

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING IN GOODS  
AND SERVICE TAX, IN THE STATE OF HARYANA, PANCHKULA**

**Appeal Case No. :** HAAAR/2020-21/01

**Dated: 24.06.2020**

GSTIN of the Applicant	06AAVCS8021P1ZJ
Name	M/s Siemens Healthcare(P) Ltd.
Address / Registered Address	Plot No. 78, JIL Building, Sector 18, Gurugram, Haryana
Present for the Applicant	Shri Gajendra Maheshwari, Advocate

**Order under Section 101 of Central Goods and Service Tax Act, 2017 /  
Haryana Goods and Service Tax Act, 2017**

The present appeal has been filed under Section 100 (1) of Central Goods and Service Tax Act, 2017 / Haryana Goods and Service Tax Act, 2017 (hereinafter referred to as CGST Act / HGST Act, respectively) by M/s Siemens Healthcare (P) Ltd. against the Advance Ruling No. HAR/HAAR/R/2018-19/27 dated 03.12.2018.

A copy of order dated 03.12.2018 of the Advance Ruling Authority was received by the appellant on 04.03.2020 and the appeal was due for filing by 3.04.2020 in terms of Section 100(2) of the CGST Act 2017. However the appeal was been filed on 24.06.2020 and is within time when read with COVID-2019 related extension provided to GST matters vide notification 35/2020-Central Tax dated 3.04.2020, This notification extends the time limits to 30.06.2020, *"where any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020."*

**I. BRIEF FACTS OF THE CASE**

M/s Siemens Healthcare Pvt. Ltd, Plot No. 78, JIL Building, Sector 18, Gurugram (hereinafter, "the Appellant") has been, historically, in the business of trading medical equipment required to spread its business dimension by involving itself in the provision of diagnostic imaging services to hospitals (customers) and other clinical establishments for various Haryanais registered as a State taxpayer under GST in Gurugram. They are engaged in selling, establishing and maintaining the medical diagnostic/imaging equipment at the premises of their clients viz. hospitals and other clinical establishments.

1. As submitted by the applicant, such diagnostic imaging services would involve providing to its customers visual representations of the interior of a

human (i.e., patient's) body to assess the current medical condition of patients by their customers. Detailed description of the services and relevant terms of the proposed arrangement have been explained by the applicant, as under:

- I. The above services shall; inter alia, be provided at customer's premises by placing, installing and operating their diagnostic system of relevant modality. Having said that, there shall be no transfer of ownership or right to use the diagnostic system, components and accessories ('collectively equipment') to the customer.
- II. The applicant shall be responsible for arranging the technical personnel (to operate equipment) and all other consumables (excluding contrast) and medical supplies like films, compact disks (media). Diagnostic output so provided by the applicant shall be used by the customer for further analysis, perusal and examination.
- III. The customer shall not hypothecate, pledge or create any encumbrance whatsoever on the equipment nor shall it part with the possession of the equipment to any third-party during subsistence of the agreement. Further, as per the agreement, the customer agrees and acknowledges that the applicant shall provide diagnostic imaging services for further analysis, perusal and examination by the customer without assuming any clinical risks.
- IV. As regards to the consideration for provision of aforesaid services, the applicant shall raise monthly invoice on the customer. The manner of arriving at the consideration amount shall be either on revenue share arrangement in a pre-agreed proportion or pre-agreed service fees based on the number of patients/cases. The services fees payable to the applicant may further be subjected pre-agreed lower and/or upper capping on the basis of diagnostic imaging service volume.
- V. The scope of services proposed to be provided by the applicant is further explained by the applicant; as under:
  - (i) Placing the medical imaging equipment (of mutually agreed technology) at customer's premises;
  - (ii) Preparing patients for imaging procedures (scheduling patients and providing pre-scan instructions thereby preventing rescheduling);
  - (iii) Correctly positioning patients to get the right image. For, instance to position patients for an IVIRI, the Applicant would need to decide on the correct imaging coil, the best Position and the protocol for the imaging;
  - (iv) Operating equipment optimally to get accurate diagnostic images;
  - (v) Communicating with physicians/ radiologist about images;
  - (vi) Delivering/ handing over the acquired images to the Picture Archiving and Communication System ('PACS'),

The application for advance ruling has been filed as the taxpayer intends to also deploy their professionals to run such machines in the hospitals, while maintaining these machines also.

