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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. Pallela 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- Whether the Supply of Medicines and Allied Items to the out-patients through the Pharmacy of the Hospital run by the applicant attracts liability under GST - Orders issued- Reg.

Read: 1. Order No.KER/16/2018 dated 19.09.2018 of the Authority for Advance Ruling U/s.98 of the GST Act, 2017.

2. Appeal dated 22.10.2018 filed by M/s. Ernakulam Medical Centre Private Limited.

M/s. Ernakulam Medical Centre Private Ltd (hereinafter called the appellant) runs a hospital, which is rendering medical services with professionals like doctors, nursing staff, lab technicians, etc. In the GST scenario, health care services by a clinical establishment, an authorized medical practitioner or para-medics classified under SAC 9993 has been exempted vide Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

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BRIEF FACTS OF THE CASE

2. The appellant had preferred an application for advance ruling on whether the supply of medicines and allied items through the pharmacy of the hospital run by them attracts liability under GST. During the advance ruling proceedings, the authorized representative of the applicant had stated that the medicines and surgical items supplied through the pharmacy to the patients under medical prescription of doctors is entitled to exemption, being health care services. No medicines are sold to customers, who do not consult doctors either as inpatient or as outpatient. The medicine supplied through the pharmacy is incidental to the health services rendered in the hospital. The pharmacy is meant exclusively for dispensing medicine and consumables to the inpatients or outpatients. No medicines or allied items are sold to outsiders, who come with the prescription from outside doctors. Medicine sale is restricted only to the patients, who take registration in the hospital. Under pre-GST period there were several decisions pertaining to the point that the supply of medicines, surgical items, x-ray etc., to the patients in the course of treatment by hospital cannot be said to be sale.

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

3.1. Health care services provided by a clinical establishment or an authorized medical practitioner or para medics are exempted vide Sl.No.74 of Notification No.12/2017-CT-(Rate) dated 28.06.2017. The word "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

3.2. Pharmacy is an outlet to dispense medicines or allied items based on prescription. Patients are only admitted to a hospital when they are extremely ill or have severe physical trauma. As far as an inpatient is concerned, hospital is expected to provide lodging, care, medicine and food as part of treatment under

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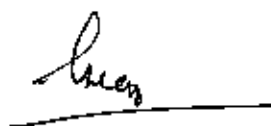
supervision till discharge from the hospital. Inpatients receive medical facility as per the scheduled procedure and have strict restriction to ensure quantity / quality of items for consumption. Hence medicine or allied goods supplied to inpatient are indispensable items and it is a composite supply to facilitate health care services and is not taxable.

3.3. Whereas in the case of an outpatient, the hospital only gives a prescription, which is advisory in nature. The patient has absolute freedom to follow the prescription or not to follow. Similarly, there is freedom to procure the medicines or allied items prescribed, either from the pharmacy run by the hospital or from medicine dispensing outlets. Hospital reserves no control over the patient's continuous treatment. As far as an outpatient is concerned, there is no difference with regard to procurement of medicine either from the dispensing outlet within the hospital or from outside the hospital. In both the places, medicines are dispensed based on prescription. Hence, there is no privilege for the hospitals that are dispensing medicine to outpatients. Therefore, pharmacy run by hospital dispensing medicine to outpatient or by standers or others can be treated as individual supply of medicine and not covered under the ambit of health care services. Hence such supply of medicine and allied goods are taxable.

4. The Advance ruling authority also stated that the clarifications issued based on the approval of 25th GST Council Meeting held on 18.01.2018 F.No.354/17/2018-TRU Dt.12-02-2018, has clarified that food supplied to the inpatients as advised by the doctor/nutritionist is a part of composite supply of health care and not separately taxable. Other supplies of food by hospital to patients not admitted are taxable. The same principle is also applicable in the case of dispensing of medicine.

