

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 15 / 2018

Dated : 27th July 2018

Present:

1. Sri. Harish Dharnia,
Joint Commissioner of Central Tax,
..... Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of
Commercial Taxes
..... Member (State Tax)

1.	Name and address of the applicant	M/s COLUMBIA ASIA HOSPITALS PRIVATE LIMITED The Icon, 2 nd Floor, No.8, 80 feet Road, HAL III Stage, Indiranagar, Bengaluru 560075
2.	GSTIN or User ID	291800000248ARI
3.	Date of filing of Form GST ARA-01	14.03.2018
4.	Represented by	Sri Naveen Rajapurohit, Chartered Accountant
5.	Jurisdictional Authority – Centre	Central Tax (East Division-5) Bengaluru East Commissionerate, 3 rd Floor, Division-5, Range –AED5, BMTc Bus Stand Building, HAL Airport Road, Dommaluru, Bengaluru 560071
6.	Jurisdictional Authority – State	NA
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN SBIN18022900312325 dated 23.02.2018 2. Rs.5,000-00 under KGST Act vide CIN SBIN18022900312325 dated 23.02.2018

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017 AND SECTION 20 OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

M/s Columbia Asia Hospitals Private Limited, (called as the ‘Applicant’ hereinafter), having its registered office at The Icon, 2nd Floor, No.8, 80 feet Road, HAL III Stage, Indiranagar, Bengaluru 560075 has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is a private limited company engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The Company is also engaged in supply of medicines (pharmacy) to in-patients and out-patients. It also operates Restaurant / Canteen services in its premises which is used for supplying food and other eatable items to its patients and their attendants.

3. The question on which advance ruling is sought is as follows:

“Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act or it shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act?”.

4. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that he is a private limited company and is an international healthcare group operating a chain of modern hospitals across Asia. The Company is currently operating across six different states having eleven hospitals out of which six units are in the state of Karnataka. The Hospitals owned by the applicant are engaged in providing secondary and tertiary Healthcare services which in turn categorises as In-patient (IP) and Out-patient (OP) services.
- b. The applicant has its India Management Office (“IMO”) i.e Corporate Office in Karnataka and some of the activities for all the units with respect to accounting, administration and maintenance of IT system are carried out by the employees from IMO which forms part of the registered person in Karnataka. Further, GST paid on certain expenses such as rent paid on immovable property and other equipments, travel expenses, consultancy services, communication expenses etc., which are incurred towards services used by the IMO are availed by the registered person in the state of Karnataka and subsequently, registered person in Karnataka is discharging IGST on the expenses proportionately attributable to the other units located outside the State of Karnataka treating the same as taxable supplies in this regard.
- c. The applicant provides an example on how the services are apportioned and the same reads as under
 - If the Company has received rental services amount to Rs.1,00,000 plus GST of Rs.18,000, which are towards management office. The Company in Bangalore would avail the input tax credit to the extent of Rs.18,000-00 and subsequently

the Company, Bangalore would raise invoices on other units for an amount determined on the basis of turnover of respective unit to the total turnover of all the units in the said tax period and the applicable GST is discharged on the same.

- Assuming the turnover of Company, Pune is Rs.10,00,000 and the total turnover of all units is Rs.1 Crore, then the value of the invoice is determined as follows:

$$\frac{\text{Rental Services received at IMO} * \text{Turnover of Pune}}{\text{Total turnover of all Units}} = \frac{100000 * 1000000}{10000000} = \text{Rs.10,000-00}$$

Therefore, Company in Bangalore would raise an invoice for Rs.10,000-00 on the Company in Pune and discharge the applicable GST on this amount.

- d. However, the applicant states, with respect to employee cost there are no invoices raised by the management office treating the same as activities carried out by employees in the course of or in relation to his employment which does not amount to supply of services.
- e. With these facts, the applicant has sought an advance ruling on the matters already enumerated above.

4. The applicant states that as per Section 7(1)(c) of the Central Goods and Services Tax Act, 2017, the term "Supply" includes "the activities specified in Schedule I, made or agreed to be made with or without a consideration". Further, as per Section 7(2) of the CGST Act, "activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services". As per Entry 2 of Schedule I of the CGST Act, "Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business" shall be treated as a supply even if it is made without consideration. He stated, however, as per Entry 1 of Schedule III of the CGST Act, "Services by an employee to the employer in the course of or in relation to his employment" shall not be treated as a supply of services.