## **II. QUESTIONS IN ADVANCE RULING:**

The RULING has been requested on the QUESTION:

*"Whether the provisioning of diagnostic imaging services under the agreement/contract executed by Siemens Healthcare Pvt. Ltd. (SHPL) with its customers would qualify for exemption from levy of GST under S. No. 74 of the Notification 12/2017-CT(R) dated 28/06/2017?"*

The Advance Ruling Authority (AAR) had provided the following Ruling: -

RULING:

*"The services offered/ provided by the applicant do not qualify to be covered under the scope of exemption provided under entry at Sr. No. 74 of the Notification No. 12/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 and hence, these are not exempted".*

## **III. GROUND OF APPEAL:**

The Appellant has submitted the following as their 'Grounds of Appeal':

1. That, the Advance ruling Authority (AAR)'s findings are contrary to the provisions of the CGST Act.
2. That, the AAR has not disputed that Appellant is a clinical establishment and is providing services under SAC 9993. Whereas, the exemption has been denied on the ground that the services are not health care services. Accordingly, in the present appeal the Appellant is confining its submission to this aspect of the matter.
3. The term "Healthcare services" is defined in clause (zg) of the Exemption Notification as under:

*"(zg) "health care 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;"*

The term "healthcare services" reproduced above can be divided into following limbs:

- services provided by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy; further, the said services should be provided in any recognized system of medicines in India.
- It includes services by way of transportation of the patient to and from a clinical establishment.
- It does not include services of 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

The first limb of the definition of 'healthcare services' is read as "*services provided by way of diagnosis*". It may be noted that '*by way of diagnosis*' has not been defined in GST law. General interpretation of the term "by way of diagnosis" is wide enough to cover any process '*intrinsically linked or associated with diagnosis*' or which '*assists in diagnosis*'.

4. Hence, 'diagnosis' in '*by way of diagnosis*' precludes a completed diagnosis.

For understanding of the term 'diagnosis' as commonly accepted and construed in the health care industry, the definition of the term 'diagnosis' provided by National Cancer Institute, is as under:

*"The process of identifying a disease, condition, or injury from its signs and symptoms. A health history, physical exam, and tests, such as blood tests, imaging tests, and biopsies, may be used to help make a diagnosis."*

That, dictionary meaning of the term "Diagnosis" is provided below:

*"The act or process of discovering or identify a diseased condition by means of a medical examination, laboratory test, etc."*  
(Collinsdictionary.com)

*"Investigation or analysis of the cause or nature of a condition, situation, or problem"* (merriam-webster.com)

Further, in common parlance, diagnosis includes following components (source: Wikipedia.com):

*"Complementing the already given information with further data gathering, which may include questions of the medical history*

(potentially from other people close to the patient as well), physical examination and various diagnostic tests;"

"A diagnostic test is any kind of medical test performed to aid in the diagnosis or detection of disease. Diagnostic tests can also be used to provide prognostic information on people with established disease."

There are many judicial precedents wherein Courts have held that interpretation of entries in tax statutes should be governed by the manner in which those entries are understood by the trade or person concerned:

- In *Aditya Surgical versus State of Karnataka* {2018 (10) G.S.T.L. 284 (Kar.)} the issue before the High Court was classification of a product within the term 'medical equipment'. While disposing of the case, the Court was satisfied and observed that "it is a well settled principle for interpretation of various entries under the Tax Laws that such commodities have to be interpreted in the manner in which the person concerned with that trade will construe them to be or in other words, the Common Parlance test or Trade Parlance test has to be applied while making such interpretations".
- In *GVK Industries Ltd versus Income Tax Officer* {2017 (49) S.T.R 513 (S.C)} Supreme Court relied on the dictionary meanings and general understanding of the individual terms 'managerial, technical and consultancy services' to arrive at a decision. Further, Supreme Court stated that when "the expression have not been defined in the Act, and therefore, it is obligatory on our part to examine how the said expressions are used and understood by the persons engaged in business. The general and common usage of the said words has to be understood at common parlance".