5. Based on the above deliberations, the Advance Ruling Authority ruled vide order read 1st above that;

- i) *The supply of medicines and allied items provided by the hospital through the pharmacy to the in-patients is part of composite supply of health care treatment and hence not separately taxable.*



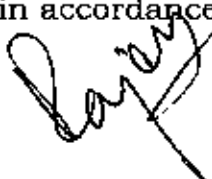
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- ii) *The supply of medicines and allied items provided by the hospital through the pharmacy to the out-patients is taxable.*

6. Aggrieved by the said Advance ruling, the appellant preferred appeal vide paper read 2nd above, before the Appellate Authority for Advance Ruling. The appellant has stated that the ruling by the Advance ruling Authority is opposed to law, facts, circumstances and the legislative intent behind the exemption granted vide Notification No. 12/2017-CT(Rate) dated 28.06.2017 (Sl. No. 74).

GROUND OF APPEAL

7. The authorized representative of the appellant has stated that the Authority for Advance Ruling has erred in ruling that the supply of medicines and allied items by the Hospital through the pharmacy to the outpatients is taxable. He further contented that Advance Ruling Authority ought not to have relied on the clarification issued based on the decisions of the 25th GST Council meeting held on 18.01.2018 to the effect that "*supplies of food by hospital to patients not admitted or their attendants or visitor are taxable*". The authority missed to note that the supplies of medicines to outpatients under the prescription of the medical officers of the hospital cannot be equated with supplies of food by hospital to patients or their attendants. Outpatients may purchase food from the canteens or other food outlets at their will and pleasure and such supplies will not partake of any service provided by the hospital. Unlike supply of food to outpatients, sale of medicines and other items are inextricably connected with the health service rendered by the hospital. The Pharmacy attached to the hospital is for supplying medicines only to the patients, who seek medical assistance from the doctors of the hospital under valid prescription. Patients visit the hospital with the basic intention of getting total medical care and not to purchase medicines from the pharmacy. Admission of the patient as inpatient is mainly based on the nature of the ailment. Subject to the nature of the disease and availability of bed facilities and rooms, the patient may or may not be admitted. In the case of patients not admitted, medicine will be provided as per the advice of the medical officers. Such patients will be undergoing treatment in accordance with the medical advice of the doctors. The observations

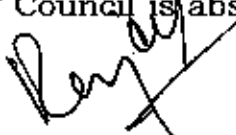


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of the Authority that "prescription given to outpatients is only advisory in nature, they have freedom to purchase medicines from the pharmacy of the hospital or other outlets and the hospital reserves no control over the continuous treatment of such patients" etc., are quite unfounded or irrelevant in excluding the supplies from the exempted services. Pertinently medicines are inevitable for medical treatment and the same becomes part of the health care services irrespective of the supply to inpatients or outpatients. The exemption notification contemplate that the entire health care services provided by hospitals are exempt. The only exclusion is of food supplied to the outpatients and bystanders and visitors of the canteens run by the hospital, which is not related to the healthcare given to the patients. The notification having not restricted health care services rendered to outpatients, the interpretation put upon the same by the Advance Ruling Authority militates against the legislative intent. The action of the authority in treating medicines supplied to outpatients on the same pedestal as food supplied from the canteen or restaurant run by the hospital is quite erroneous. The Authority failed to note that the appellant never sells medicines from the pharmacy to customers at large and medicines are supplied only to the patients, who avail the service of the medical officers on due consultation.

DISCUSSIONS AND FINDINGS

8. The Appellate Authority heard the authorized representative of the appellant. During the personal hearing, the authorized representative reiterated the contentions raised in the grounds of appeal. Further, he produced the case sheets and invoices raised on inpatients and outpatients, who underwent treatment in the hospital. He further deposed that the pharmacy has been maintained for providing medicines to patients (inpatient and outpatient) who consult the medical officers on appointment. No medicine can be supplied to any customer from outside without consulting the doctors in the hospital after taking admission as per hospital card issued. Often in the case of inpatients, after discharge from the hospital also, periodical consultation of doctors and supply of medicines under their prescription is made. The findings of the authority for advance ruling placing reliance on the clarification dated 18.01.2018 issued by the 25th GST Council is absolutely illegal. The above clarification has specifically



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exempted the entire amount of hospital charges realized for health care services without segregating inpatients or outpatients. However, Para 5(3) of the above clarification excluded other supplies of food by a hospital to patients (not admitted) or their attendants or the visitors from the purview of exemption. This exclusion cannot be relied upon as grounds for holding that medicine supplies to outpatients are not eligible for exemption. The clarification also does not differentiate between inpatients or out patients. The clarification to the said extent is against the legislative intention for affording full exemption to health services rendered by hospital without discriminating between inpatients and outpatients. Based on the contentions raised, it was prayed that the ruling of the Advance Ruling Authority may be modified by ruling that the supply of medicines and allied items to the outpatients through the pharmacy attached to the hospital run by the Appellant is a part of healthcare service exempted under the notification.

