

**THE AUTHORITY FOR ADVANCE RULING  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560009**

**Advance Ruling No. KAR ADRG 04/2021**

**Date : 29-01-2021**

Present:

1. Dr. Ravi Prasad M.P.  
Additional Commissioner of Commercial Taxes . . . . Member (State Tax)
2. Sri. Mashhood Ur Rehman Farooqui,  
Joint Commissioner of Central Tax, . . . . Member (Central Tax)

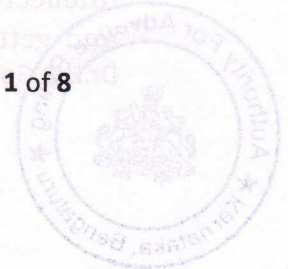
1.	Name and address of the applicant	Dr. H B Govardhan, No.85, Near Corporation Bank, 1 <sup>st</sup> Floor, Magadi Main Road, Anjananagar, Bengaluru 560091
2.	GSTIN or User ID	29SUOPB7362A1ZO
3.	Date of filing of Form GST ARA-01	16.03.2020
4.	Represented by	Dr. H.B. Govardhan
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bengaluru North West Commissionerate
6.	Jurisdictional Authority - State	LGSTO-80, BENGALURU
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act 2017 vide CIN CNRB20032900073539 dated 09.03.2020 and Rs.5,000/- under KGST Act 2017 through debit from cash ledger vide reference number AA290121062066K dated 27.01.2021.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017  
& UNDER 98(4) OF THE KGST ACT, 2017**

Dr. Hosahalli Boraiah Govardhan, No.85, Near Corporation Bank, 1<sup>st</sup> Floor, Magadi Main Road, Anjananagar, Bengaluru 560091, (hereinafter referred to "the applicant") having GSTIN 29SUOPB7362A1ZO, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and KGST Act.

Dr. H.B. Govardhan

Page 1 of 8





2. The applicant, a proprietary concern, registered under the provisions of the Goods and Services Act, 2017, is a Medical Doctor specialised in Cancer and other General Health Care Services and presently working in KIDWAI HOSPITAL as Salaried Employee and also is rendering Consulting Services to Hospitals/ Laboratories / Biobanks registered in United States of America (USA) and other countries through phone calls, Video Conference, Mails and other Electronic devices. He is living in India and rendering all medical consultancy services from India to Hospitals/ laboratories / biobanks and receives monthly/ quarterly remuneration from USA and other countries in dollars / foreign currency. He has further stated that he desires to practice in India part time and receive consultancy income in India from Indian Hospitals/ Laboratories and health care services.

3. In view of the above, the applicant sought advance ruling in respect of the following questions:

- (a) *Is the applicant eligible to be registered under GST Act?*
- (b) *Is there any tax liability on services rendered to the Hospitals / Laboratories/ Biobanks registered in United States of America (USA) and other countries includes export of intellectuals like clinical data completions, analysis, clinical opinion advisory consultation through Phone calls, Video Conference, Mails and other Electronic devices and the applicant is living in India and services rendered from the place of India?*
- (c) *Is there any tax liability on Health Care Services – Medical Services and Paramedical Services (Part-time practicing in Clinic) rendered in India to the recipient from India?*

4. **Admissibility of the application** : The applicant filed the instant application, in relation to requirement of registration and determination of liability to pay tax. Further the applicant has sought advance ruling in respect of the questions on the issues covered under Section 97(2)(e) & (f) of the CGST Act 2017 respectively and hence the application is admitted.

5. The applicant furnished the following facts relevant to the instant application.

5.1 The applicant stated that he is a clinical practitioner involved in supply of Health Care Services to Indian Hospitals and Laboratories and receives consultation fees after deduction of TDS for the said services. The applicant desires to know whether he should get registered under GST and are there any tax liabilities for health care services in India. He also stated that he is giving external health care services to laboratories, hospitals, bio-bank companies situated outside India, either in USA or other countries as Export of Clinical Information Intellectuals, Clinical data completion, data analysis, through electronic devices and getting monthly or quarterly remuneration in dollars depending on his work.

Dr. H.B. Govardhan





He is desirous to know whether there is a tax liability and whether these services come under GST as it includes health care services outside India and also includes export of intellectuals and getting remuneration from USA in dollars.

### **PERSONAL HEARING / PROCEEDINGS HELD ON 30.07.2020**

6. Dr. H. B. Govardhan, the applicant medical practitioner himself appeared for personal hearing proceedings on 28.07.2020 before this authority and reiterated the facts and submitted as under:

6.1 The applicant is presently a practicing medical doctor and is providing consultation facilities to the patients in India. He is also giving consultation related to diagnosis and treatment of cancer patients referred to by Hospitals, Laboratories and Biobank Companies situated abroad for which he is receiving remuneration based on the work done to them. He is also planning to provide consultation services related to diagnosis and treatment to the Indian Hospitals, Laboratories and Bio-banks in future. The applicant has furnished the copy of Consulting Agreement entered by him with M/s Cureline Inc. USA, schedule 'A' of which specifies the list of consultancy services that need to be provided by the applicant.

