



**HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICE TAX,**



**HARYANA VANIJYA BHAWAN, PLOT NO. 1-3,
SECTOR 5, PANCHKULA-134151 (HARYANA)**

ADVANCE RULING NO. HR/HAAR/07/2022-23

Name & Address of the Applicant.	M/s ARPK Healthcare Private Limited, Sector-16, Faridabad, Haryana, 121002.
GSTIN/ARN of the Applicant.	062200004183AR5
Date/Receipt of Application:	06.09.2022
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the questions have been raised by the applicant.	(b) applicability of a notification issued under the provisions of this Act; (e) Determination of the liability to pay tax on any goods or services or both. (f) whether applicant is required to be registered; (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Hearing:	11.10.2022

Memo] 490

Dated: 12/01/2023

APPLICANT'S ELIGIBILITY FOR SEEKING AN ADVANCE RULING:

To file an application before the Authority of Advance Ruling, the applicant must satisfy the conditions prescribed under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as HGST Act, 2017). Since the provisions of both the Acts are *parimateria*, any reference to provisions of CGST Act, 2017 in this order should be construed as a reference to corresponding provisions of the HGST Act, 2017 as well as IGST Act, 2017. Section 97(2) of the CGST Act, 2017 prescribes that an Advance Ruling may be sought inter alia on the questions of (b) applicability of a notification issued under the provisions of this Act. (e) Determination of the liability to pay tax on any goods or services or both (f) whether applicant is required to be registered (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Proviso with reference to the Section 98(2) of CGST Act, 2017 states that where the questions raised in the application is already pending or decided in any proceedings in the case of the applicant under any provision of this Act, the application

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may be rejected by the Advance Ruling Authority after providing an opportunity of being heard to the applicant. In the present case, the applicant has undertaken in form ARA-01 that the issue is neither pending nor decided in any proceedings under any of the provisions of the Act. The applicant has generated CPIN with reference to the applicable fee of Rs. 10,000/- under both the Acts. As the applicant is not registered under the HGST Act, 2017 so he could not raise DRC-03. The matter is being examined on merits by the authority.

Statement of facts as per ARA-01:-

M/s ARPK Healthcare Private Limited is providing Health Care Services as defined in clause (zg) of the notification number 12/2017 dt. 28.06.2017. Similarly, M/s Asian Institute of Medical Science (a unit of Blue Sapphire Healthcare Private Limited) is providing Healthcare Services as defined in clause (zg) of notification no. 12/2017 dated 28.06.2017. M/s ARPK has approached to M/s Asian Institute of Medical Science, Faridabad that authorised medical practitioner employed in M/s ARPK Healthcare Provide Ltd. will provide Gastroenterologist services (Healthcare Services) to the patients of M/s Asian. Fee/Charges of Gastroenterologist services will be paid by patient to M/s Asian Hospital. Thereafter M/s Asian will pay to M/s ARPK for the services rendered by them to the patients of M/s Asian Hospital. Both M/s Asian hospital and M/s ARPK healthcare will share the charges paid by the patients. In our opinion in both the cases fee/charges for Healthcare Services shall not be liable to GST because fee/Charges received by M/s Asian as well as M/s ARPK are exempt from levy of GST. **Basis of our reasoning are as follows: -**

As per entry number 74 of Notification No. 12/2017 -CENTRAL TAX (RATE) Dt. 28/06/2017 (as amended time to time) supply of following services is exempt from levy of GST. Extract of relevant entry is as follows:-

Sr. No.	Chapter Section Heading, Group of 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 authorized medical practitioner or paramedics; (b) Services provided by way of transportation of a patient in an ambulance, other than those specified in	Nil	Nil

		(a) above,		
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Relevant definitions are as following:-

- (a) Para (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 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;
- (b) Para (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.
- (c) Para (k) "authorized medical practitioner" means a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force,

The circular No. 32/06/2018-GST New Delhi, 12th February 2018 was issued for clarifications regarding GST in respect of certain services including levy of GST on Healthcare Services. The relevant portion of above circular is as:

Sr. No.	Issue	Clarification
5	<p>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 dated 28.06.2017 as amended refers]. charges, without there being any employer relationship. Will 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>(2) Retention money:</p>	<p>Health care services provided by a clinical anauthorised medical practitioner para-medics are exempt. [St. 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) Healthcare services have been</p>

	<p>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. Will GST be applicable on such money retained by the hospitals?</p> <p>(3) Food supplied to the patients: 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>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)) 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 in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable</p>
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From the above clarification it is clear that the entire amount charged by M/s Asian from the patients including the fee/charges made to the doctors employed by M/s ARPK is towards the healthcare services provided by the M/s Asian and M/s ARPK to the patients and is exempt.

