

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

Advance Ruling No. KAR ADRG 51/2020

Date : 08-10-2020

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	M/s AMBARA, No.50/1, Mountain Road, 1 st Block, Jayanagar, Bengaluru 560011
2.	GSTIN or User ID	29ABCFA3084B1ZS
3.	Date of filing of Form GST ARA-01	24.02.2020
4.	Represented by	Sri Sanjay M Dhariwal, C A & Authorised Representative
5.	Jurisdictional Authority – Centre	The Principal Commissioner of Central Tax, Bangalore South Commissionerate (RANGE ASD3)
6.	Jurisdictional Authority – State	LGSTO-90, 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 and Rs.5,000/- under KGST Act vide CIN HDFC20022900395087 dated 22.02.2020.

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

1. M/s Ambara, No.50/1, Mountain Road, 1st Block, Jayanagar, Bengaluru 560011, (hereinafter referred to “the applicant”) and having a GSTIN 29ABCFA3084B1ZS, 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.

The applicant is a partnership firm registered under the provisions of the Goods and Services Act, 2017. The applicant states that they are engaged in the



business of providing health care services and also run a Hospital in the name of CURA Hospital. The applicant provides the services relating to Health Care Services which are in the nature of diagnostic and treatment services.

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

1. *Whether input tax credit is required to be restricted on medicines supplied to patients admitted in hospital?*
2. *Whether input tax credit is required to be restricted on medicines supplied to patients treated as out-patients?*
3. *Whether input tax credit is required to be restricted on medicines supplied to other than inpatients and out-patients?*
4. *Whether input tax is required to be restricted on supply of food and beverages to the patients admitted in hospital?*

4. **Admissibility of the application** : The applicant filed the instant application, in relation to the admissibility / restriction of input tax credit. Further the applicant have sought advance ruling in respect of the questions on the issues covered under Section 97(2)(d) of the CGST Act 2017 respectively and hence the application is admitted.

5. **Applicant's interpretation of law** : The Applicant submits their interpretation of law as under:

5.1 The applicant, with regard to the question 1 relating to *whether input tax credit is required to be restricted on medicines supplied to patients admitted in hospital*, submits that as per section 9 of KGST / CGST Acts, 2017, tax shall be levied on all intra-State supply of goods or services or both at the rates prescribed under the respective schedules and notifications. Notification No.12/2017 dated 28.06.2017 exempts health care services provided by a clinical establishment. As per this notification, the definition of "clinical establishment" includes hospital. The applicant further submits that "health care services" is also defined to mean any services by way of diagnosis or treatment or care or 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.

5.2 The applicant submits that the services provided in the hospital are very much fall under the head health care services as defined under Notification



No.12/2017 and therefore the consideration received from patients admitted in the hospital is exempted from payment of tax under GST Law.

5.3 The applicant further submits that the medicines supplied to the patients admitted in the hospital during the course of health care services are also exempt from payment of tax on the ground that the supply of medicines forms part and parcel of health care services.

5.4 Further, the applicant submits that sub-section (30) of section 2 of KGST/ CGST Act, 2017 defines the expression "composite supply" to mean that it is a supply made by a taxable person to a recipient consisting of two or more supplies of goods or services or both or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. Further, sub-section (90) of section 2 of KGST/ CGST Act, 2017 defined the expression "principal supply" to mean that it is the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

5.5 The applicant submitted that though mere supply of medicine does not fall under health care services, however on conjoint reading of definition, "composite supply" and "principal supply" it is understood that, supply of medicine is ancillary supply and health care service is predominant supply, both the supplies are naturally bundled with each other, hence fall under "composite supply", therefore supply of medicines to the patients admitted in the hospital during the health care services is exempt from payment of tax under the GST Law.

5.6. The applicant submitted that where outward supply is exempt from tax, the applicant is not eligible to claim input tax credit in terms of section 17 of the Act, which deals with apportionment of credit and blocked credits. Section 17(2) of the Act, reads as "*where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies*".

5.7 From the above submission, the applicant is of the understanding that, medicines supplied to patient admitted in hospital during the course of treatment forms part of health care services, which is exempt from payment of tax, therefore input tax paid on such medicines is not eligible for credit.