5. In their case, the *diagnostic imaging services* to be rendered by the Appellant are *imperative and must for a comprehensive and accurate diagnosis of the medical condition of the patient*. That is to say, providing visual representations of the interior of human body or function of some organs or tissues is the stepping stone for any clinical analysis or medical intervention.

The Appellant would use the following technologies for the purpose of diagnosis medical condition of a patient:

a. Medical Resonance Imaging (MRI): An NRI (or magnetic resonance imaging) scan is a radiology technique that uses magnetism, radio waves, and a computer to produce images of body structures. The image resolution produced by MRI is quite detailed and can detect tiny changes of structures within the body. For some

procedures, contrast agents are used to improve delineation of structures;

b. Computerized Tomography (CT): Computed tomography (CT) is a diagnostic imaging test used to create detailed images of internal organs, bones, soft tissue and blood vessels. The cross-sectional images generated during a CT scan can be reformatted in multiple planes, and can even generate three-dimensional images which can be viewed on a computer monitor, printed on film or transferred to electronic media;

c. X-Ray/ Mammography: Radiography is an imaging technique using X-rays to view the internal form of an object. This is the oldest and most common imaging technology and most of us have experienced this.

Mammography is an advanced X-Ray picture of the breast, often using 3D reconstruction. It is used to check for breast cancer in women who have no signs or symptoms of the disease (screening). It can also be used if you have a lump or other sign of breast cancer (diagnosis).

d. PET-CT: Positron emission tomography - computed tomography (better known as PET-CT or PET/CT) is a nuclear medicine technique which combines a positron emission tomography (PET) scanner and a computed tomography (CT) scanner to acquire sequential images from both devices in the same session, which are combined into a single superposed (co-registered) image. It is very useful in combining structural data and functional imaging etc.

Irrespective of the technology used to obtain virtual representation of interior of human body, the scope and responsibility of the Applicant in such contracts would, inter alia, include and cover the following:

- Placing the medical imaging equipment at the customer's premises;
- Preparing patients for imaging procedures. This would include:
  - scheduling patients to ensure a smooth experience for the patients.
  - providing pre-scan instructions thereby preventing rescheduling. Correct preparation translates to a good scan.
- Installing and maintaining imaging equipment. The applicant would manage the complete maintenance of the imaging equipment and

would ensure minimal downtime;

- Supplying all consumables like films, disks required to print/ record capture the image (visual representation) on the inner of the human body;
- Correctly positioning the patient to get the right image. For, instance to position the patient for an MRI, the applicant would need to decide on the correct imaging coil, the best position and the protocol for the imaging;
- Operating equipment optimally to get accurate diagnostic images. For instance, Applicant would decide on the protocol being used, adapt the scan based on the patient condition, while continuously balancing scan time and image quality.
- Communicating with physicians/ radiologist about images. In emergency cases, the Applicant prioritizes and brings the scan dataset to the Radiologist's notice, contributing to prompt delivery of emergency care. In regular cases, the Applicant would complete the post-processing of the images acquired and also archives and files the images, before pushing them to the Radiologist for review/ reporting and diagnosis.
- Delivering/ handing over the acquired images to the Picture Archiving and Communication System ('PACS') or any other archiving system as provided by the Customer.

It is important to understand that the above diagnostic imaging services to be rendered by the Appellant are imperative and must for a comprehensive and accurate diagnosis of the specific medical condition of the patient. That is to say, providing visual representations of the interior of human body or function of some organs or tissues is the stepping stone for many clinical analysis or medical interventions.

Thus, Appellant's scope of services under the proposed contract to obtain images (creating visual representations) of interior of body through a medical imaging or radiology equipment to assess the current medical condition of the patients for clinical analysis and medical interventions unequivocally falls within the ambit of the term "*by way of diagnosis*" for the purpose of the Notification.

