

Placement of non-transferable medical instruments in hospitals without consideration, a 'supply of service' – Kerala AAR

10 June 2021



Summary

The Kerala Authority for Advance Ruling (AAR) observed that the applicant is engaged in placement of specified medical instruments at premises of unrelated customers, such as hospitals and labs, for their use without transfer of ownership and consideration for a specified period. Further, such placement is against an agreement between the applicant and the hospitals for an obligation of minimum purchase of certain products from the applicant. Therefore, the AAR held that such placement constitutes a 'supply of services' and not 'movement of goods otherwise than by way of supply'. Therefore, such transaction shall be taxable under GST.

Facts of the case

- The applicant¹ is engaged in sale of pharmaceutical products, diagnostic kits, diagnostic instruments, etc.
- The applicant has adopted the business model of placing their own medical instruments at premises of unrelated hospitals or laboratories without any consideration. To execute the placement of instruments, the applicant enters into the Reagent Supply and Instrument Use Agreement. As per the said arrangement, the recipient must purchase minimum quantity of purchase products such as reagents, calibrators and disposables.
- The applicant sought an advance ruling to determine whether the provision of specified medical instruments by the applicant to unrelated parties for use without any consideration, constitutes a "supply" or whether it constitutes "movement of goods otherwise than by way of supply".
- Earlier in year 2018, the Kerala AAR had held that this supply would constitute a "composite supply" and the Appellate Authority for Advance

¹ M/s Abbott Healthcare Private Limited.

Ruling (AAAR) upheld the ruling of AAR as legally correct and proper.

- However, in 2020, the Hon'ble Kerala High Court quashed the ruling of the AAR as well as the AAAR and rejected the finding that placement of medical instruments to hospitals, laboratories etc., for use without any consideration constitutes a "composite supply". The court remitted the case back to AAR for fresh decision based on the observation made by the Hon'ble High Court in the order.

Kerala AAR observations and ruling²

- **Ingredients of supply:** The Kerala AAR observed that the activity to qualify as 'supply'³ must satisfy the three essential ingredients of 'supply' i.e., the activity:
 - (i) involves goods or services,
 - (ii) is in the course or furtherance of business, and
 - (iii) is made for a consideration.
- **Involves goods or services:** The AAR observed that the instrument or

machine installed at the premises of hospital/labs by the applicant clearly fall within the definition of goods. Further, the right granted to use the machine squarely gets covered in the scope of term 'transfer'⁴.

- **In the course or furtherance of business:** The AAR observed that the definition of business in GST law is inclusive and wide in scope. Considering the same, the activity of applicant is undoubtedly in the course or furtherance of business.
- **Made for a consideration:** The AAR held that the agreement to purchase agreed value of reagents, calibrators and disposables for use in instrument exclusively from the applicant and obligation to pay in case of deficit purchase constitute a valid consideration⁵.
- **Transaction qualifies as supply:** Thus, the AAR concluded that placement transaction is a 'supply'. Additionally, the AAR observed that the grant of non-transferable right to

² Advance Ruling No. KER/97/2021 dated 7 May 2021

³ Section 7 of the CGST Act, 2017

⁴ Section 7(1)(a) of the CGST Act, 2017

use the goods for a specified period without transferring title of the goods qualifies to be ‘supply of services’⁶.

Our comments

This has been one of the most controversial issues in GST regime for the healthcare and pharmaceutical industry. Most of the businesses were considering it to be ‘movement of goods otherwise than by way of supply’ and were not discharging GST liability.

This ruling seems to have made it clear that such transaction would qualify as ‘supply of service’ and not a ‘composite supply’ as held in earlier ruling of Kerala AAR.

Considering the above, it is recommended for entities in this industry to revisit their GST positions in this regard. Additionally, it is also imperative to note that the rate of GST would now have to be determined considering this as a separate supply and not composite supply.

⁵ Section 2(31) of the CGST Act, 2017

⁶ Section 7(1A) of the CGST Act, 2017

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