6. With regard to question 2 which is related to whether or not input tax credit is required to be restricted on medicines supplied to patients treated as outpatients, the applicant submits as under:



6.1 that the medicines supplied to patients treated as out-patients, do not form part of "composite supply", as the patients have the option either to buy medicines at pharmacy runs by the applicant at hospital or in any other pharmacy outside the hospital.

6.2 that the medicines supplied to out-patients is an independent supply from that of health care service, therefore both the supplies would be treated separately, hence the supply of medicines attract tax as supply of goods.

6.3 Based on the above submissions, the applicant states that they are of the understanding that where medicines are supplied to outpatients, they attract tax and the applicant is eligible to claim input tax credit.

7. With regard to the question 3 which is related to whether the input tax credit is required to be restricted on medicines supplied to other than in-patients and out-patients, the applicant has submitted that supply of medicines to persons other than in-patients and out-patients is an independent transaction and do not fall under health care services and therefore the supply of medicines would attract tax under GST. Based on the above, the applicant states that they of the understanding that where medicines are supplied to persons other than in-patients and out-patients, the applicant is eligible to claim input tax credit.

8. With regard to question 4 relating to whether the input tax is required to be restricted on supply of food and beverages to the patients admitted in hospital, the applicant has submitted that supply of food and beverages to the patients admitted in hospital fall under the definition of "composite supply" and "principal supply" and hence supply of food becomes ancillary to the principal supply of health care service, which is exempt from tax and therefore supply of food is also exempt from tax. The applicant further states that, from the above, they are of the understanding that food and beverages supplied to patients admitted in the hospital during the course of treatment forms part of health care services, which is exempt from payment of tax and therefore input tax paid on such food and beverages is not eligible for credit.

PERSONAL HEARING / PROCEEDINGS HELD ON 30.07.2020

9. Sri Sanjay M Dhariwal, Chartered Accountant and duly authorised representative, appeared for personal hearing proceedings on 28.07.2020 before this authority and reiterated the submissions already made. Further, the learned representative has also stated that the applicant is making item wise billing i.e. bed charges, food charges, medicine charges etc.



10. DISCUSSION & FINDINGS:

10.1 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.

10.2 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.

10.3 The applicant is running a hospital providing health care services, to both in-patients as well as out-patients. The applicant, in addition to health care services also provides food & beverages, medicines to the in-patients. The applicant has been making item-wise billing to the in-patients & the out-patients. Thus the applicant supplies medicines to three types of persons, (a) inpatients, (b) out-patients and (c) customers.

10.4 In view of the above, the applicant is seeking advance in respect of the questions mentioned at para 3 supra. The questions are related to availability of ITC, on the inputs, when they supply the medicines to the in-patients, out-patients, customers and when they supply food & beverages to the in-patients in the hospital. We proceed to consider one question at a time & examine the same.

10.5 The first question is related to supply of medicines to the in-patients and is about *the restriction of the input tax credit, on such supply*. The inpatients are the patients admitted in the hospital for health care services. The applicant contends that they are providing a composite supply of health care services. Thus the question before us to decide is whether the services supplied by the applicant as a part of health care services to the inpatients are composite supply of services or not.

10.6 **Supply of medicines to the inpatients:** It is seen, in this case, that the contract is for the treatment of the patients and the medicines provided to the patients are in the course of treatment of the patients in the hospital. Hence the supply from the applicant hospital to the inpatients is that of supply of health care services only. It is clear from the facts of the case, that the applicant is a "clinical establishment" and is providing "health care services", as per the meaning attributed to those two terms under Notification No.12/2017- Central Tax (Rate) dated 28.06.2017. It is also clear that the patients get admitted to the hospital and become inpatients for the treatment of the ailment. The patient does not have any choice of the medicines that are being administered and the only thing the patient interested in is the treatment provided for the ailment. There is no separate



contract for the supply of medicines which is independent of the supply of treatment services. Any medicines which are administered to the patient are a part of the treatment services and there is no separate supply of medicines to the patients.

10.7 Section 2 (30) of the CGST Act, 2017 provides for the definition of a "Composite supply" which reads as under:

"(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or a combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"

It is very clear from the above that to constitute a "composite supply" the supply should consist of two or more taxable supplies which are naturally bundled and supplied in conjunction with each other. In the instant case the supply of medicines is not a distinct supply and the medicines are consumed in the course of supply of treatment services and hence would not constitute a "composite supply" as there is only one supply and that is "treatment of ailment" which is a "health care service". If at all any medicines or any other things are supplied independently, of the treatment services, then that would constitute a separate supply not under the service contract for which the person is admitted to the hospital. To constitute a composite supply, there must be two separate taxable supplies and these must be naturally bundled and supplied together. In the case of usage of medicines, there are no two supplies which are separate and bundled together and hence would not constitute "composite supply".