6. Whether 'input services' for a hospital are entitled for the exemption?

At the outset, it is submitted that the AAR, Haryana in its impugned order has not disputed that the Appellant would work as an independent entity at

the customer's premises and provide the diagnostic imaging services falling under SAC 9993 (i.e. human health and social care services).

Such healthcare services provided by the Appellant are its output supply. Therefore, once such factum of providing healthcare services by the Appellant to its customers under SAC 9993 was not disputed, the benefit of exemption should not have been denied on the ground that such services are in the nature of 'input services' for further supply of healthcare services by hospitals.

If the AAR Haryana's finding that any services in the nature of input services for hospital would not be entitled for the exemption under the Exemption Notification is accepted, then various input services that are otherwise covered in the definition of 'healthcare services' under the Exemption Notification would also be disentitled from the exemption. Such interpretation would be contrary to the intention of the legislature that no tax should be imposed on the services that are in the nature of 'healthcare services'.

To explain further, SAC 9993 covers various services that are input services for hospitals and may be provided by qualified practitioners, agencies (other than medical doctors), for example:

- Heading 999313: Child birth and related services
- Heading 999314: Nursing and Physiotherapeutic services
- Heading 999317: Blood, sperm and organ bank services

The aforesaid output services of the service provider may be in the nature of 'input services' for a hospital. Since such services are covered under the definition of 'healthcare services' under the Exemption Notification, irrespective of being input services they will enjoy the exemption from payment of GST.

Thus, whether or not a service is in the nature of 'input service' for further supply of healthcare services by hospitals, it would be exempt from payment of GST so long as it is covered in the definition of 'Healthcare services' under the Exemption Notification.

7. The Appellant provides the services 'by way of' healthcare services.

The term 'by way of' healthcare services connotes 'for the purpose of' healthcare services which means and includes providing diagnostic imaging services, as discussed above.

The dictionary meaning of the phrase 'by way of' is provided below:


- "For the purpose of." (Merriam-webster.com)
- "For the purpose of" (yourdictionary.com)

- "Intended to be a particular thing, or to have a particular purpose" (Macmillan Dictionary)

On a reading of the above extract, it is evident that the meaning of 'by way of' is synonymous with the words 'for the purpose of'. Since the services provided by the Appellant are 'healthcare services', it would be redundant to say that they are not for the purpose of 'healthcare services'.

The Authority for Advance Ruling, Haryana has erroneously distinguished the judgment of the Hon'ble Supreme Court of India in His Holiness KesavanandaBharatiSripadagalvaru v. State of Kerala and Another, (1973) 4 SCC 225, which dealt with the meaning of 'by way of'. The relevant extract is provided below:

*"As the words and phrases — Permanent Edition, Vol. ii, p-111 would show that 'by way of' may be taken to mean 'as for the purpose of' 'in character of', 'as being' and was so intended to be construed in an Act providing that certain companies should pay an annual tax for the use of the State, 'by way of' a license for their corporate Franchise. The illustration given should show that in fact the payment of license fee, is not a tax, but it is so considered to be by way of tax."*



In this respect the AAR, Haryana has failed to consider that judicial principles and rules of interpretation can be applied universally in all cases irrespective of the issue under challenge.

Further, in the aforesaid judgment the Hon'ble Supreme Court has held that substitution of the word "amendment" by the expression 'amend by way of addition, variation or repeal' makes no difference as it bears the same meaning as the word "amendment".

In view of the above, it is evident that the Hon'ble Supreme Court has used the term 'by way of' to include everything which relates to the word 'amendment'. Therefore, the same principle is applicable in the case of the Appellant as well wherein healthcare services are being provided by the Appellant 'by way of' and/ or for the purpose of diagnosis.