The applicant has also referred to ruling pronounced by the authority of Karnataka state on 30th September, 2019 in the case of Matrix Imaging Solutions India Private Limited [Advance Ruling No. KAR ADRG 105/2019, dated September 30, 2019]. Facts of the case to some extents are same as in our case. In this ruling it was held that such fee/charges for healthcare services are exempt under GST.

Queries on which Advance Ruling has been sought:-

1. Whether Fee/ charges received by M/s ARPK Healthcare from M/s Asian Hospital is exempted under the provisions of the GST Act, 2017?
2. Whether Fee/charges for Health Care Services received by M/s Asian is exempted under the provisions of the GST Act, 2017?

PERSONAL HEARING:

On 11.10.2022 Sh. Rajesh Kumar, Chartered Account presented the matter before the authority on behalf of the applicant and enumerated the detail facts of the case. The applicant has also submitted as following on 20.12.2022:-

1. Both of directors of the M/s ARPK Healthcare Private Limited Company are Authorized medical practitioner. The name of both of directors are (1) Dr. Ruchika Miglani (2) Dr. Amit Miglani. Both of them are MBBS doctor and registered with medical Council. Both are providing health care services under the name and style of M/s ARPK Healthcare Private Limited. We are enclosing copy of their certificates issued by the medical Council and their registration number.
2. It is submitted that the every company is incorporated and registered with ROC with a main object. The main object of the company "to provide medical services inhouse or in any other hospital". This main object is specified in the memorandum of association. It is important that any company is not allowed to do any work/business beyond the its objects as per Memorandum of Association. Non compliance is having serious repercussions. So, in our present case ARPK Healthcare Private Limited will provide Health care services.
3. It is submitted that ARPK Healthcare Private Limited is clinical establishment. As per Para No. 2(s) of notification no. 12/2017 central tax rate dt. 28.06.2017. The clinical establishment is define as under :- "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; It is submitted that as per above definition no provision of CGST Act made it mandatory that clinical establishment should be registration in any other act. To get exemption under CGST the only requirement is that there should be supply of health care services as define under CGST Act 2017.
4. It is submitted that no institution or hospital can treat their patients, rather a team of individual doctor's treat patients in such institution or hospital, similarly in our present case M/s ARPK Healthcare Private Limited is the healthcare service providing company, wherein both the directors will be in employment of the Company and will provide health care services to in- patient/out-patient.

Discussions and findings:

We have gone through the facts of the case, documents on record and submissions made by the applicant. It is observed that the applicant is a corporation/company registered under the Companies Act, 2013 but the same is not registered as a clinical establishment for providing medical services under the Clinical Establishment (Registration/Regulation) Act, 2010 and the applicant company is planning to execute a contract with M/s Asian Hospital Pvt. Ltd., Faridabad (recipient of the services) to supply the services related to the human resources in the form of Doctors/nurses/other staff. The applicant will be overall incharge of the gastroenterology department of the recipient of services i.e. M/s Asian Hospital. Primarily, the applicant has raised the query that whether the said supply of services through an agreement/contract to M/s Asian Hospital falls under the category of health care services (SAC 9993) or not? And whether the consideration to be received by the applicant from the Asian Hospital as to be agreed upon by both parties (the contract is yet to be executed) is eligible for exemption under Sr. No 74 of Notification No 12/2017/CT(R) dated 28 June, 2017 as amended?

Before proceeding further to decipher the issue at hand, it is worthwhile to go through the legal provisions as applicable in the present case.

(A) Relevant provisions of the CGST Act, 2017 are reproduced as under:

Section 7 (Scope of supply) - (1) For the purposes of this Act, the expression "supply" includes--

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business; [and]
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration;

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),--

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as--

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

Section 2(31) "consideration" in relation to the supply of goods or services or both includes--

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or

both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government: Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Section 2(93) "recipient" of supply of goods or services or both, means-

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

Section 2 (102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Section 2 (105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

B. As per the notification no. 12/2017-CT(Rate) dated 28.06.2017 (as amended) clinical establishment and Health Care services and authorized medical practitioner has been defined as under:-

"(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 recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnosis or investigative services of diseases."

