

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX

Joyjit Banik, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	BAMAPADA JANA
Address	161, Bagpota Road, Sarsuna, South 24 Pg, Pincode-700061
GSTIN	19AFGPJ5685M1ZP
Case Number	WBAAR 16 of 2024
ARN	AD190824013666S
Date of application	September 05, 2024
Jurisdictional authority (State)	Budge Budge Charge
Jurisdictional authority (Centre)	Joka Division, Kolkata North Commissionerate
Order number and date	14/WBAAR/2024-25 dated 26.11.2024
Applicant's representative heard	Smt Swati Mukherjee, Advocate

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain

provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression "GST Act" would mean the CGST Act and the WBGST Act both.

1.2 The applicant is a service provider and engaged in providing catering services to the hospital canteen. The applicant supplies food for patient diet made to the Central Hospital, South Eastern Railway, Garden Reach Road, Kolkata- 700043.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following questions:

(i) Whether the supply of food to all the inpatients would be considered as exempted supply under Notification No. 12/2017 read with Sec. 8(a) of the GST Act?

(ii) Whether the applicant is correctly raising invoices by considering the services provided to the Central Hospital, South Eastern Railway, Garden Reach Road, Kolkata 700043 falling under the SAC 999311 which is exempted as per entry Notification 12/2017 Central Tax (Rate) dated 28.06.2017?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (a) & (b) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the questions raised in the application have neither been decided by nor are pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1. The applicant has been awarded with the work of supplying inpatients diets to the Central Hospital and accordingly has entered into a contract with the South Eastern Railway. The scope of services as per the clause 2.0 of the said contract reads as follows:

"The contractor shall provide Catering Service by running the in-house Kitchen of the Hospital. The Contractor has to provide the entire service including provision of all necessary appliances, fuel, consumable materials and catering personnel as per requirement for day to day procurement of fresh material, cooking, proper service to all Indoor patients by serving nearest to one of the standard diet as indicated in (vi) below as per recommendation of Medical Officers and guidelines of the Dietician, proper maintenance of hygienic conditions of Kitchen besides

any other Catering jobs as may be instructed by the Medical Unit Authority. Approximately 170-200 meals should be served daily depending upon the bed occupancy in the hospital. Minimum warranty will be 100 quantity each meal per day during the entire tenure."

2.2 The applicant further submits that the terms of payments as per the said contract have been defined in Clause 2.06 (A) under heading payments in the following manner:

"i. The Contractor shall submit the bill on a monthly basis to South Eastern Railway at its registered office within 10th day of the next month.

ii. Measurements, Certificates and Payment to the Contractor shall be governed by as per GEM terms & Condition unless otherwise expressly stipulated elsewhere in this contract.

iii. Income Tax @ 2% of the gross amount as applicable will be deducted from all bills of the Contractor in accordance with relevant section of the current Income Tax Act. No payments will be made to the Contractor unless he submits his latest Income Tax clearance Certificate, periodically.

iv. Payment to the Contractor is to be made through NEFT System (Electronic Fund Transfer System). "

2.3 Accordingly, the applicant issues invoices to the Central Hospital, South Eastern Railway, Garden Reach Road, Kolkata 700043 without charging any WBGST/CGST considering that the supply of services of diet to the indoor patient as per the diet chart provided by the medical officers are falling under the composite supply of healthcare services and thus qualifies to be an exempted supply in terms of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 along with clarification given in the Circular No.32/06/2018.GST dated 12.02.2018.

2.4 The applicant submits that the issue regarding taxability of certain services were discussed in the 25th GST Council meeting held on 18.01.2018 and on the recommendation of the GST Council, the CBIC issued a comprehensive circular being Circular No. 32/06/2018 GST on 12.02.2018 addressing the issues under the subject heading: Clarifications regarding GST in respect of certain services. In the said circular, under serial No 5, clarification has been given that *"Food supplied to the in-patient as advised by the doctor/nutritionist is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable."*

2.5 In the instant case, the applicant is providing the in-patient diet supply through the in-house Kitchen of the Hospital. Since the hospital has provided primary equipment and articles for canteen as such the services provided by the applicant does not fall under the category "outsourced by the Hospitals from outdoor caterers" and as such there shall not be any levy of taxes on the bills raised by the applicant to the Central Hospital, South Eastern Railway.

