

	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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**BEFORE THE AUTHORITY OF:** Shri. Sivaprasad.S, IRS &  
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	M/s. ST. THOMAS HOSPITAL
GSTIN	32AAATS6887K2ZX
Address	Chethipuzha, Kurisummoodu, Changanacherry, Kottayam – 686104.
Advance Ruling sought for	<p>i) Whether the medicines, surgical items, implants, stents and other consumables used in the course of providing health care services to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures would be considered as “Composite Supply” of health care services under GST and consequently, can exemption under Notification No.12/2017 read with Sec.8(a) of GST be claimed?</p> <p>ii) Whether the supply of food to all the inpatients would be considered as “Composite Supply” of health care services under GST and consequently, can exemption under Notification No.12/2017 read with Sec. 8(a) of GST be claimed?</p> <p>iii) Whether, for the availment of ITC on common purchase of medicines and surgical items which are ultimately supplied on actual basis to inpatients and outpatients, the following formulae is correct: <i>GST paid on such common purchase of medicines in the month of April x Turnover of taxable outpatient medicine supply in the month of April / Total of turnover of outpatients medicine supply + turnover of inpatient medicine supply for the month of April.</i></p>
Date of Personal Hearing	22-12-2020
Authorized Representative	Tony .M.P, Chartered Accountant

**ADVANCE RULING No. KER/108/2021 dated 26-05-2021**

M/s. ST. Thomas Hospital (**hereinafter referred to as the applicant**) is a healthcare project managed by Catholic Archdiocese of Changanassery and is a Charitable Trust registered under Section 12A of Income Tax Act, 1961. The applicant is engaged in provision of Health Care Services to both inpatients and out patients.

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

**3. BRIEF FACTS OF THE CASE:**

3.1. The applicant has a multi-speciality hospital providing health care services with professionals like doctors, nursing staff, lab technicians, etc. Medicines, surgical items, implants, stents and other consumables etc. are supplied through pharmacy to in-patients under the prescription of the doctors which are incidental to the health care services rendered in the hospital. The medicines and surgical items are taken from the inpatient pharmacy by the nursing staff to the bedside of the inpatients and managed by the nursing staff themselves. The inpatients are provided with stay facilities, medicines, consumables, implants, dietary food and other surgeries / procedures required for the treatment. The Central store of the hospital procures stocks of medicines, implants, consumables etc from various suppliers and distribute to its outlets such as inpatient pharmacy, operation theatre pharmacy and outpatient pharmacy based on the indent issued. The inpatient pharmacy and operation theatre pharmacy supplies medicines, implants and consumables only to inpatients, whereas the outpatient

pharmacy attached to the hospital entertain the medical prescription of outpatients. Applicant raise an invoice on the inpatients at the time of discharge in which the charges for various items like, room rent, lab and diagnostic services, surgery, doctor's consultation, nursing charge, diet charges, medicines, implants and other surgical items are included. Along with the rendering of healthcare services to inpatients, they also supply food to them. There are two categories of inpatients-while the food to be consumed by some of the inpatients are under the direction / supervision of the dietician, some other inpatients are not under any specific direction or supervision by the dieticians but only under general direction of doctors.

3.2. The applicant purchases medicines and surgical items and supply them to both inpatients and outpatients. The purchase invoices are common in this case, that means the medicines purchased through a single purchase invoice is used for both inpatients and outpatients. It is not necessary that the purchase in a month will be supplied to the patients in the same month. At the time of purchase of the medicines, applicant is not aware of whether it will be used for inpatients or outpatients or how much percentage of such invoice will be used for inpatients and outpatients. It is also relevant to note that at the time of making common purchase of such medicines, applicant is not sure of how these medicines will be ultimately used, but at the time of actual supply to the patients, applicant is able to know how much of such common purchase of medicines are actually supplied to inpatients and outpatients. In that sense, such purchases which are in the nature of common at the time of purchase but at the time of actual supply it is not in the nature of common. In the case of such common purchase of medicines and surgical items which are ultimately supplied on actual basis, applicant is availing input tax credit on such invoices proportionately in a month.

4. Accordingly, the applicant sought advance ruling on the following;

1. Whether the medicines, surgical items, implants, stents and other consumables used in the course of providing health care services to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures

would be considered as "Composite Supply" of health care services under GST and consequently can exemption under Notification No.12/2017 read with Section 8(a) of GST be claimed?

2. Whether the supply of food to all the inpatients would be considered as "Composite Supply" of health care services under GST and consequently can exemption under Notification No.12/2017 read with Section 8(a) of GST be claimed?