"(zg) "health services" means any services 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 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.

(k) "authorized medical practitioner" means a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force,

C. And the Clinical Establishments (registration and regulation) Act 2010 defines the clinical establishment as following:-

(c) "clinical establishment" means- (i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers services, facilities requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine established and administered or maintained by any person or body of persons, whether incorporated or not; or

(ii) a place established as an independent entity or part of an establishment referred to in sub-clause (1), in connection with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administered or maintained by any person or body of persons, whether incorporated or not,

And shall include a clinical establishment owned, controlled or managed by--

(a) The Government or a department of the Government;

(b) A trust, whether public or private;

(c) A corporation(including a society) registered under a Central, Provincial or State Act, whether or not owned by the Government;

(d) A local authority; and

(e) A single doctor,

But does not include the clinical establishments owned, controlled or managed by the Armed Forces.

D. Further, Entry No 74 of Notification 12/2017-CT (R) dated 28 June, 2017 is as under:-

74	Heading	Services by way of -	Rate	Condition
	9993	(a) Health care 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

And the Notification 03/2022-Central Tax(Rate) dated 13.07.2022 is as under:-

Sr. No.	Heading	Description of service	CGST Rate (%)	SGST Rate (%)	IGST Rate (%)	Condition
31	9993	Human health and social care services	9	9	18	
31A	9993	Services provided by a clinical establishment by	2.5	2.5	2.5	The credit of input tax charged on goods services used in supplying the service has been taken

		way of providing room [other than intensive care unit (ICU)/Critical Care Unit(CCU)/Intensive Cardiac Unit(ICC)/Neonatal intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services				
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From the analysis of the above mentioned provisions from all aspects of the issue at hand, it can be said that the applicant's contract/agreement to supply the services of human resources personnels to the M/s Asian Healthcare Pvt. Ltd., is a taxable event and not covered under the exemption notification no. 12/2017-CT (R) dated 28 June, 2017. The matter is discussed as following:-

M/s ARPK, the applicant has described the procedure to be adopted for providing healthcare services in its application that M/s ARPK has approached to M/s Asian Institute of Medical Science, Faridabad that authorised medical practitioners employed in M/s ARPK Healthcare Private Ltd. will provide gastroenterologist services (Health Services) to the patients of M/s Asian Hospital Pvt. Ltd. And fee/Charges of these services which are to be paid by patient is to will be credited to the account of M/s Asian Hospital. Thereafter M/s Asian Hospital will pay consideration to M/s ARPK for the services rendered by them to the patients of M/s Asian Hospital in accordance with the agreement between both the parties(M/s Asian Hospital and M/s ARPK).

The above procedure can be divided in two parts- In the first part M/s Asian Hospital Private Ltd. will provide healthcare services to the patients through the doctors hired/outsourced by it form M/s ARPK. In second part, it can be said that the infrastructure including apparatus and instruments etc. established by M/s Asian Hospital is outsourced to M/s ARPK Healthcare Private Ltd. Therefore the services provided by M/s Asian Hospital Private Ltd. are covered under the definition of "Healthcare Service" as defined under clauses 'zg', 's' and 'k' of the notification no. 12/2017. **But the outsourcing of infrastructure by M/s Asian Hospital to M/s ARPK Healthcare Private Ltd. is not covered under these definitions.** Therefore, the charges/fee paid to M/s Asian Hospital for the said outsourcings of infrastructure are not exempted under the notification no. 12/2017-CT (R) dated 28.06.2017.

In the case at hand, the Applicant has stated that authorised medical practitioner employed in M/s ARPK Healthcare Provide Ltd. will provide Gastroenterologist services (Healthcare Services) to the patients of M/s Asian. So, M/s Asian will pay to M/s ARPK for the services rendered by it to the patients of M/s Asian Hospital. Both M/s Asian hospital and M/s ARPK healthcare will share the charges paid by the patients. The Recipient of the services is the hospitals/ Clinical establishment i.e. M/s Asian Hospital Pvt. Ltd., who will enter into contract with the applicant. In short, it is said that the Applicant is vested with contract of taking a space with all amenities related to the Gastroenterological department or in other words M/s Asian will enter into a

contract with M/s ARPK to outsource the supply of doctors (specialists)/ nurses and other staff.