2.6 The applicant contends that similar issues have been decided by the Kerala Advance Ruling Authority in Order No-KER/16/2018 dated 19.09.2018 in the case of M/s Ernakulam Medical Centre (P) Ltd wherein it has been ruled that the supply of medicines and allied items provided by the pharmacy to the inpatients is a part of composite treatment and hence not separately taxable. The aforesaid ruling has been confirmed by the Appellate Authority. The applicant also places his reliance on the advance rulings in the case of M/s ST. Thomas Hospital dated 26.05.2021[KER/108/2021 dated 26.05.2021] and M/s Ambara dated 08.10.2020 [KAR ADRG 51/2020 dated 08.10.2020] respectively and contends that in both the rulings it were decided that supply of medicines provided by the pharmacy to the in-patients is a part of composite treatment and hence not separately taxable. As such the applicant is under interpretation that the supplies provided by the applicant are exempted from levy of any tax.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized advocate of the applicant during personal hearing.

4.2 The applicant submits that kitchen and dietary service related contract was placed by the Central Hospital (South Eastern Railway), Garden Reach, Kolkata to the applicant to undertake preparation, processing and cooking of meals, special diets and feeds as per specification and deliver to inpatients as per time specified by the Hospital. It is seen from the contract that the applicant is awarded with a contract for supplying full regular diet for patients of general ward which includes morning tea, snacks, breakfast, lunch, evening tea and dinner. According to the contract, hospital provides a proper and suitable area for running the kitchen and the applicant is responsible for purchase, procurement and appropriate storage of raw material. The applicant is responsible for arranging catering appliances like Industrial cooking gas cylinders, gas oven, OTG, refrigerator, mixer grinder, toaster, sandwich maker, juicer, electric kettle, Induction cooker, dish washer, storage cabinet etc..

4.3 The applicant argues that services of providing diet to inpatients of the hospital is exempted vide serial no 74 of the Notification No 12/2017 Central Tax (Rate) dated 28.06.2017. To delve into the issue, we find it apposite to reproduce first the relevant entry of the Notification No

12/2017 Central Tax (Rate) dated 28.06.2017:

SI No	Chapter, Section, heading, Group or Service Code	Description of Service	Rate(Per cent)	Condition
74	Heading 9993	<p>Services by way of-</p> <p>(a) Health care services by a clinical establishment, an authorized medical practitioner or para medics;</p> <p>Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neonatal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services.</p> <p>(b) Services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</p>	Nil	Nil

It transpires from above that the applicant may be exempted from payment of tax by virtue of the aforesaid entry subject to fulfillment of the following conditions that:

- (i) the services provided by the applicant qualifies as 'health care services';
- (ii) the applicant must come within the ambit of clinical establishment, an authorized medical practitioner or para medics.

4.4 The expressions "healthcare services", "clinical establishment" and "authorised medical practitioner" have been defined in Para 2 (zg), 2(s) and 2(k) respectively of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as follows:

- *“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;

- *“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;*
- *“authorised medical practitioner” means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;*

4.5 Admittedly, the Central Hospital (South Eastern Railway), Garden Reach, Kolkata is a clinical establishment and it provides health care services to both in-patients as well as out-patients. In the case of an in-patient, i.e., the patient who gets admitted to the hospital in order to avail health care services, there do not have any choice from the end of the patient for the prescribed diet which is strictly administered by the doctors or the nutritionists of the hospital. Such supply of food provided by the hospital, as a part of composite supply of health care services, is not taxable separately as it has been clarified in the Circular No. 32/06/2018 GST on 12.02.2018. However, in the instant case, the hospital provides such food to the in-patients in an outsourced manner i.e., food is supplied by a separate person according to the contract made by the hospital. Therefore, the scope of the applicant is limited in preparing food and supplies the same to the in-patients only.

4.6 The applicant, according to scope of service in point 2.02 of the contract agreement, is entrusted with the job of preparing and providing meals to in-patients of the hospital. Food is cooked as per recommendation of the medical practitioners of the hospital and served accordingly to the in-patients. The scope of service in point 2.02 of the contract agreement affirms that the nature of job of the applicant lies with only catering services by serving nearest to one of the standard diets as per recommendation of medical officers of hospital.

4.7 The authorized advocate of the applicant, in course of personal hearing, has submitted that the hospital authority provides proper and suitable area for running kitchen within hospital premises where the applicant undertakes the activities of preparing food for the in-patients as recommended by the doctors and nutritionist. The applicant therefore does not fall within purview of the phrase “outsourced by the Hospitals from outdoor caterer”.

4.8 As per Collins Dictionary, the term ‘outsource’ means ‘to subcontract to another company’.

The Cambridge Dictionary defines the term as to get work done by making a contract with another company to do it. We find that in point no 2.06(A)(i) of the Contract Agreement it is clearly mentioned that the contractor shall submit monthly bill to South Eastern Railway within 10th day of the next month. Thus the hospital gets the work done by making a contract with the applicant rather than doing it itself. Merely using space for running kitchen in hospital premises and serving food, as recommended, do not satisfy applicant's claim that they are not outsourced by the hospital.