3. Whether, for the availment of ITC on common purchase of medicines and surgical items which are ultimately supplied on actual basis to inpatients and outpatients, the following formulae is correct:

GST paid on such common purchase of medicines in the month of April	X	Turnover of taxable outpatient medicine supply in the month of April
		Total turnover of outpatient medicines supply + turnover of inpatient medicine supply for the month of April

**5. CONTENTIONS OF THE APPLICANT:**

5.1. Healthcare Services are exempted from GST as per Sl.No.74 of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017. The medicines, consumables and implants used in the course of providing healthcare services to the patients admitted for diagnosis or treatment in the hospital or clinical establishment is naturally bundled in the ordinary course of business. The patients are expected to receive healthcare services that includes receiving the appropriate medicine, relevant consumables, or implants required to make sure that appropriate diagnosis or the best possible treatment of the health issues are conducted. If there is no supply of medicines, consumables or implants, it would be difficult to render the health care service which will ultimately have an impact on the survival of the patients. The healthcare service cannot be provided without the drugs / consumables / stents. This being a composite supply the principal supply is predominant which is health

care and therefore the same is to be considered for taxability under GST. The ancillary supplies such as room rent and dietary food provided to inpatients also shall be exempt and beyond the ambit of taxation. They rely on the definition of health care services in Para 2 (zg); the definition of the term "clinical establishment" in Para 2(s) of the Notification No.12/2017 Central Tax (Rate) dated 28.06.2017; the definition of composite supply under Section 2(30) and tax liability on composite supply as per Section 8(a) of the CGST Act and the explanation to the Scheme of Classification of Services under SAC 9993 - Human health and Social Care services.

5.2. As per explanatory notes "inpatient services" means services provided by hospitals to inpatients under the direction of medical doctors aimed at curing, restoring and / or maintaining the health of a patient and the service comprises of medical, pharmaceutical and paramedical services, rehabilitation services, nursing services and laboratory and technical services. The complete gamut of activities required for well-being of a patient and provided by a hospital under the direction of medical doctors is a composite supply of service and is covered under 'Inpatient services' classifiable under SAC 999311. From a joint reading of the explanatory notes pertaining to inpatient services and the exemption stated above, it is evident that the exemption is applicable to a clinical establishment, when services by way of diagnosis or treatment or care for illness, etc are undertaken by such establishment under the directions of a medical doctor. Further the CBIC in Circular No.32/06/2018 - GST dated 12.02.2018 clarified that food supplied to the inpatients as advised by the doctor / nutritionist is a part of composite supply of healthcare and not separately taxable. The Kerala Authority for Advance Ruling in Order No. KER/16/2018 dated 19.09.2018 in the case of M/s. Ernakulam Medical Centre (P) Ltd ruled that the supply of medicines and allied items provided by the pharmacy to the inpatients is part of composite treatment and hence not separately taxable. The above ruling was reiterated by the Kerala Appellate Authority for Advance Ruling in its Order No. AAR/03/2018 dated 14.12.2018.

## **6. CONTENTIONS OF THE JURISDICTIONAL OFFICER:**

6.1. As per Sl No.74 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 health care service has been exempted from payment of GST. The healthcare services will be the predominant element of this composite supply whereas medicines, surgical items, implants, stents and other consumables used in the course of providing such health care services to the inpatients are ancillary to it and does not in itself become principal supply. The tax liability on a composite supply shall be the rate of tax applicable on principal supply. In the case of health care, the principal supply of health care services is exempted from payment of tax and hence the supplies of other items ancillary to the principal supply of health care services are also exempt from payment of tax. The decision of the various advance ruling authorities in the following cases confirms this view.

1. Advance Ruling Order No.KER/16/2018 dated 19.09.2018 in the case of M/s. Ernakulam Medical Centre Pvt. Ltd. which was upheld by Order No.AAR/03/2018 dated 14.12.2018 of the Appellate Authority for Advance Ruling, Kerala.
2. Advance Ruling Order No.KER/47/2019 dated 12.04.2019 in the case of M/s. Kindorama Health Care Pvt. Ltd
3. Advance Ruling Order No.KER/57/2019 dated 05.09.2019 in the case of M/s. Baby Memorial Hospital Ltd.

6.2. The CBIC in Circular No. 32/06/2018 - GST dated 12.02.2018 clarified that food supplied to the inpatients as advised by the doctor / nutritionists is a part of composite supply of healthcare and not separately taxable.