8. The Authority for Advance Ruling, Karnataka in a similar case of Matrix imaging Solutions India Pvt. Ltd. Advance Ruling No. KAR ADRG 105/ 2019 has held that diagnostic services provided to hospitals and other establishments are covered under entry no. 74 of the Notification No. 12/ 2017 — Central Tax (Rate) dated 28.06.2017 as "services by way of health care services by a clinical establishment" and exempted from GST. The ruling has went on to hold that services by way of diagnosis for illness are covered under "health care services".

Attention is also drawn to the recent ruling rendered by AAR, Karnataka in case of Sayre Therapeutics Pvt. Ltd. Advance Ruling No. FAR ADRG 05/2018. In this case the Appellant was not undertaking the diagnosis by itself but was rather involved in the diagnostic process, pre & post counseling with patients in oncology and immunology therapy. To effectuate this, Appellant had collaborated with German molecular diagnostic company to provide advanced genetic tests that help in prevention and management of cancers and blood disorders. In line with the principles outlined in the aforesaid paragraphs, AAR granted the benefit of GST exemption to the Appellant by holding that activities (viz., consultation with German counterparts to determine particular test relevant to the patient, providing comprehensive counseling, collecting and transporting the samples for relevant tests, collecting test results and coordinating discussions with Oncologists for future treatment) are sophisticated and relevant in diagnosis and treatment of disease of cancer.

The AAR, Haryana erred in not appreciating the true interpretation and intent of the Exemption Notification that exempts 'healthcare services' from the applicability of GST

The AAR, Haryana has erred in holding that the SAC mentioned in column 2 of the Exemption Notification is only indicative.

It is stated that Column 2 of the Exemption Notification mentions SAC 9993 which includes all types of human health and social care services. Further, 'diagnosis' and 'diagnostic imaging services' are covered under SAC 999312 to the Explanatory Notes. Therefore, **if the intention of the legislature was to restrict the scope of exemption entry to actual diagnosis then it would have clearly indicated SAC 999312 in Column 2 of the table to the Exemption Notification. However, Column 2 mentions SAC 9993 and Column 3 starts with the phrase services 'by way of' which clearly means that the intention of the legislature was to further expand the scope of the exemption entry.**

It is a settled principle of law that exemption Notification should be interpreted harmoniously to give full effect to the legislative intent behind introducing the same.

9. Reference is drawn to the decision of Supreme Court in the case of Tata oil Mills Co. Ltd. Vs Collector of Central Excise on 14 August, 1989, 1990 AIR 27, 1989 SCR (3) 839, Wherein it has been held that in trying to understand the language used by an exemption notification, one should keep in mind two important aspects:

- the object and purpose of the exemption and,

- the nature of the actual process involved in the manufacture of the commodity in relation to which exemption is granted.

In the instant case, it is beyond any shadow of doubt that the legislative intent behind exempting the diagnostic and investigative services was to ensure that quality healthcare services are made available to masses at affordable prices.

As explained in detail above, the activities undertaken by Applicant are an important limb in the entire process of healthcare, i.e. diagnosis and related treatment for which exemption is sought to be granted by the Exemption Notification.

Therefore, the AAR, Haryana has committed a serious error in giving a very narrow interpretation to the exemption notification. Such an interpretation is also contrary to the rule of 'purposive interpretation' i.e. not in line with the legislative intent discussed above.

The AAR Haryana should have given widest possible interpretation to the Entry No 74 of the Exemption Notification so as to cover all activities that critically contribute towards quality diagnosis and treatment of diseases. This would have ensured that the critical activities in the process of providing healthcare services to an individual remain exempt from the applicability of GST.

Further, the observation of the AAR, Haryana with respect to the ruling in Commissioner of Customs (import) Mumbai v. Dilip Kumar & Co. (2018) 9 SCC 40 is misplaced. This is because in the said judgment the Hon'ble Court while holding that strict interpretation must be given to an exemption notification has went on to hold that the assessee has the burden to prove that its case comes under the parameters of the respective exemption notification.

