

GST-ADVANCE RULINGS

CA. C. B. Thakar, CA. Jinal Maru

Case: LATEST DEVELOPERS ADVISORY LTD [2020-TIOL-66] (RAJASTHAN AAR)

The applicant is in the business of providing maintenance i.e. Common Area Maintenance (CAM) services to housing societies and pay GST on the same. They also enter into separate agreement with individual members who wish to avail their services for supply of water to them. The applicant shall procure water from tanker water & supply and charge to the individual customers based on the sq. feet occupied by them as there are no sub-meters. They sought ruling for whether GST is payable on supply of water as they are mere traders and may qualify for exemption under Entry 99 of the Notification 2/2017-CTR.

The AAR held that though there is separate agreement for supply of water and they collect charges on per sq. feet basis from the residents of the society, it is not possible to supply of water to each apartment separately as the apartments do not have their own separate water storage tanks. Also, it is quite evident that supply of water in Contract-II & supply of maintenance services in Contract-I are to the same society and , there is no direct supply of water to the individual residents. GST is leviable on the supply of water as applicable on supply of maintenance services.

Case: OPTM HEALTH CARE PVT LTD [2020-TIOL-54-AAR-GST (KOLKATA)]

The Applicant is providing a form of treatment called “Phytotherapy” to cure osteoarthritis and disorders of similar nature. The medicines invented by them have been approved by the Drug Control Department under the category of Ayurvedic Medicine. They seek ruling to know whether they are eligible for exemption under entry 74 of notification 12/2017-CTR.

The AAR held that applicantsubmissions do not clarify that its plant-based preparations are manufactured exclusively in accordance with the formulae prescribed in any authoritative book of Ayurveda specified in the first Schedule of the Drugs and Cosmetics Act, 1940. It also does not claim that the persons administering the plant-based preparations are ‘authorised medical practitioners’ in Ayurveda within the meaning of para no. 2(k) of the exemption notification 12/2017-CTR . Hence, exemption not eligible.

Case: M/s WATER HEALTH INDIA PVT LTD [2020-TIOL-57] (KARNATAKA AAR)

Applicant enters into agreement with local Municipalities to purify the raw water through community water treatment and supply the purified water in unsealed containers of 20 litres. They claim to eligible for exemption from payment of GST under entry 99 of notification 2/2017-CTR.

AAR held that the word “and” used in entry 99 is disjunctive in nature & lays down that water sold in sealed container is the another type of water excluded from the said entry along with aerated water, mineral water, purified water etc.

Thus, supplying of purified drinking water to the general public in an unsealed container is not entitled for the exemption from GST

Case: LATEST DEVELOPERS ADVISORY LTD [2020-TIOL-66] (RAJASTHAN AAR)

Facts of the Case:

1. The applicant proposes to engage in the business of providing maintenance i.e. Common Area Maintenance (CAM) services to housing societies.
2. For providing above services, it will enter into an agreement (Contract –I) with the society/ individual customers.
3. With respect to one of the Projects lacking proper supply of water, applicant enters into an agreement (Contract-II) for water supply arrangement for personal use of individual members.
4. The applicant shall procure water from tanker water & charge to the individual customers based on the sq. feet occupied by them, as there are no sub-meters. Also Contract-II is optional with the individual members of the society.

Questions before AAR:

1. Whether the applicant is required to pay GST on water charges collected from customers for supply under Contract-II?

Arguments by Applicant :

1. Supply of water is exempt from levy of GST under Entry 99 of the Notification 2/2017-CT(Rate). That since the project is located in an area where there is no water supply, customers have entered into an contract with the applicant for water management. Water is purchased by the applicant & supplied “as such” to the customers, i.e. without carrying out any further process.
2. Water is movable in nature and therefore qualifies as “Goods” u/s 2(52) of CGST Act. The activity of applicant is merely trading of water supply.
3. Without prejudice, even if the transaction in Contract-II involves supply of services & supply of goods(water), it would be composite supply. Since principal supply is exempt under above notification the entry transaction would be out of levy of GST.

Decision of AAR

1. In the instant case, applicant is providing services to society in 2 parts i.e. all services of maintenance (other than supply of water) & supply of water. Further, as a general practice across trade the maintenance service is inclusive of supply of water & hence supply of water through a separate agreement raises suspicion in its activity. This is because the water received by the society is used for multiple purpose i.e. gardens, washing cleaning , swimming pool & is stored in common underground water tank which is maintained by society.
2. The applicant seems to have bifurcated the services provided to society in order to escape condition of Rs.7500/- per month per member under entry 77 of notification 12/2017-CTR or it might be crossing basic threshold limit.
3. Even though there is separate agreement for supply of water and collects charges on per sq. feet basis from the residents of the society, it is not possible to supply of water to each apartment separately as the apartments do not have their own separate water storage tanks.
4. Thus, it is quite evident that supply of water in Contract-II & supply of maintenance services in Contract-I are to the same society and relevant to each other, there is no direct supply of water to the individual residents.
5. Therefore GST is leviable on the supply of water as applicable on supply of maintenance services.