6.3. The applicant is eligible to avail ITC on the taxable outward supply made by them i.e., medicines and surgical items if any supplied to outpatients. For availing the ITC, the tax payer has adopted the formula of taking proportionate credit by dividing turnover of the taxable supply of medicine in the month by total turnover supply of medicines in the month [i.e., supply to inpatients (non-taxable) + supply to outpatients (taxable) multiplied by total GST paid on the common purchase of medicines during the month]. The formula adopted by the tax payer has no legal backing as per the CGST Act and the rules made

there under. The apportionment of ITC credit is governed by the provisions of Section 17(2) of the CGST Act, 2017 read with Rule 42 of CGST Rules, 2017.

#### **7. PERSONAL HEARING:**

The applicant was granted opportunity for personal hearing on 22.12.2020. Shri. Tony.M.P, Chartered Accountant represented the applicant in the personal hearing. He reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made by them.

#### **8. DISCUSSION AND CONCLUSION:**

8.1. The issue was examined in detail. The applicant is a multi-specialty hospital providing health care services with medical professionals. Medicines, surgical items, implants, stents and other consumables are supplied through pharmacy to inpatients under the prescription of the doctors. The out-patients are those who visit the hospital for consultation, routine check-ups or clinical visits. The in-patients are those who are admitted to the hospital for the required treatment. The in-patients are provided with stay facilities, medicines, consumables, implants, dietary food and other surgeries/ procedures required for the treatment. The Central store of the hospital procures stocks of medicines, implants, consumables etc from various suppliers and distribute it to its outlets such as in-patient pharmacy, operation theater pharmacy and out-patient pharmacy based on the indent issued. The in-patient pharmacy and operation theater pharmacy supply medicines, implants and consumables only to in-patients whereas the out-patient pharmacy attached to the hospital entertain the medical prescription of out-patients and outside customers with valid prescription.

8.2. The entry at Sl.No.74 of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

Sl. No.	Chapter	Description of services	Rate	Condition
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74	Heading 9993	Services by way of- (a) healthcare services by a clinical establishment, an authorized medical practitioner or paramedics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	Nil	Nil
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8.3 The term “healthcare services” is defined in Para 2 (zg) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as follows; “healthcare services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

8.4. The term “clinical establishment” is defined in Para 2(s) of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as follows; “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 investigate services of diseases.

8.5. Section 2(30) of CGST Act defines “composite supply” as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. Section 8 of CGST Act governs the tax liability of composite supply. As per clause (a) of Section 8 of the CGST Act, a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Section



2(90) of the CGST Act defines “principal supply” as the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. Bundled supply means a bundle of provision of various supplies wherein an element of provision of one supply is combined with an element or elements of provision of any other supply. If the nature of supply is such that one of the supplies is the main supply and other supplies combined with such main supply are in the nature of incidental or ancillary supply which help in better utility of the main supply then it is considered as naturally bundled. If various elements of a bundled supply are naturally bundled in the ordinary course of business, it shall be treated as provision of a single supply which gives such bundle its essential character. Therefore, classification of a composite supply is based on that component of the supply which gives the essential character. There is need to determine whether a given transaction is one containing major, incidental and ancillary elements or one containing multiple and separate major elements. In the case of a transaction containing a major and ancillary element, classification is to be determined based on the essential features or the dominant element of the transaction. Therefore, a view has to be taken as to whether an individual supply is merely a component of the overall supply or is itself a distinct and independent supply; i.e whether the component is merely ancillary to the principal supply or the component can be considered as separate taxable supply in its own right. A supply, which does not constitute for a customer an aim in itself but a means of better enjoying the principal supply is considered as a supply ancillary to the principal supply.

8.6. The Explanatory Notes to the Scheme of Classification of Services under GST pertaining to Health Care services is reproduced below;

SAC 9993 Human Health and Social Care Services

99931 – Human Health Services

999311 – Inpatient services

This service code includes:

- i. surgical services delivered under the direction of medical doctors to inpatients, aimed at curing, restoring and / or maintaining the health of a patient.
- ii. Gynaecological and obstetrical services delivered under the direction of medical doctors to inpatients, aimed at curing, restoring and / or maintaining the health of a patient.
- iii. Psychiatric services delivered under the direction of medical doctors to inpatients, aimed at curing, restoring and / or maintaining the health of a patient.
- iv. Other hospital services delivered under the direction of medical doctors to inpatients, aimed at curing, restoring and / or maintaining the health of a patient. These services comprise medical, pharmaceutical and paramedical services, rehabilitation services, nursing services and laboratory and technical services, including radiological and anaesthesiological services, etc.

Thus, Inpatient services falling under SAC 999311 means services provided by hospitals to inpatients under the direction of medical doctors aimed at curing, restoring and / or maintaining the health of a patient and the service comprises of medical, pharmaceutical and paramedical services, rehabilitation services, nursing services and laboratory and technical services.