5. The applicant explained that the activities carried out by employees from its India Management Office (IMO) for accounting and other administrative functions with respect to other units amount to supply of services between distinct persons without consideration as per Entry 1 of Schedule I. However, the same shall not be treated as supply of services by virtue of specific relaxation provided in Entry 1 of Schedule III which states that "services by an employee to the employer in course of or in relation to his employment shall be neither treated as a supply of goods not a supply of services."

6. The word employee cannot be restricted to employment with the registered person as per Section 2(94) of the CGST Act merely on account of the location from where he renders his employment services. The employment relationship exists between the employee and employer, i.e. legal entity as a whole and not confined to the location of registered person from where the said employee renders services. When an employee renders any services to other registered persons, i.e. distinct persons of the same legal entity, the nature of activities still assumes the character of services by an employee to the employer in the course of or in relation to his employment as he is an employee for the legal entity as a whole and not for any one registered person. Hence, the services rendered by employees towards accounting and other administrative functions pertaining to other units still retains the character of services by an employee to the employer in the course of or in relation to his employment and hence shall not be treated as supply of services as per Entry 1 to Schedule III. Therefore, GST shall not be applicable on the said activities as the same is not a supply of services.

7. The applicant also states that certain services such as rent paid on immovable property, telephone services and business consultancy availed at the India Management Office (IMO) but are used for the entity as a whole and hence, the same are attributable to all the registered persons located in other states as well. Allocation of such expenses to other registered units by IMO is only for the purpose of determining the profit of each cost centre i.e. registered unit. Whether such allocation of expenditure to other registered units tantamount to supply of services between related or distinct persons as per Entry 2 to Schedule I to CGST Act and accordingly liable to tax is the question asked.

8. FINDINGS & DISCUSSION:

The contention of the applicant is examined.

8.1 Regarding the applicability of entry No.2 of Schedule I to the activities of accounts and management done by the IMO for the individual units located both within the State and also outside the state, the following is observed:

The entry 2 of Schedule I, which deals with the activities that are to be treated as supplies even if made without consideration, reads as under:

“2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business”

8.2 Further, the explanation given in Section 15 of CGST Act 2017, defines the “related persons” as under:

“For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

- i. such persons are officers or directors of one another’s businesses;
- ii. such persons are legally recognised partners in business;
- iii. such persons are employer and employee;
- iv. any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- v. one of them directly or indirectly controls the other;
- vi. both of them are directly or indirectly controlled by a third person;
- vii. together they directly or indirectly control a third person; or
- viii. they are members of the same family;

By careful reading of the above provision, since the IMO is covered under one registration in the state of Karnataka and the units are covered under different registrations, and the units are controlled by the IMO, they both are related persons. By implication, any supply of goods and services from IMO to the separately registered units would amount to supply of goods and services, even if made without consideration.

8.3 Clause (c) of sub-section (1) of Section 7 which is related to the scope of supply clearly states as under:

“(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) . . .

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) . . .”

Hence any activities made between related persons made or agreed to be made without a consideration shall be covered under supply of goods or services. The valuation of such services is to be done as per the provisions of section 15 of the Central Goods and Services Tax Act, 2017 and if any consideration is charged by issue of invoice by the IMO to the respective units would amount to transfer and hence supply as it is in the course of business under clause (a) of sub-section (1) of section 7. Further, these activities made between the IMO and the separately registered units are not covered under any of the entries in Schedule III.

Regarding the second issue related to the activities performed by the employees at the corporate office in the course of or in relation to employment, the employees employed in the Corporate Office are providing services to the Corporate Office and hence there is an employee-employer relationship only in the IMO. The other offices are distinct persons and therefore the employees in the IMO have no employer employee relationship with other offices.

Entry No.1. of the Schedule III which is related to the activities which are to be treated neither as a supply of goods nor supply of services reads as under:

1. *“Services by an employee to the employer in the course of or in relation to his employment.”*

The services provided to the employer, i.e. the corporate office by the persons employed by the corporate office are in the nature of the employee-employer relationship. Further, since the corporate office and the units are distinct persons under the Act, there is no such relationship between the employees of one distinct entity with another distinct entity, at least as per the Goods and Service Tax Acts, even if they are belonging to the same legal entity.

Further, the activities made between the related persons are treated as supplies and the valuation includes all costs, the employee cost also needs to be taken into consideration at the time of valuation of goods or services provided by one distinct entity to the other distinct entities.

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

R U L I N G

The activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act.

(Harish Dharnia)
Member

(Dr.Ravi Prasad.M.P.)
Member

Place : Bengaluru,
Date : 27.07.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore East Commissionerate,
Bengaluru.

The Asst. Commissioner, LVO - , Bengaluru.

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