9. The contentions raised by the appellant have been examined in detail. The aspect that needs to be examined in this case is whether the supply of medicines and allied items to the outpatients through the pharmacy attached to the hospital is a part of healthcare service and hence exempted from liability under GST.

10. The authorized representative at the time of the Personal hearing has submitted the case sheets and invoices raised to inpatients and outpatients who have undergone treatment at the hospital. On analyzing the case sheet and invoices raised in case of an inpatient, it can be seen that during the period of admission in the hospital, the patient is under continuous monitoring of the doctors and nursing staff and administration and dosage of medication is all under the control of the doctor and the nursing staff. The entire treatment protocol is documented and recorded. The invoice/bill raised for the treatment as an inpatient is a single bill charging for all the facilities/ services utilized for the treatment in the hospital including room rent, nursing care charges, laboratory, consumables, medicines, equipment charges, doctor's fee, etc. Thus, it is clear that in case of an inpatient, the hospital has provided a bundle of supplies which is classifiable under health care services.

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11. The authorized representative has deposed that often in the case of inpatients after discharge from the hospital also, periodical consultation of doctors and supply of medicines under their prescription is made. In such instances, whether the inpatient after discharge from the hospital comes back for periodical follow up consultation is at his own discretion, which is outside the control of the hospital. The hospital in no way can insist that the medicines should be purchased from the pharmacy run by the hospital. Further, on scrutiny of the invoice submitted along with the case sheet of an inpatient, who has undergone further periodical consultation, it can be seen that even though the invoice is named as "OP SERVICES-CASH", the invoice is raised only for supply of medicines and no consultation charges are seen raised in the invoice. From this it is evident that there is no bundling of supplies but clearly differentiable supplies one of which is supply of medicines, which is a taxable supply under GST.

12. Further, on analysis of the case sheet and the invoices raised in respect of an outpatient, it can be seen that even though the invoice is named as "OP SERVICES-CASH", the invoice is raised only for supply of medicines and no consultation charges are seen raised in the invoice. Thus, in case of outpatient, the doctor's consultation and supply of medicines are not bundled together.

13. The patients visit the hospital with the basic intention of getting treatment for their ailment. Based on the severity of ailment and need for immediate or constant medical monitoring and care, the patient is admitted as inpatient.

14. In case of outpatients, it is the choice of the patient whether to follow the medical advice given by the doctor or not. Neither the hospital nor the consulting doctors can coerce the patient to follow the medical advice given by the doctor. Thus, in certainty, it can be established that the medical care other than the doctor's consultation is outside the control of the hospital. Neither the consulting doctor nor the hospital has any control on the patient's medical care. The doctor prescribes medication and the charges for doctor's consultation is billed, separately. Further, it is up to the outpatient to decide whether to buy the medicines from the hospital run pharmacy or from outside. It is not compulsory

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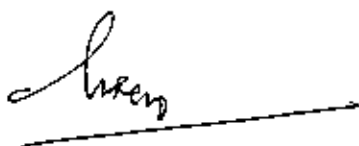
for the outpatients to buy medicines from the hospital run pharmacy and it is not mandated by the hospital. As such, in case of outpatients, the health care service provided by the hospital is restricted to the consultation of the doctor. These are not naturally bundled together to be considered as composite supply. Even if the outpatients decide to buy the medicines from the pharmacy run by the hospital, the charges for supply of medicines is billed separately and cannot be considered as composite supply to extend the exemption and hence supply of medicines and allied items to outpatients is liable to GST being a taxable supply.

15. In view of the above discussions, this Appellate Authority for Advance ruling does not find any reason to modify the decision of the Authority for Advance Ruling, issued vide order read 1st above.

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The supply of medicines and allied items to the outpatients through the pharmacy attached to the hospital run by the appellant is taxable under GST.

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. Ernakulam Medical Centre Pvt. Ltd.,
N.H.Byepass, Palarivattom,
Kochi- 682028.**