

**1. Case: M/s BARODA MEDICARE PVT LTD [2022-TIOL-24-AAAR-GST] (GUJARAT AAAR)**

**Facts of the Case:**

1. The appellant is running 3 multi- specialty hospitals under the Brand name 'Sunshine Global Hospitals' at Manjalpur, Vadodara and Surat.
2. The Gujarat AAR in respect of the questions raised by appellant held as under :
  - a. The supply of medicines, surgical items, implants, consumables and other allied items provided by the hospital through their hospital in house pharmacy used in the course of providing health care services as well as supply of food and room on rent to in-patients admitted to the hospital for diagnosis or medical treatment or procedures is a composite supply of In-Patient Healthcare Service is exempted under entry 74 of notification 12/2017-CTR
  - b. The applicant will be liable to pay GST @ 18% on the payment received directly from the business entity for health services provided to employees of the business entities in relation to Occupational Health Check-up (OHC) or preventive care along with ambulance facility and allied medical services under "Human health and social care services under entry 31 of notification 11/2017-CTR
3. Aggrieved by the aforesaid AAR, present appeal has been filed.

**Questions before AAAR:**

1. Whether the supply of Occupational Health Check-up (OHC) service by the hospital i.e. nursing staff, Doctors, Paramedical staff on hospital's payroll, working in different corporate for providing health check-up service, ambulance facility, and allied medical services to their employees and also the camps conducted for health check-up outside the hospitals, to be treated as Health Care service and hence not taxable under CGST / SGST ?

**Arguments by Applicant:**

1. That some hazards are common for all industries, like hazardous substances, dust, machinery related accidents, trips and falls, physically demanding work, heat and cold, etc. The best way to avoid any accident to happen is to have preventive & safety process in place and get an individual's health check done regularly.
2. They submitted that the occupational health checks can be required for variety of staff, at various stages of their occupation, starting before a new person is assigned to particular job.
3. That these are the services which are provided by any clinical establishment through their Nursing staff, Doctors, Paramedical staff etc. at their place to look after any medical emergencies, medical treatment, health check-up of organization staff.
4. That the primary purpose is to offer timely health check-up, medical treatments, and other allied medical services as and when required by the organization towards their staff needs in the workplace and allow the employer to make changes to improve worker health and safety.
5. That there are 29 enlisted diseases under Schedule VIII read with Sections 89 and 90 of the Factories Act, 1948 and to diagnose / prevent and take care of these diseases, occupational health check up and prevention is being provided by the appellant to the business entities.
6. That services provided by the appellant merit classification under Service Code 999312 as far as occupational health - check ups are concerned. This is as per the explanatory notes to the scheme of classification of services related to "Human health services" (Group 99931). The said Service Code is wide enough to consist general medical services consisting of the prevention, diagnosis and treatment by doctors of medicine of physical and / or mental diseases, such as : (a) consultations; (b) physical check-ups, etc. I
7. That the Board has given specific note for this SAC (Services Accounting Code), specifically mentioning that these services are not limited to specified or particular conditions, diseases or anatomical regions; that they can be provided in general practitioners' practices and also delivered by outpatient clinics, at home, in firms, schools etc. or by phone, internet or other means.

8. Relied on a judgement delivered by European Court of Justice in the case of Peter d' Ambrumenil, Dispute Resolution Services Ltd. Vs. CCE [2012] 36 STT 537 (ECJ) wherein the Hon'ble Court held that conducting medical examinations or taking medical samples of individuals for employers or insurance companies or certification of medical fitness are exempt, if such services are intended principally to protect health of person concerned.
9. Also referred to various rules of Draft Occupational Safety, Health and Working Condition (Central) Rules, 2020, and has submitted that the entire scheme and objective of Occupational Health Check up is medical examination of a patient. It is further submitted that when it is a case of medical examination of a patient, the word 'diagnosis' defined in various dictionaries is broad enough to include occupational health check up.
10. That in order to be eligible to claim benefit of exemption, what is important is that the above said Health Care Services must be supplied by a clinical establishment, an authorized medical practitioner or paramedics and not to whom, as it can also be provided to firms, schools etc

