments by the Appellant to unrelated parties like hospital(s), Lab (s), for uses without any consideration, constitutes a "supply" or whether it constitutes "movement of goods otherwise than by way of supply" as per provisions of the CGST / SGST Act, 2017?"***

***This question was raised under Section 7 of CGST Act, 2017. The AAR should have restricted himself to answer this question.***

***However, the AAR held that the transaction with the Hospital/ Laboratory was a composite supply and instrument was the subject of principal supply. Therefore, the AAR decided the issue which arises under Section 8 of the CGST Act.***

***Considering that there is only one appeal available in advance ruling, we value this opportunity very much and therefore it is prayed that the matter be remanded back.***

***Further, the AAR had not given us any opportunity to make any submission on the issue of composite supply. Therefore, there was a violation of natural justice as the issue was decided without hearing us. For this reason also the matter should be remanded back.***

***With respect to the submissions on merits, we would also like to summarize the agreements discussed during the hearing, as under:***

- 1. As part of its business activity, to execute the aforesaid placement of instruments, the Appellant inter-alia enters into Reagent Supply and Instrument Use Agreement ("the Agreement") with various hospitals, labs etc.,***





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- 2. Under the said Agreement, specified medical instruments are provided by the Appellant to the unrelated hospitals, labs etc., for their uses for a specified period without any consideration. The instruments are placed at the unrelated Hospital/ Lab's premises for uses by them. The ownership in the instruments continues to be with the Appellant only and all rights, title and interest in the instruments are owned and vested with the Appellant, all the time during the period of uses.**
- 3. In summary, the instruments are provided to the unrelated hospitals, labs without any consideration under a delivery challan, whereas, the specified products are supplied for a monetary consideration under Tax invoice on which GST is duly paid.**

**We pray that the honorable members refer the grounds taken in the appeal and additional submissions. Our submission that supply is without consideration for GST purposes and therefore, there is no supply. In this regard, we place our reliance on the decision of Hon'ble Supreme Court in *Dev Das Gopal Krishnan vs. State of Punjab* (referred to at Para A.21 of the additional submissions).**

**The same business practice was prevailing in the pre-GST regime i.e. VAT regime as well as continued on as is basis in GST regime also. We have brought on record the copy of the agreements, our invoice on distributors and distributor invoice on the Hospital / Laboratories. We also rely on the order of Intelligence officer with respect to instrument supplied on 04.03.2016. Thus, there was no change in the business practice and hence the allegation of establishing a business model to avoid any incidence of tax does not arise at all in any manner. Hence, such an allegation of establishing colorable device is completely incorrect."**

**DISCUSSION AND FINDINGS**

- 15. We have gone through the entire records in the instant case and also heard the authorized representative of M/s. Abbott Healthcare Pvt. Ltd in the matter.**
- 16. The issues to be decided in this appeal are as follows;**



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- (i) Whether the Advance Ruling Authority had gone beyond the questions raised by M/s. Abbott Healthcare Pvt. Ltd.?
- (ii) If the original authority had gone beyond the questions raised by M/s. Abbott Healthcare Pvt. Ltd., should the issue be remanded back to the said authority?
- (iii) If the original authority had passed a proper order in the first instance, is there sufficient new material before this appellate authority to set aside the original order?

17. On consideration of the first issue, the following facts emerged;

- a) M/s. Abbott Laboratories had sought an advance ruling on two questions;
  - (i) whether the placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, for a specific period constitute supply?
  - (ii) whether such movement of goods constitutes otherwise than by way of supply under GST?
- b) The Advance Ruling Authority in the ruling portion, *inter alia*, stated that; ***"the placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, against an agreement containing minimum purchase obligation of products like reagents, calibrators, disposals etc., for a specific period constitute composite supply.*** On perusal of the advance ruling order, it reveals that the original authority has discussed the matter in detail before arriving at the said conclusion, where it is held that the placement of goods in the hospitals, labs etc., as in the instant case is indeed a supply and a composite supply to be specific. This categorical clarification has answered the first question raised by M/s. Abbott Healthcare Pvt. Ltd. in the advance ruling application.

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- c) In light of the categorical ruling as mentioned supra with respect to the nature of the supply in the instant case, the second question raised by M/s. Abbott Healthcare Pvt. Ltd., before the original authority does not have any relevance as the matter with respect to the movement and subsequent placement of goods, as envisaged in the instant case, has already been elaborated and held to be a taxable supply by the original authority.

**18.** In light of the discussion and findings in Para 17 above, the second issue to be decided upon, and as outlined in Para 16 supra, does not have any relevance as it is evident that the original authority has ruled appropriately on the questions raised by M/s. Abbott Healthcare Pvt. Ltd.

**19.** With regards to the last issue, wherein it has to be considered as to whether any new arguments or facts have been brought on record by the Appellant, during the personal hearing, which would require the modification of the Advance Ruling Order of the original authority in the instant case. The submission on merits, including the concomitant facts, made during the Personal Hearing and presented as a summary of the agreements entered into by the relevant parties have already been discussed in detail by the original authority and we do not find any reason to modify the Order.

**20.** In the Appeal Memorandum, and during the personal hearing the appellant's representative has placed reliance on the decision of the Hon'ble Supreme Court in the case of Devi Das Gopal Krishnan vs. State of Punjab. However, a thorough perusal of the facts of the said case, make it evident that it is not pari-materia, either on facts or on law, with the matter under consideration of this authority. In brief, the appellant has failed to provide any fresh cogent arguments or new evidence to further their case to modify the ruling of the advance ruling authority in the instant case. We are of the opinion that the ruling of the original authority that the placement of the specified medical instruments in the instant case constitutes a composite supply is legally correct and proper.

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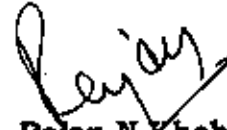
**Order No. AAR/04/2018 dated: 14.12.2018**

We hereby uphold the original order as legally correct and proper and rule that the placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, against an agreement containing minimum purchase obligation of products like reagents, calibrators, disposals etc., for a specific period constitute composite supply, the principal supply being the transfer of right to use any goods for any purpose is liable to GST under Sl. No. 17 (iii)-Heading 9973 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

Therefore the appeal is disallowed.



**Pullela Nageswara Rao, IRS  
Chief Commissioner,  
Central Tax, Central Excise & Customs**



**Rajan.N.Khobragade, IAS  
Principal Secretary and Commissioner,  
State Goods & Service Tax Dept.,  
Kerala.**

**To,**

**M/s. Abbott Healthcare Private limited,  
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