In light of the clarification issued by the CBEC it is clarified that the Appellant is entitled for the exemption under the Exemption Notification

Clarification issued by CBIC vide Circular dated 12 February 2018 is rightly applicable to the Appellant. It may be noted that the said clarification/ circular has been issued in reference to recommendations of 25th GST Council meeting held on 18th January, 2018. Relevant extract of the said circular has been reproduced hereunder:

*"5. is GST leviable in following cases:*

*(1) Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee*

*relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?*

Clarification:

*Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt (SI. No. 74 of notification No. 12/2017- CT (Rate) dated 28.06.2017 as amended refers).*

*Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt."*

Basis the above clarification, it can be construed that services of technicians/ consultants to the hospitals, for further provision of services to the patients by the hospitals, shall be construed as provision of healthcare service by the third parties and shall qualify for the exemption.

Given this, services so rendered by the Appellant being in the nature of the services of a technician/ consultant to its customers (i.e., hospitals) squarely fall within the scope of aforesaid clarification and are qualified for the exemption.

10. The AAR Haryana has erred in not passing the order within the stipulated time period under the GST law

It is submitted that as per Section 98(6) of the CGST Act, the AAR is required to pronounce an advance ruling within 90 days from the date of receipt of the application for advance ruling. However, in the present case, the AAR, Haryana has failed to pass the ruling within the stipulated time period provided under the GST law.

It is stated that though the ruling mentions that date of passing of ruling as 03.12.2018, however, the ruling was served on the Appellant on 04.03.2020 i.e. after a period of 15 months. In view of this, it is clear that the AAR, Haryana had passed the ruling beyond the statutory period of 90 days.

In support of the above argument, the High court of Andhra Pradesh in the judgment of Khetmal Parekh and Company v. State of Andhra Pradesh [(1976) 38 STC 531] at Para 7 has held that the order is not binding on the assessee since there has been inordinate delay in communicating the order of the Deputy Commissioner to the assessee. The relevant extract is reproduced below:

"7. ....But, in our opinion, in view of the inordinate delay in communicating the order of the Deputy Commissioner to the assessee, it would be in the fitness of things and under the principles of the rule of law, that the order should be held to be not binding on the assessee."

Further, the High Court of Andhra Pradesh in the judgment of M. Ramakrishnaiah & Co. v. State of Andhra Pradesh (1976) 38 STC 537) at Para 4 has set aside the order of Sales Tax Appellate Tribunal holding that there is no reason why there has been a delay of ten and a half months in serving the order of the Deputy Commissioner upon the assessee. This decision has been further upheld by the Supreme Court in the judgment of State of Andhra Pradesh v. M. Ramakrishnaiah & Co. [(1994) 93 STC 406] at Para 4 wherein it was held that since in the absence of any explanation with regard to delay in serving the order of the Deputy Commissioner upon the assessee, it shall be presumed that the order was not made on the date it purported to have been made. The relevant extract is reproduced below:

"4. We are of the opinion that the theory evolved by the High Court may not be really called for in the circumstances of the case. We are of the opinion that this appeal has to be dismissed on the ground urged by the assessee himself. As stated above, the order of the Deputy Commissioner is said to have been made on 6-1-1973, but it was served upon the assessee on 21-11-1973 i.e. precisely 10.5 months later. There is no explanation from the Deputy commissioner why it was so delayed. if there had been a proper explanation whatsoever, we must presume that the order was not made on the date it was purports to have been made. it could have been made after the expiry of the prescribed four years period."

Basis the above, it can be construed that due to such inordinate delay in serving the ruling on the Appellant, the AAR, Haryana had not passed the ruling on the date it purported to have been made.

Given the above, the ruling of the AAR, Haryana is ought to be set aside and the appeal of the appellant must be allowed.

#### IV. RECORD OF PERSONAL HEARING

Shri Gajendra Maheshwari, Advocate, Attended the personal hearing<sup>on 25-08-2021</sup> through video conference on behalf of the Appellant and emphasized on all the points already made in the Appeal. Shri Maheshwari further submitted that the CBIC's Circular No.32/6/2018-GST dated 12.02.2018 has amply clarified the matter and the exemption is admissible to *technicians* independently, without any contract of such persons with the patient. That, accordingly, the exemption would be admissible to the services intended to be provided by them.