#### **Decision of AAR**

1. The appellant under their proposed agreement of Occupational Health Checkups will provide round the clock Doctors, Nurses, medical assistants, Paramedical staff etc for offering treatment, diagnosis, and allied healthcare services at the site of their recipient unit. The consideration will be based on the requirements of the recipient unit. The above personnel deployed at the unit shall look after emergencies, medical treatment, medical check-ups etc of the employees of the unit. They will be carrying out regular health check up of employees viz. pre-employment health check up ; prevent work related injuries, diseases and potential health hazards; monitor health status at periodic intervals ; providing immediate treatment as when required which may involve getting ambulance services in case patient needs ICU or immediate hospital admission.
2. It is clear that objective of medical examination is diagnosis. The definition of diagnosis, as per Cambridge dictionary means a judgement about what particular illness or problem is, made after examining and as per freedictionary.com is the act of process of identifying or determining the nature and cause of a disease or injury through evaluation of patient's history, examination and review of laboratory data, are broad enough to include occupational health check -ups within the meaning of word diagnosis. Further, occupational health check-ups provide preventive care which falls in the scope of the word 'care'.
3. In view of above definition of Health Care Services, it is clear that there is no disparity when provided by a clinical establishment to a patient inside the clinical establishment or outside the said establishment.
4. In para 16 of ruling passed by GAAR, it was held that occupational health check-ups are classified under 'Human Health and Social Care Services in terms of Sr. No. 31 of the Notification No. 11/2017-CT (Rate) dated 28.06.2017. That GAAR has classified the service under major heading 9993 as mentioned at Sr.31 the Notification No. 11/2017-CT (Rate) dated 28.06.2017.
5. The said major or group code has been granted exemption under Sr. No. 74 of exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended. The GAAR has failed to examine as to whether the description of service provided by the appellant is covered within the description of service given at Sr. No. 74 of Notification No. 12/2017-CTR.
6. On going through explanatory notes of SAC 9993 i.e. Human Health and Social Care Services and headings and sub-heading mentioned under above SAC, we find that other than the Human Health Services (SAC 99931), which is exempted when provided by a clinical establishment an authorized medical practitioner or para-medics, the following services are mentioned:
  - (a) 99932 Residential care services for the elderly and disabled
  - (b) 99933 Other Social Service with accommodation
  - (c) 99934 Social Services without accommodation for the elderly and disabled
  - (d) 99935 Other Social Service with accommodation
7. We hold that supply of Occupation Health Checkup Service by the hospital i.e. nursing staff, Doctors, Paramedical staff on hospital's payroll working in different corporate for providing health check-up services, ambulance facility and allied medical services to their employees and also the camps conducted for health check-up outside the hospitals to be treated as Health Care Service and exempted under GST in terms of Entry at Sr.No.74 of Notification No.12/2017- CTR.

#### **2. Case: M/s HEALERSARK RESOURCES PVT LTD [2022-TIOL-68-AAR-GST] (TELANGANA AAR)**

#### **Facts of the Case:**

1. The applicant are in the business of providing boarding and lodging to the students undergoing training under healthcare related vocational program under Deendayal Upadhyay Grameen Kaushalya Yojana (DDU-GKY)
2. They are charging Rs.9000/- per candidate per month; of which Rs.3500/- is towards rent for accommodation at fixed cost and Rs.5500/- towards food on head count/actual number of candidates.

**Questions before AAR:**

1. What is the applicable GST SAC and GST rate for the supply of service described in this application?
2. Is it a composite supply or a mixed supply?
3. Whether the service provided by them falls under serial no. 14 of Notification No. 12/2017 dated 28.06.2017 i.e. services for residential or lodging purposes if the value of supply of a unit of accommodation is below Rs.1000/- per day?

**Arguments by Applicant:**

1. That they are charging only Rs.9000/- per month which amounts to Rs.300/- per day for both accommodation and food as a composite supply. Further that the supply of food is ancillary to accommodation and accommodation being the principle supply, hence he claims that their service is exempt from tax in view of entry 14.
2. A composite supply is essentially a naturally bundled supply where two or more different supplies invariably exist along with each other. A naturally bundled supply should possess the following attributes (as mentioned in Education Guide on Taxation of Services published by CBE & C on 20.06.2012 at Para 9.2.4) :
  - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use
  - The elements are normally advertised as a package
  - The different elements are not available separately
  - The different elements are integral to one overall supply - if one or more is removed, the nature of supply would be affected.