6.2 The applicant claims that the services provided to the Institute which is a hospital, is exempted from tax under the CGST Act, KGST Act and IGST Act.

### **FINDINGS & DISCUSSION**

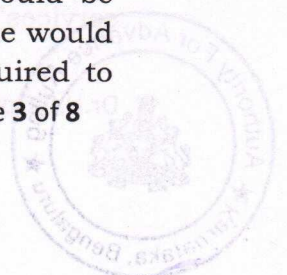
7. We have considered the submissions made by the Applicant in his application for advance ruling as well as the submissions made by him when he appeared for the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

7.1 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

7.2 The applicant stated that he supplies the diagnostic services to the hospitals, Laboratories and Bio-bank companies. The applicant has also submitted a copy of the consulting agreement entered by him with M/s Cureline, Inc., USA, which reveals that the applicant, during the term of the agreement, shall provide his medical expertise in organising collaborative projects between Cureline Inc and clinical centres located in India, histopathological consulting and business development to Cureline.

7.3 The applicant stated during the physical hearing that he would be receiving the samples, test reports and other laboratory reports on which he would be providing his expert services like diagnosis and treatment. He is required to

Dr. H. B. Govardhan





organize collaborative projects between Cureline and clinical centres located in India and providing histopathological consulting and business development to Cureline for which he would be remunerated.

7.4 From the above agreement, it could be seen that the applicant is providing two types of services – (1) Consultation Services in diagnosis and treatment of illness to the Hospitals, Laboratories and Biobank companies, and (2) Business Promotion Services like organising collaborative projects between the foreign company and the clinical centres located in India and business development for the foreign companies.

8. Regarding the first type of services, i.e. Consultation Services in diagnosis and treatment of illness the following is observed:-

8.1 Entry no. 74 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
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

8.2 The term “health care services” is defined in clause (zg) of paragraph 2 of the said Notification and the same reads 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 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;”*

The services provided by the applicant, in the instant case, are by way of diagnosis of an illness and hence the same would be covered under “health care services”



Dr.H.B.Govardhan



8.3 The term "clinical establishment" is defined in clause (s) of paragraph 2 of the said Notification and the same reads 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 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;"*

8.4 From the above, it is clear that the applicant is a clinical establishment as it is a place established to carry out diagnostic or investigative or treatment services of diseases.

8.5 In view of the above, it is clear that the services provided by the applicant are covered under clause (a) of Entry no. 74 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and hence are exempt from tax under the CGST Act. Similarly, it is also exempted from tax under the KGST Act, 2017 and also under the IGST Act, 2017.

9. Regarding the second type of services, i.e Business Promotion Services provided by the applicant to the foreign companies, it is seen that the applicant is a registered person in India and the recipient of services is the foreign company. The applicant is getting the consideration in foreign currency from the foreign company to which he is providing services.

9.1 The contract is examined with regard to the compensation and it is seen that the applicant is paid a monthly retainer of US \$5000 and the applicant shall submit an invoice for each billing period on the last day of the corresponding month. In addition to this, the foreign recipient shall also pay the applicant funds for carrying out projects requested by the foreign company. Further, the foreign company shall reimburse for expenses incurred by the applicant and his agents or employees on behalf of the foreign company, including travel, lodging, meals for customer visits or conferences. These expenses should be pre-approved by the foreign company and the applicant shall submit expense reports and reasonable documentation on a periodic basis to the foreign company.

9.2 The nature of the services, described in Schedule 'A' attached to the Consulting Agreement, have been examined and found that the applicant is agreed to supply the following services.

1. Develop new clinical centres within the Cureline clinical network for collection, processing and analysis of the human biospecimens.

2. Manage standard and custom tissue procurement Projects as requested by Cureline, including:

Dr. H.B. Govardhan





- i. Consulting (SOP, site selection and training, etc.) on human tissue collection
  - ii. Tissue collection and shipping logistics
  - iii. Tissue processing and embedding
  - iv. Stained and unstained slide preparation
  - v. Special diagnostic staining
  - vi. IHC staining following clinical protocols
3. Manage processing and analyses of human tissues, as needed for Cureline's projects, including
  - i. Tissue processing
  - ii. Fixed and frozen slide preparation
  - iii. Immunohistochemical staining
  - iv. Tissue microarrays
  - v. Digital tissue / cell slide imaging
  - vi. Pathology report
4. Participate in establishing the clinical trial oriented Tissue Procurement and Management Services
5. Participate in development of Cureline Bio-Pathology's business.