4.9 Clause (93) of section 2 of the GST Act speaks that "recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

In the instant case, the applicant has entered into the agreement with the Central Hospital, South Eastern Railway for provide catering services by running the in-house kitchen of the hospital and for which the Central Hospital is liable to pay the consideration to the applicant. So, there can be no dispute that the applicant is supplying the services to the Central Hospital who is engaged in providing health care services to the patients. So, it is the Central Hospital and not the applicant who provides health care services.

4.10 In this context, we would also like to refer to the Circular No No.32/06/2018.GST dated 12.02.2018 where the issue under serial number 5 itself clarifies that "*Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC." [emphasis supplied]*

4.11 The applicant has placed his reliance on the following advance rulings:

- (a) M/s ST. Thomas Hospital dated 26.05.2021 [KER/108/2021 dated 26.05.2021]
- (b) M/s Ambara dated 08.10.2020 [KAR ADRG 51/2020 dated 08.10.2020]
- (c) M/s Ernakulam Medical Centre (P) Ltd [Order No-KER/16/2018 dated 19.09.2018]

In the case of M/s Ambara [2020] 120 taxmann.com 369, we find that the applicant itself is a clinical establishment as it runs a hospital in the name of CURA hospital and providing healthcare services which are in the nature of diagnostic and treatment services. The AAR held that the impugned supply of food & beverages is an ancillary to the supply of treatment service *i.e.* health care service and thus exempted from payment of tax. In Ernakulam Medical Centre (P) Ltd case [2018] 98 taxmann.com 161, the applicant renders medical services with professionals like doctors, nursing staff, lab technicians etc. Also in St Thomas Hospital case [2021] 129 taxmann.com 246, the applicant is a multi-specialty hospital providing healthcare services with medical professionals. However, in the case in hand, we have already expressed our view that the applicant itself doesn't provide any health care services. We are also of the opinion that the applicant as a supplier of in-patient diet cannot be regarded as a clinical establishment like hospital, nursing home, clinic, sanatorium 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. We therefore take the view that the fact of all the aforesaid advance rulings is not identical with the instant case and would be of no help to the applicant.

4.12 On the contrary, we find that the Telengana Authority for Advance Ruling in the case of M/s Navneeth Kumar Talla [2020] 120 taxmann.com 453 held that GST is payable on the service of supplying food and no exemption is provided as service is outsourced by the hospital and the applicant is not a clinical establishment.

4.13 The applicant raises the query whether supply of food to all in-patients would be considered as exempted under exemption notification [supra] read with clause (a) of section 8 of GST Act. We have already dealt with the issue and expressed our view that the applicant is not in a position to deliver health care service as a clinical establishment. Exploring definition of "composite supply" can bring clarity further:

Clause (30) of section 2 of the GST Act provides definition of "Composite supply" as follows:

"(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;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;"

4.14 Composite supply thus is constituted with two or more taxable supplies which are naturally bundled and supplied in conjunction with each other. In the instant case, the Central

Hospital, being a clinical establishment, provides food to the in-patients. Such food has been outsourced by the Hospital from the applicant. Therefore, food supplied to the in-patients as advised by the doctor/nutritionists constitutes a part of composite supply of health care services in the hand of the Central Hospital itself. Supply made by the applicant to the Central Hospital is a standalone service of supply of food and in no way can be considered as a composite supply of health care services.

In view of the foregoing, we rule as under:

RULING

Question: Whether the supply of food to all the inpatients would be considered as exempted supply under Notification No. 12/2017 read with Sec. 8(a) of the GST Act?

Answer: No. Supply of food by the applicant to all in-patients would not be covered under entry No 74 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 to be an exempted supply.

Question: Whether the applicant is correctly raising invoices by considering the services provided to the Central Hospital, South Eastern Railway, Garden Reach Road, Kolkata 700043 falling under the SAC 999311 which is exempted as per entry Notification 12/2017 Central Tax (Rate) dated 28.06.2017?

Answer: No. Tax is payable by the applicant on his supply made to Central Hospital, South Eastern Railway.

(Dr. TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 26th November, 2024

To,

BAMAPADA JANA

161, Bagpota Road, Sarsuna, South 24 Pg, Pincode-700061

Copy to,

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Commissioner, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector, Kolkata-700107
- (4) The Charge Officer, Budge Budge Charge, 62, Diamond Harbour Road, Behala Industrial Complex, Kolkata-700034
- (5) Office Copy