M/s. TATHAGAT HEART CARE CENTRE LLP (appellant)

Appellate Authority for Advance Ruling — Karnataka

ORDER NO.KAR/AAAR/01/2018-19 DATED:05.09.2018 Dated **05.09.2018**

Q Questions Before the Authority

- Whether GST is leviable on the rent payable by a hospital supplying lifesaving cardiology and emergency services, for premises taken on lease for running the hospital.
- Whether the appellant can take credit of the GST paid on the rent, given that its outward healthcare supplies are exempt and so it has no taxable output supply.
- Whether there is a refund mechanism for input tax credit to the extent of GST paid on rent, and the applicability of Rule 89(h) of the KGST Rules to such a refund.

F Facts

The appellant runs a cardiology specialised hospital in premises taken on lease, providing lifesaving heart care with ICU and 24x7 attendance. Its outward healthcare supplies are exempt from GST, and it pays GST on the rent it pays for the premises. The advance ruling application asked whether GST is leviable on that rent.

H Ruling

Whether GST is leviable on rent paid for premises leased to run the hospital	**Yes. GST is leviable at 18% (CGST 9% + SGST 9%).**	Under Sl. No. 16 (Real Estate Services) of CGST Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the corresponding KGST Notification (11/2017) No. FD 48 CSL 2017 dated 29.06.2017. The outward healthcare supply is exempt under Sl. No. 74 of Notification 12/2017-CT(R), but that does not exempt the inward rent.
Whether ITC of GST paid on rent can be availed when outward healthcare supplies are exempt	**Not decided. Dismissed as outside the appellate scope.**	No question on ITC for exempt supplies was raised before the lower authority under s.97, so it could not be appealed.
Whether refund of ITC on rent is available and whether Rule 89(h) of the KGST Rules applies	**Not decided. Dismissed as outside the appellate scope.**	The authority held that this issue was raised for the first time in appeal and was not examined by the AAR.

The Appellate Authority upheld the advance ruling of the Karnataka Authority for Advance Ruling (KSA ADRG 4/2018 dated 21.03.2018) that GST is leviable on the rent paid or payable for premises taken on lease for the hospital, and dismissed the appeal on all counts. It declined to rule on the input tax credit and refund issues (paras 8(b) and 8(c)) because they were not raised before the lower authority.

R Reasoning

The authority treated the CGST and KGST Acts as in pari materia. It accepted that the hospital's outward healthcare services are exempt under Sl. No. 74 of Notification 12/2017-CT(R). It then held that the lease of the premises is 'renting in relation to immovable property' under clause 2(zz) of Notification 12/2017-CT(R). Only renting for residential use is exempt, under Sl. No. 12, so the rent is taxable at 18% under Sl. No. 16 of Notification 11/2017-CT(R). On the ITC and refund questions, it held that the appellate power under s.101 is limited to confirming or modifying the ruling appealed against, and that no appeal lies on questions not raised under s.97 and not examined by the AAR.

P Provisions Relied On

- Section 97 of the CGST Act, 2017 and the KGST Act, 2017 (application for advance ruling)
- Section 98 of the CGST Act, 2017 and the KGST Act, 2017 (procedure on application)
- Section 100 of the CGST Act, 2017 and the KGST Act, 2017 (appeal to Appellate Authority)
- Section 101 of the CGST Act, 2017 and the KGST Act, 2017 (orders of Appellate Authority)
- Section 54(3) of the CGST Act, 2017 (refund of unutilised ITC), as referred to in Rule 89(h)
- Rule 89(h) of the KGST Rules (refund of unutilised ITC), raised by the appellant but not decided
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 74 (healthcare exemption)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, clause 2(zz) (definition of renting of immovable property) and…
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 16 (Real Estate Services at 18%)
- KGST Notification (11/2017) No. FD 48 CSL 2017 Bengaluru dated 29.06.2017 and KGST Notification (12/2017) No. FD 48 C…

! For the Practitioner

A hospital that leases premises for exempt healthcare services should note that the inward rent remains taxable at 18% under Sl. No. 16, even though its outward supplies are exempt. The order confirms that renting of non-residential immovable property is not exempt merely because the lessee's own supplies are exempt. It does not decide whether ITC on that rent is blocked or refundable under s.54(3) or Rule 89(h), so a practitioner seeking that relief would need a fresh advance ruling application on that specific question.

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 -> kar_aaar_01-2018-19-thccllp.pdf

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