9.3 It is inferred from the schedule A supra that the services to be provided by the applicant are in the nature of management activities and hence merit classification under Business Promotion Services. The applicant is involved in the setting up of operations in India and managing them as per the directions of the foreign company and these are not Health Care Services. The services that the foreign company provides to the ultimate customers would be health care services but not the services provided by the applicant to the foreign company.

10. Now we proceed to examine whether the services provided by the applicant, on behalf of the foreign company, as their agent, to the clients in India, are covered under Intermediary Services or not. In this regard, we invite reference to the term "intermediary", defined under clause (13) of section 2 of the IGST Act, 2017, which is as under:

*"(13) 'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;"*

10.1 In the instant case, the applicant is providing business promotion services on behalf of the foreign company, as an agent, by utilizing his medical expertise in organising collaborative projects, histopathological consulting and business development. Thus the applicant indubitably is committed through the agreement to facilitate the supply of services, in relation to establishment of Indian clinical centres in India, on behalf of the foreign company, as an agent, but not on his own

Dr. H. B. Govardhan





account. Hence the impugned services squarely get covered under intermediary services.

10.2 Section 13(8) of the IGST Act, 2017 specifies that the place of supply of the "Intermediary Services" be the location of the supplier of services. Thus the place of supply in this case is location of the applicant i.e. India. Hence the impugned services are taxable under GST Law.

10.3 Now we proceed to examine the issue whether the services provided by the applicant are covered under "export of services" or not, for which we invite reference to the definition of the term "export of services", under clause (6) of section 2 of the Integrated Goods and Services Tax Act, 2017, which reads as under:

*"(6) "export of services" means the supply of any service when,-*

- (i) The supplier of service is located in India*
- (ii) The recipient of service is located outside India;*
- (iii) The place of supply of service is outside India;*
- (iv) The payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian Rupees wherever permitted by the Reserve Bank of India; and*
- (v) The supplier of service and the recipient of service are not mere establishments of a distinct person in accordance with Explanation 1 in section 8"*

10.4 In the instant case, with regard to this service, the applicant who is the provider of services is located in India and the recipient of service, i.e. the foreign company, is located outside India. The payment for such service is received in foreign currency and the applicant and the foreign company are not related persons. The place of supply is India, in terms of Section 13(8) of the IGST Act 2017 and hence the impugned services are not covered under export of services, as all the required conditions are not fulfilled.

11. Now we proceed to examine the applicable tax rate on the impugned services. The nature of services provided by the applicant are business promotion and management services, covered under SAC 9983 and are liable to tax at 9% CGST under entry no. 21(ii) of the Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 and 9% KGST under entry no.21(ii) of Notification (11/2017) No. FD 48 CSL 2017 dated 29.06.2017 and at 18% under IGST Act under entry 21(ii) of Notification No.08/2017- Integrated Tax (Rate) dated 28.06.2017.

12. The applicant is providing Business Promotion & Management Services, covered under SAC 9983 and are taxable as discussed at para 11 supra. The applicant being a service provider, as an intermediary, becomes a taxable person

Dr.H.B.Govardhan





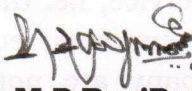
and hence is liable for registration in terms of Section 22(1) of CGST Act 2017. Therefore the applicant is liable for registration subject to threshold limit of turnover. It is observed that the applicant has already been registered under section 22 of the Central Goods and Services Tax Act, 2017 and also the Karnataka Goods and Services Act, 2017.


13. Regarding the question that the applicant has asked relating to the applicability of tax liability on the health care services – Medical Services and Para-medical services (part time practicing in Clinic) rendered in India to the recipient from India, it is clear that the diagnostic and treatment services provided by the applicant from his clinical establishment to any person in India would be exempt as per the entry 74 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 and entry 74 of Notification (12/2017) No. FD 48 CSL 2017 dated 29.06.2017 and entry 77 of Notification No. 09/2017- Integrated Tax (Rate) dated 28.06.2017.

14. In view of the foregoing, we rule as follows

### **RULING**

1. The applicant is liable for registration under the GST Acts.
2. There is no liability of tax on diagnostic and treatment services rendered to Hospitals/ Laboratories/ biobanks registered in United States of America and other countries. However, the business promotion services rendered, as per the contract submitted, are liable to tax under the GST Acts.
3. The diagnostic and treatment services are covered under Health Care Services and the medical services and part time practising in Clinic are exempted from the payment of GST.

  
(Dr.M.P.RaviPrasad)  
Member

  
(Mashhood Ur Rehman Farooqui)  
Member  
MEMBER  
Karnataka Advance Ruling Authority  
Bengaluru - 560 009

Place : Bengaluru, Karnataka Advance Ruling Authority  
Date : 29-01-2021 Bengaluru - 560 009

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, North West Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-80, Bengaluru.

Office Folder.

Dr.H.B.Govardhan