10.8 The treatment services for diseases are "health care services" as defined under Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 and supply of health care services provided by a clinical establishment is exempt from the levy of tax as per entry No. 74 of the said notification supra. Since the output supplies are exempt, the applicant is not eligible to claim the input tax paid on the inward supplies of medicines that are used for providing "health care services" to the inpatients.

10.9 **Supply of medicines to the out-patients:** The applicant, in this case, supplies medicines in two ways, - one as sale of medicines from his pharmacy counter and the other as a part of the health care services. The first type is of the nature of sale of medicines and medicines being taxable goods and the contract is for supply of medicines, the same is liable to tax and the applicant is eligible to claim input tax credit relating to the taxable supply of medicines.

10.10 In the second type of services, the applicant supplies medicines as a part of the supply contract of health care services and the applicant contends that



these services are composite supply of health care services. The applicant, while providing treatment to the outpatients, uses certain consumables such as medicines, bandages, cotton, etc.,. Hence the medicines, cotton and bandages are consumed in the provision of health care services and the output is only health care services. Hence there is no separate / distinct supply of medicines, bandages, cotton etc., and since they are used in the supply of exempt health care services, the impugned supply can't be a composite supply, as explained at paras 10.7 & 10.8 supra. Therefore the applicant is not eligible to claim input tax credit on the taxes paid by the applicant on the inward supplies of such goods.

10.11 **Supply of medicines to the Customers:** The applicant, with regard to the supply of medicines & other goods to the customers, is selling the medicines as a trader and hence they are liable to collect and pay the applicable tax on the goods sold and also is eligible to claim input tax credit like any supplier of taxable goods, subject to any restrictions in Section 17 of the GST Act.

10.12 **Supply of food & beverages to the inpatients:** The supply of food & beverages to the inpatients can happen in two ways i.e. prescribed diet in accordance with the treatment & food as per the request of the inpatient. Thus with regard to supply of food & other articles to the inpatients in the hospital, the question before us to decide is whether the said supply is a part of the health care services or not.

If the supply of food & beverages is under the prescribed diet as part of the treatment process, and if it is an integral part of the treatment, then the food and beverages loses its identity as a separate supply and merges with the supply of treatment service similar to supply of medicines. Thus the impugned supply of food & beverages is an ancillary to the supply of treatment service i.e. health care service, which is an exempted supply, under entry No.74 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017. Therefore the applicant can't claim the input tax credit.

10.13 However, if the supply of food & beverages is at the request of the patient i.e. if it is not a diet but menu is as per the patient's request, such supply maintain separate identity and if it is supplied distinctly, then the question arises whether the supply of food and beverages are naturally bundled and supplied in conjunction with the treatment or health care services. It is pertinent to mention here that the Authorised Representative during the personal hearing has confirmed that the applicant do not allow the inpatients to consume outside food. Thus it is inevitable that the impugned supply becomes naturally bundled with the treatment service i.e. health care service and the supply becomes composite supply, which is an exempted supply, under entry No.74 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017. Thus the applicant can't claim the input tax credit.



11. In view of the foregoing, we pass the following

R U L I N G

1. The input tax credit is required to be restricted on medicines used in the supply of health care services provided to inpatients.
2. The input tax credit is required to be restricted on medicines used in the supply of health care services provided to outpatients. Further in case medicines are supplied independent of health care services, then the applicant is eligible to claim input tax credit subject to payment of taxes on such independent supply of medicines.
3. The input tax credit is not required to be restricted on medicines supplied to others i.e. customers, who are neither inpatients nor outpatients, as there is no health care services provided and is liable to pay tax on such outward supply of medicines.
4. The input tax credit is to be restricted on supply of food & beverages supplied to inpatients and is part of the health care services.

(Dr.Ravi Prasad.M.P.)

Member MEMBER

Karnataka Advance Ruling Authority
Place : Bengaluru Bengaluru - 560 009

Date : 08 -10-2020

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 Principal Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-90, Bengaluru.
5. Office Folder.

(Mashhood Ur Rehman Farooqui)

Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