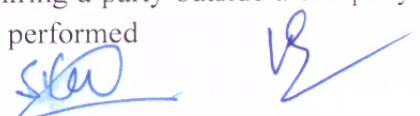
Further, it is also observed that the applicant who is a company will render its specialized services at the premises of M/s Asian hospital Faridabad, who are the recipient of the services, and the applicant will supply the services to consumers/ patients who don't make payment to the applicant. The applicant is paid only by the recipient of the services (M/s Asian). Here it can be said that the services are rendered by one company to another company/ hospital and one of them is supplier and another is recipient of the services. The applicant stressed that the main recipient of the services are the patients and services to the patient is covered under the entry no. 74 of the Notification no 12/2017 however it is altogether different aspect and can be better understood by the following explanation:-

1. A patient comes to the M/s Asian Hospital for treatment of some gastroenterological disease. The patient pays a sum of Rs X for his OPD/IPD to the counter of the Asian Hospital. Here the M/s Asian Hospital is a clinical Establishment and it is providing the patient the requisite medical treatment. The hospital has charged the payments/ fees from the patient, and so the hospital becomes liable to deliver the services. The Asian Hospital has all the facilities for treatment of the ailments but not having the specialized doctors (neither as an employee nor the hired one). The doctors in this regard are supplied by the applicant company. Here, the applicant company is paid by the hospital to acquire its services and not by the patients. The consideration amount will be paid as per the terms and condition of the contract. The Company being incorporated under the Companies Act, 2013 may or may not be a clinical establishment. This company would act as a clinical establishment only if it is involved in treating the patients as defined under the definition (of the healthcare services) of the notification issued under the Act *ibid* but it becomes a supplier of specialized man power if it act differentially as it's in the present case.

2. M/s Asian Hospital outsourced its requirements of specialized doctors particularly for the gastroenterological services from the applicant company and not treating the patient by itself as a clinical establishment. The exemption claimed by the applicant is available as per the entry of the said notification only when the clinical establishment itself provides this service (treatment related to gastroenterological problems) as a part of health care services to the in-patients as well as out-patients and the same is not available when such supply of services provided by a third party as a contractual arrangement.

In this regard, we need to see what is the legislative intention behind any exemption of tax given under the GST Act i.e. the purpose for not taxing the healthcare services is to give benefit to the common man/patients as it(Healthcare services) is one of the basic necessities of life. Similarly in the field of education i.e. School/College/University tuition fees is exempted whereas the tuition fees charged by the coaching centres institutions is taxable.

And it is also observed that a company/corporation cannot be a doctor for providing the health care services which are exempted under the notification no. 12/2017 dated 28.06.2017. From an overall view of the matter/issue at hand it can be said that M/s Asian Hospital is/will be outsourcing (the business practice of hiring a party outside a company to perform services or create goods that were traditionally performed

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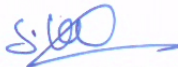
in-house by company's own employees and staff) the services of M/s ARPK (the applicant) and applicable tax under the GST Act shall be levied accordingly.


Conclusion:-

The authority is of view that the scope of supply under the GST Act is quite vast and covers all aspects of the nature of supplies. And the said supply which is to be made between the applicant and M/s Asian Hospital is duly covered under the definition of the scope of supply, hence taxable under the Act. So, it can be said that the claim of the applicant that the services rendered by the applicant to M/s Asian Hospital is covered under the Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017 is not sustainable rather it falls under the taxable supply of services by a company/ legal entity to an another company/hospital.

Ruling: -

Questions	Answers
1. Whether Fee/ charges received by M/s ARPK from M/s Asian is exempt under GST?	No
2. Whether Fee/charges for Health Care Services received by M/s Asian is exempt under GST.	Yes except for the services mentioned under heading 9993 clause no. 31A vide notification no. 03/2022-CT(R)dated 13.07.2022


(Sunder Lal)
Member CGST


(Kumud Singh)
Member SGST

Regd. /Speed Post

M/s ARPK Healthcare Pvt. Ltd.,
Sector-16, Faridabad, 121002
Haryana.

Copy to:

1. The Additional Commissioner, Central Goods & Service Tax Commissionerate, Plot No. 5, Sector 25, Panchkula (Haryana).

Note: An Appeal against this advance ruling order lies before the Haryana Appellate Authority for Advance Ruling for Goods and Service Tax Haryana Vanijya Bhawan, Plot No. 1-3, Sector 5, Panchkula-134 151 (Haryana), within 30 days from the date of service of this order.