## V. DISCUSSION AND FINDINGS

1. The exemption has been claimed by the Appellant in their Application for Advance Ruling and in the present Appeal in terms of Notification 11/2017 – Central Tax (Rate) dated 28.06.2017. The relevant entry 74 of this notification provides exemption to ‘Health Care Services’ and reads as under: -

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
74	Heading 9993	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	Nil	Nil

The Notification defines the following terms, relevant to the ibid entry, as under: -

(k) “authorised medical practitioner” means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

(s) “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 recognised 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;

(zg) “health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised 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;

2. The Board's Circular No 32/6/2018-GST dated 12.02.2018 mentioned by the Appellant at the time of personal hearing reads as under:

<p>5. Is GST leviable in following cases:</p> <p>(1) Hospitals hire senior doctors/consultants/technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship.</p> <p>Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?</p>	<p>Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl.No. 74 of notification No. 12/2017-CT(Rate) dated 28.06.2017 as amended refers].</p> <p>(1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.</p>
<p>(2) Retention money: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc.</p> <p>Will GST be applicable on such money retained by the hospitals?</p>	<p>(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of notification No. 12/2017- CT(Rate)].</p> <p>Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.</p>
<p>(3) Food supplied to the patients:</p> <p>Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	<p>(3) Food supplied to the in-patients as advised by the doctor/ nutritionists is a part of composite supply of healthcare and not separately taxable.</p> <p>Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p>

The Appellant has claimed that the above Circular has clarified the matter/ allowed the exemption to *Doctors* and *Technicians* even without their contract with the patient therefore the exemption is admissible to their activity.

3. The exemption (Sr. No. 74) Notification No. 12/2017-CT(rate) dated 28.07.2017 is for (a) 'Health Care Services' provided by way of transportation of a patient in an ambulance:

**Table**

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
74	Heading 9993	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	Nil	Nil

4. We find that the exemption provided vide the Notification is to 'Services' by way of -

- (a) health care services
  - by a clinical establishment,
  - an authorised medical practitioner or
  - para-medics;
- OR
- (b) services provided
  - by way of transportation of a patient in an ambulance, other than those specified in (a) above.

Thus the exemption is to *Services* and not to *Technicians* or *Doctors*/ *Medical Practitioners* or *Para-Medics* or *Ambulance Operators*.

Clearly, the case of Appellant M/s. Siemens Healthcare Pvt. Ltd. (SHPL) is not covered under ambulance services.

Now, the question arises whether the Appellant's services meet the dual criteria of a. being health care services; and also b. whether provided as a clinical establishment. Obviously the services under examination are not to be provided by the Appellant as *Authorised Medical Practitioner* or as *'Para Medics'*.

Health care services have been defined in the Notification as:

“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised 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;

This definition explains the Board's ibid circular where despite the Doctors' services being actually of support services to the Hospitals, are exempt since these have been provided 'by way of' diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy.

In the instant case, we find, the services being provided by the Appellant are not by way of diagnosis, but are the input service of provisioning of diagnostic imaging services under the contract/ agreement for further provisioning of Diagnostic service to the patients by the persons authorised to provide such services viz. medical practitioner/pathologist/radiologist.

5. The appellant's contention is that since the circular 32/6/2018-GST dated 12.02.2018 allows exemption to the technicians hired by hospitals also, the exemption is admissible to SHPL also as its technicians are to operate MRI (Magnetic Resonance Imaging) & CT (Computerized Tomography), X-Ray and Mammography machines installed in the clinical establishments (Customers of SHPL) & are to provide diagnostic images to the clinical establishments.

It is observed that there are kinds of *Technicians*. For the exemption to be admissible, the technician's role/ activity has to amount to *Healthcare Services*. Not all the technicians provide healthcare Services. It is observed that services of technicians who are 'Emergency Medical Technicians' or the services of technicians who are akin to *Para-medics*, are healthcare services. Apparently the CBIC's circular ibid refers to such technicians only.