**Decision of AAR**

1. As seen from the information serviced by the applicant, the rent is fixed at the rate of Rs.3500/- whereas the food is charged at Rs.5500/- as per the head count or actual number of candidates. This means that the price is variable to the extent of food supplied and this is not a single price the customer pays, no matter how much of the package is actually received. For the above reason, the two supplies are not integral to one another.
2. The Hon'ble High Court of Kerala in the case of *Abott Health Care Pvt. Ltd. (2020) 74 GSTR 37 (Kerala)* held that a composite supply must take into account supplies as affected at a given point in time on "as is where is" basis.
3. In the present case this condition is not fulfilled. Therefore there are two distinct supplies one for accommodation and the other for food
4. Thus, we rule as under:
  - (i) There are two distinct supplies in this contract one for accommodation and the other for food.
  - (ii) The SAC for supply of accommodation is '99631' and as enumerated at serial no. 14 of Notification No. 12/2017 dt: 28.06.2017 this is exempt in the present case as per day rent is below Rs.1000/-.
  - (iii) The SAC for supply of food is '99633' and taxable at the rate is:
    - a. 6% CGST & SGST each with ITC upto 14.11.2017.
    - b. 2.5% CGST & SGST each without ITC thereafter from 15.11.2017 onwards

**3. Case: M/s THE SINGARENI COLLIERIES COMPANY LTD [2022-TIOL-70-AAR] (TELANGANA AAR)**

**Facts of the Case:**

1. The applicant is entering into contracts with a host of vendors/suppliers for extraction of coal. Under rule (3) of State Forest produce transit rules they are liable to pay a certain amount to move the mined coal through the forest area as permit fee at the rate of Rs. 10 per ton of coal transported.

**Questions before AAR:**

1. Whether, in the facts and circumstances of the case, the Applicant is obliged to pay GST on the forest permit fee paid by it under reverse charge mechanism?
2. If GST is payable on forest permit fee paid by the Applicant, can services received by the Applicant be classifiable under heading 9973 of Notification No. 11/2017 Central Tax (Rate) dated 28th June, 2017 and thus be exigible to a lower rate of tax for the period prior to 01-01-2019?

#### **Decision of AAR**

1. The coal mines operated by the applicant are situated in the forest area and under rule 3 of the State Forest produce transit rules, no forest produce shall be moved into or from within the State by land or water. Such movement is permitted only when the person moving the produce obtains a forest permit by paying a fee which in the instant case is Rs. 10 per ton of coal transported
2. The fee collected is for regulating the act of transport through a forest area.
3. The Hon'ble Supreme Court of India in the case of *P. Kannadsan etc. vs. State of Tamilnadu & other etc. (1996) 5 SCC 670* has been observed that "...in the matter of fees, it is not necessary that element of quid pro quo should be established in each and every case, for it is well settled that fees can be both regulatory and compensatory and that in the case of regulatory fees, the element of quid pro quo is totally irrelevant." Such fees may offset the expenses incurred in rendering the said service and co-relation between the two is not important and in some instances such as license fee, which are regulatory in nature, the quid pro quo also is not essential
4. Transporting coal through forest area without obtaining a forest transit permit and paying the transit fee is punishable under Section 20 (4) of the Forest Act. Penalties are fixed for breach of the provisions of the Rules. The transit fee is the amount of consideration for tolerating an act or a situation arising out of the legal obligation during the transport of the mineral through a forest area.
5. This is covered under entry 5(e) of the Schedule II to the CGST Act, 2017 wherein 'to do an act' is deemed to be a service. Forest department's act of allowing such vehicles through forest area is therefore covered under this head. Further these services are not classifiable under heading '9973' of Notification No. 11/2017 as the same relate to 'Leasing or rental services without an operator' whereas the present service relates to Entry 5(e) of the Schedule II to the CGST Act, 2017.
6. Further the consideration received is taxable on reverse charge basis vide the service entry at Serial No. 5 of Notification No. 13/2017 dated: 28.06.2017.