Case: OPTM HEALTH CARE PVT LTD [2020-TIOL-54-AAR-GST (KOLKATA)]

Facts of the Case:

1. The Applicant is providing a form of treatment called “Phytotherapy” to cure osteoarthritis and disorders of similar nature.
2. The protocol of treatment which they follow is called “Phytotherapy”. The word “Phyto” means derived from plants. They claims that food from rice, wheat have certain chemical compounds to produce the shell of the human body. These chemicals are known as phytochemicals. OPTM stands for “Organic Phyto Therapeutic Method. The phytochemicals are oil-based, produced from plants when they mature to give fruits and flowers. Trees preserve these organic chemicals in their seeds too

Questions before AAR:

1. Whether they are eligible for exemption under entry 74 of Notification 12/2017-CTR?
2. Whether they need to stay registered under GST Act?

Arguments by the Applicant:

1. The medicines invented by them have been approved by the Drug Control Department under the category of Ayurvedic Medicine. Supplemented by phytotherapy, the medication is used for the treatment of osteoarthritis and disorders of similar nature
2. The patients suffering from osteoarthritis and disorders of similar nature are being treated by qualified doctors applying the unique phytotherapeutic methods. It is registered as a clinical establishment under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (hereinafter the CE Act).
3. Thus it is a composite supply, wherein principal supply is health care services and supply of medicines is ancillary supply.
4. Although the Applicant is licensed as a phytotherapy centre, use of ayurvedic medicines in the protocol of treatment shows that it actually provides ayurvedic treatment, which is a recognised systems of medicines u/s 2(o) of the CE Act. Therefore, they should be eligible for exemption under entry 74(a) of above notification.

Decision of AAR

1. The applicant states that its 'phytotherapy' combines application of plant-based preparations with services having some therapeutic value.
2. If the preparations applied are manufactured exclusively in accordance with the formulae described in any authoritative book of Ayurveda specified in the First Schedule of the Drugs and Cosmetics Act, 1940 (section 3(9)) for use in the diagnose, treatment, mitigation or prevention of specific disease or disorder, they can be called ayurvedic medicine and the treatment provided may be considered a recognised system of medicine in India. However, the applicants submission do not clarify that the medicines prepared are as per the said formulae prescribed.
3. The applicant also does not claim that the persons administering the plant-based preparations are 'authorised medical practitioners' in Ayurveda within the meaning of Para No. 2 (k) of the Exemption Notification.
4. Hence, it cannot be accepted that it is a clinical establishment offering treatment in the recognised ayurvedic system of medicine. The Applicant's supply is not exempt under Entry No. 74 of the Exemption Notification. It, therefore, needs to remain registered, as its liability to pay GST does not cease.

Case: M/s WATER HEALTH INDIA PVT LTD [2020-TIOL-57] (KARNATAKA AAR)

Facts of the Case:

1. The applicant is engaged in business of supplying purified water in following types :
 - a) In unsealed form by filling customers empty cans
 - b) In 20 litre unsealed cans
 - c) Through piped network to establishments
2. The applicant has entered into MOU with local panchayats / municipalities for the supply of purified water to the general public. The MOU provided that the applicant shall supply purified water by installing community water treatment plant at economical price.
3. They charged this purified water at Rs. 8/- for 20 litres cans. Also, they could recover the capital & operational expenses in case the amount so collected falls short.

Questions before AAR:

1. Whether supply of purified water to public in empty unsealed cans is exempt under GST law?

Arguments by the Applicant:

1. They have entered into agreement with Municipalities to purify raw water pumped from well, ponds, bore well etc by removing all impurities making it fit enough to drink. Hence Applicant is selling purified water not in sealed containers.
2. Entry 99 of notification 2/2017-CTR exempts all types of water except sold in sealed containers. This is evident from the term "and" in the said entry.

“Water [other than aerated, mineral, purified, distilled, medicinal, iconic, battery, de-mineralized and water sold in sealed container] is exempt from GST.”

3. It was argued that, the exclusion will apply only when the purified water is sold in sealed container. The term ‘sold in sealed container’ runs along with the excluded category of water. The term ‘and’ prior to the term ‘water’ should be read in a manner that is conjunctive & in such a way that phrase in a sealed container is applicable for all types of water enumerated in the entry. They submitted that the word “water in sealed container” should be read in conjunction with word “purified, mineral, etc” and should not be read as separate sentence.
4. Relying on the case of Sukhnandan V. Suraj Bali, it was held that “and” should be understood in its natural grammatical sense to indicate a conjunctive sense & not a disjunctive sense and cannot be read as “or”.
5. They also relied on CBIC circular 52/26/2018 dated 9th August,2018 where it clarifies that supply of drinking water for public purposes, if not supplied in sealed containers, is exempt from GST.

Decision of AAR

1. That the ordinary usage of “and” is conjunctive. However, there is no hard and fast rule as to the meaning of the word “and” and this word gets its proper meaning from the particular context from which it has been used. This has been observed by Hon’ble Allahabad HC in case of Sukhanandan V. Suraj Bali.
2. Applying the above principle, the word “and” used in entry 99 is disjunctive in nature & lays down that water sold in sealed container is the another type of water excluded from the said entry along with aerated water, mineral water, purified water etc.
3. Thus, supplying of purified drinking water to the general public in an unsealed container is not entitled for the exemption from GST.