As Wikipedia quotes from the publications of US Bureau of Labour Statistics:

*“An emergency medical technician (EMT), also known as an ambulance technician, is a health professional that provides emergency medical services. EMTs are most commonly found working in ambulances. In English-speaking countries, paramedics are a separate profession that has additional educational requirements, qualifications, and scope of practice”.*

Miller-Keane Encyclopaedia and Dictionary of Medicine, Nursing and Allied Health, Seventh Addition © 2003 by Saunders defines a Paramedic as,

*"a person trained to manage the emergency care of sick or injured person transport to a hospital, including administration of injections and intravenous fluids, reading of electrocardiograms, and performance of defibrillation & other advanced life support measures if ordered by a physician."*

Thus it is clear that a Medical Technician which is more akin to a *Paramedic* and provides *Healthcare Services* to the patients, is exempt as per the clarification cited by the CBIC's circular.

6. It is observed that SHPL is providing the input services of provision of installing/operating the MRI, CT scanners etc in the premises of its Customers (clinical establishments) and providing diagnostic images to them (clinical establishments).

Clinical Establishment has been defined in the Notification as:

*"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 recognised 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."*

Thus, for an establishment to be covered under the definition of 'clinical establishment' it has to

- offer services or facilities in any recognised system of medicines in India, (for those) requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy.
- OR, it is a
- place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

Thus the question arises whether the Appellant's establishment (within hospitals)

- are meant to offer services requiring diagnosis or treatment?
- are independent in providing 'diagnostic services'?

We find that providing diagnostic images is not equivalent to providing diagnosis, and the services by SHPL is not an independent establishments for providing diagnostic service.

7. To avail the benefit of the exemption all the limbs of the notification must be satisfied i.e., the services have to be health care services as defined in clause (Zg) of para 2 of the notification & the services have to be provided by clinical establishment as defined in clause (s) of para 2 of the said notification. Since the appellant is to provide its diagnostic imaging services to the clinical establishment which in turn makes use of these images provided by the appellant & with the advice/opinion of medical practitioner/pathologist/radiologist makes diagnosis & provides it to the patient, the appellant can't be said to provide diagnosis services to the patient, & hence not eligible to the exemption.

8. The Authority for Advance Ruling (AAR) has observed that the term '*by way of diagnosis*' does not include any intrinsically linked processes and in the instant case it is not the Applicant firm but only the Hospital which further provides the diagnostic service, and thus, a health care service.

In fact, the Applicant has itself mentioned in the '*Statement of Facts*' adduced to the Appeal that the technical preparation of the images is further submitted to the Radiologist for diagnosis, "*...the Applicant would complete the post-processing of the images acquired and also archives and files the images, before pushing them to the Radiologist for review/ reporting and diagnosis* (emphasis supplied).


(Para 6(g), Statement of Facts submitted in Appeal)


It is therefore clear that the services exempt under the Notification are healthcare services and would include *diagnosis* where the services are in the line of aiding diagnosis. Also, from the Applicant's *ibid* submission itself in the Statement of Facts, it is obvious that the '*Dignosis*' is not complete unless the Radiologist gives it on the basis of images prepared by the Applicant. Also the services have not been provided to the patient.

9. Hon'ble Supreme Court's judgment in *Tata Oils* is not applicable. In the instant case the Appellant has not pleaded that intent of the legislature is to also exempt the inputs/ input services consumed for providing the Healthcare services; nor is there any notification or clarification providing such exemption viz. to input services. Appellant's activity remains an Input Service for providing diagnosis.

## VI. ORDER:

In view of the above discussions and findings, we dismiss the appeal and uphold the Advance Ruling dated 03.12.2018 as the same does not suffer from any infirmity or illegality. The AAR has correctly held that the nature of the Applicant's services is of input services.

  
**(Shekhar Vidyarthi)**  
Member (SGST)

  
**(Rajesh Sodhi)**  
Member (CGST)

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3. Deputy Excise and Taxation Commissioner, Gurugram East (Ward-4), Gurugram. Haryana.