M/s. Kasturba Health Society (Appellant)

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/19/2019-20 Dated **13.12.2019**

Q Questions Before the Authority

- Whether the applicant, a charitable society whose main object is imparting medical education and which satisfies the criteria of an 'Educational Institution', is engaged in business so as to be obliged to comply with the CGST Act, 2017 and MGST Act, 2017 in totality.
- Whether such a charitable society is liable for registration under section 22 of the CGST/MGST Act, 2017, or can remain outside registration under section 23 as there is no taxable supply.
- Whether fees and other charges received from students, and recoupment charges received from patients (who are an essential clinical material for education laboratory), constitute 'outward supply' under section 2(83), and if so whether they fall under Sr. No. 66, or the nominal amount received from such patients falls under Sr. No. 74, of Notification 12/2017 Central Tax dated 28.6.2017.
- Whether the cost of medicines and consumables recovered from OPD patients, with nominal charges for pathological and other investigations (CT-Scan, MRI, Colour Doppler, Angiography, Gastroscopy, Sonography), during the course of diagnosis and treatment, is a 'composite supply' qualifying for exemption as educational and/or health care services.
- Whether nominal charges received from patients towards an 'Unparallel Health Insurance Scheme', to retain patient flow for medical education and provide concessional rates for investigation and treatment, are 'supply' eligible for exemption as educational and/or health care services.
- Whether the nominal amount received for making space available for essential facilities (banking, parking, refreshment etc.) supporting the main activities, and the amount received for disposal of wastage, are 'supply' qualifying for exemption as educational and/or health care services.

F Facts

The Appellant, Kasturba Health Society, is a charitable society registered in 1964 under the Societies Registration Act, 1860 and the Bombay Public Trust Act, 1950. It runs the Mahatma Gandhi Institute of Medical Sciences (MGIMS), a medical college funded as a joint venture by the Central Government (50%), the State Government (25%) and the Society (25%, met largely from student fees and patient recoupment charges), with a clinical laboratory named Kasturba Hospital. The Society took voluntary GST registration from 21 July 2017 and had filed no returns until March 2019, contending that its activity was not a business or supply. The Appellant's core position was that MGIMS and the Society are one legal person.

H Ruling

(i) Whether the Society, a charitable educational society, is engaged in business so as to be bound by CGST/MGST Acts in totality	**Not answered**	Held not proper and correct because the Society does not itself provide medical education; MGIMS does.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

(ii) Whether the Society is liable for registration under s.22, or outside registration under s.23 as there is no taxable supply	**Not answered**	Not answered for the reasons given at question (i).
(iii)(a) Whether student fees and patient recoupment charges are outward supply, and whether they fall under Sr. No. 66 or Sr. No. 74 of Notification 12/2017-Central Tax	**Not maintainable**	Under s.95(a) because the transaction does not pertain to the Appellant but to MGIMS.
(iii)(b) Whether medicine and consumable costs with investigation charges during diagnosis and treatment are a composite supply exempt as educational and/or health care services	**Not maintainable**	Under s.95(a); the transaction is not pertaining to the Appellant.
(iii)(c) Whether nominal charges under the Unparallel Health Insurance Scheme are exempt supply as educational and/or health care services	**Not maintainable**	Under s.95(a); the transaction is not pertaining to the Appellant.
(iii)(d) Whether nominal space and facility charges, and wastage disposal receipts, are exempt supply as educational and/or health care services	**Not maintainable**	Under s.95(a); the transaction is not pertaining to the Appellant.

The Appellate Authority agreed with the lower authority that the Society and MGIMS are separate persons under GST law, because MGIMS, governed by a Governing Council with government nominees, is the entity actually providing medical education and health care. On that basis it declined to answer the first two questions, which concern the Society's own obligations, as improper. It held that questions (iii)(a) to (iii)(d) are not maintainable under section 95(a) because the transactions pertain to MGIMS and not to the Appellant. The delay of 26 days in filing the appeal was condoned.

R Reasoning

The Authority treated the central issue as whether the Society and MGIMS are distinct persons under GST law. It relied on the Governing Council structure, with five members nominated by the Society and five by the Centre and State, and on the joint venture funding arrangement, to find that MGIMS provides the education and health services. It also relied on the Bombay High Court (Nagpur Bench) decision in Ajay Gambhir v Dean, MGIMS, which treated MGIMS as a State instrumentality, and held that management control by the Society does not make MGIMS a non-separate person, citing the analogy of parent and subsidiary companies under section 25. It distinguished the Supreme Court decisions in Queen's Educational Society and Aditanar Educational Institution, as those involved the societies themselves running the institutions. Because the transactions were MGIMS's, the questions were held not maintainable under section 95(a).

P Provisions Relied On

Section 95(a) of the CGST Act, 2017 and MGST Act, 2017 (scope of advance ruling; basis for holding questions not maintain…

Section 25 of the CGST Act, 2017 (distinct persons)

Section 2(83) of the CGST Act, 2017 (outward supply), as framed in the questions

Section 22 and Section 23 of the CGST Act, 2017 (liability to register and exemption from registration), as framed in the quest…

Notification 12/2017-Central Tax dated 28.6.2017, Sr. No. 66 and Sr. No. 74, as framed in the questions

Section 100 proviso to sub-section (2) of the CGST Act, 2017 (condonation of delay in filing appeal)

Ajay Gambhir v Dean, MGIMS (Bombay High Court, Nagpur Bench, 1985)

Queen's Educational Society v CIT (Supreme Court, 2015) and Aditanar Educational Institution v ACIT (Supreme Court), disti…

! For the Practitioner

The order is useful for a charitable society that operates a teaching institution through a separately constituted or government-linked unit, since it shows the Authority will look at governance and funding to decide which body supplies the services. It does not decide whether medical education or health care is exempt, because the Authority declined to answer the substantive exemption questions. A practitioner should note that a society's management role over a joint-venture college may not by itself make the society the supplier.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah_aaar_ss-rj_19_2019-20_13.12.2019.pdf

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