8.7. The primary purpose of the hospital is to provide treatment to the patients approaching them. The basic intention of the patients visiting the hospital is to get treatment for their ailment. Depending upon the severity of the illness the patient may require immediate medical attention, continuous monitoring etc. Therefore, according to their health condition they will be treated as out-patient or admitted as inpatient. The patients admitted to a hospital for treatment expect that proper diagnosis of the disease is made and treatment including appropriate medicines, surgical procedures if necessary, consumables and implants required along with proper diet is administered to them in the most efficient manner so that they can regain their health within the shortest possible time and resume their activities. Therefore, the medicines, implants, consumables and foods supplied in the course of

providing treatment to the patients admitted in the hospital is an integral part of the health care service extended to the patients. Hence the room, medicines, implants, consumables and food supplied in the course of providing treatment to the patients admitted in the hospital is undoubtedly naturally bundled in the ordinary course of business and the principal supply is health care service which is the predominant element of the composite supply and the other supplies such as room, medicines, implants, consumables and food are incidental or ancillary to the predominant supply.

8.8. Further, the CBIC has in Para 5 (3) of Circular No.32/06/2018-GST dated 12.02.2018 clarified that food supplied to the inpatients as advised by the doctor / nutritionist is a part of composite supply of healthcare and not separately taxable.

8.9. On the basis of the facts and the provisions of law as discussed above, we conclude that the applicant is a clinical establishment as defined in Para 2 (s) of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and the supply of medicines, surgical items, implants, stents, food and other consumables to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures is a composite supply where the principal supply is healthcare services falling under SAC 999311 which is exempted as per entry at Sl No. 74 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

8.10. The other issue raised by the applicant is regarding the availment and utilisation of input tax credit on the common purchase of medicines and surgical items which are ultimately supplied on actual basis to inpatients and outpatients. The eligibility of credit of tax paid on the inputs and input services used for taxable as well as exempted supplies are governed by the provisions of Section 17 (2) of the CGST Act and Rule 42 of the CGST Rules, 2017. Section 17 (2) of the CGST Act stipulates that where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero-rated supplies. The Rule 42 of the CGST Rules,

2017 prescribes the manner of determination of input tax credit in respect of inputs or input services and reversal thereof. Hence, where common credit on inputs or input services partly used for effecting taxable supplies and partly for effecting exempt supplies are availed the eligible input tax credit shall be calculated as per the formula prescribed in Rule 42 of the CGST Rules, 2017 and the common credit pertaining to exempt supplies calculated as per the said formula shall be reversed.

In view of the observations stated above, the following rulings are issued;

### **RULING**

1. Whether the medicines, surgical items, implants, stents and other consumables used in the course of providing health care services to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures would be considered as "Composite Supply" of health care services under GST and consequently can exemption under Notification No.12/2017 read with Section 8(a) of GST be claimed?

The supply of medicines, surgical items, implants, stents, and other consumables to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures is a composite supply where the principal supply is healthcare services falling under SAC 999311 which is exempted as per entry at Sl No. 74 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

2. Whether the supply of food to all the inpatients would be considered as "Composite Supply" of health care services under GST and consequently can exemption under Notification No.12/2017 read with Section 8(a) of GST be claimed?

The supply of food to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures is a component of the composite supply where the principal supply is healthcare services falling under SAC 999311 which is exempted as per entry at Sl No. 74 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

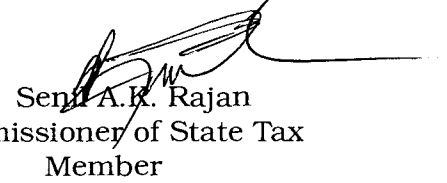
3. Whether, for the availment of ITC on common purchase of medicines and surgical items which are ultimately supplied on actual basis to inpatients and outpatients, the following formulae is correct:

GST paid on such common purchase of medicines in the month of April	X	Turnover of taxable outpatient medicine supply in the month of April
		Total turnover of outpatient medicines supply + turnover of inpatient medicine supply for the month of April

The eligibility of credit of tax paid on the inputs and input services used for taxable as well as exempted supplies are governed by the provisions of Section 17 (2) of the CGST Act, 2017 and Rule 42 of the CGST Rules, 2017. The eligible input tax credit shall be calculated as per the formula prescribed in Rule 42 of the CGST Rules, 2017.



Siva Prasad.S  
Joint Commissioner of Central Tax  
Member



Senthil A.K. Rajan  
Additional Commissioner of State Tax  
Member

To,

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