

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING**6TH FLOOR, VANIJYA TERIGE KARYALAYA****KALIDASA ROAD, GANDHINAGAR, BANGALORE-560009.**

(Constituted under Section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bengaluru, dated 25-04-2018)

ORDER NO.KAR/AAAR/01/2018-19

DATED:05.09.2018

BEFORE THE BENCH OF

- (1) Sri A.K. Jyotishi, Member.
 (2) Sri Srikar M.S., Member

GSTIN Number	29AAKFT1751D1Z5
Legal Name of Appellant	M/s. TATHAGAT HEART CARE CENTRE LLP,
Registered Address	No.12/2, 4 th Floor, K.M.P. House, Yamuna Bai Road, Madhavanagar, Bengaluru <u>Correspondence Address:</u> No.31/32, 'A' Block, 1 st Floor, Crescent Road, Bengaluru-560 001.
Details of appeal	Appeal against Advance Ruling No.KSA ADRG 4/2018 dated 21 st March 2018
Date of filing appeal	28.05.2018
Jurisdictional Authority - Centre	NA
Jurisdictional Authority – (State)	LGSTO-020, Vishweshwaraiah Tower, 2 nd Floor, Bengaluru-560 001.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	CIN PUNB18052900315551 dt 26.05.2018 for Rs 10,000/- & CIN PUNB18062900347872 dt 26.06.2018 for Rs 10,000/-

PROCEEDINGS

(Under Section 101 of the Central Goods and Service Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the KGST Act are in *pari materia* and have the same provisions in like matters, and differ from each other only on a few specific provisions; therefore, unless a mention is particularly made to such a dissimilar provision, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as " the CGST Act and KGST Act") by M/s. TATHAGAT HEART CARE CENTRE LLP, (herein after referred to as the "Appellant") against the Advance Ruling No. No.KSA ADRG 4/2018 dated 21st March 2018

BRIEF FACTS OF THE CASE

1. M/s. Tathagat Heart Care Centre LLP, is a Cardiology Specialized Hospital running on a premises taken on lease. The premises are used for treatment of heart patients as a lifesaving activity with latest equipment / machineries. Critical care patients are admitted in special rooms / general wards with lifesaving support devices, beds and oxygen supply, ICU with 24 x 7 attendance for timely monitoring of the patients. They have taken a premises on rental basis for heart care services.
2. The Appellant had filed an application for Advance Ruling under section 98 of the CGST Act, 2017 and KGST Act, 2017 on the question as to whether GST is leviable on the rent payable by a hospital supplying lifesaving services (cardiology and emergency services).
3. It was decided by the Karnataka Advance Ruling Authority vide Ruling No.KSA ADRG 4/2018 dated 21st March 2018 that GST is leviable on the rent paid / payable for premises taken on lease by the Applicant.
4. Aggrieved by the said ruling of the Authority (hereinafter referred to as 'impugned order'), the applicant has filed an appeal under section 100 of the CGST Act, 2017 / KGST Act, 2017 on the following grounds:
 - i. The Advance Ruling Authority has erred in holding that GST is leviable on the rent paid / payable on premises, taken on lease by the Applicant, under the facts of the case and has not considered grounds of appeal / statement of Applicant's interpretation of law or facts, as the case may be in right earnest thus violating the principals of natural justice.
 - ii. The Appellant is not required to pay GST on room rent collected from the patients and also on supply of medical services to the ailing patients undergoing critical heart care treat mentor lifesaving services.
 - iii. The Appellant does not have taxable value of supply of medical services by virtue of exemption granted in GST Law. As a result payment of GST on rent of the premises remains non set-off against output tax i.e., ITC cannot be availed due to nil tax payable under GST law on supply of medical services to the patients.
 - iv. That there is no provision to get refund of ITC to the extent of GST paid / payable on the rent of the premises. Hence, the very purpose of payment of

GST on rent does not serve any purpose. Thus, they are put to great financial hardship on this aspect which has to be adjudicated by the Appellate Authority for Advance Ruling.

v. In view of the above, the Appellant pleaded that the impugned order be set aside.

Personal Hearing:

5. The Appellant was called for a personal hearing on 28.08.2018 and was represented by Dr. Mahantesh Charantimat, Chairman and Managing Director of M/s. Tathagat Heart Care Centre LLP. During the hearing the authorized representative reiterated the grounds of appeal and also made written submissions wherein they drew attention to Rule 89(h) of KGST Act which says that invoice received and issued during the tax period in a case where the claim pertains to refund of any unutilized input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of output supplies other than nil rated or fully exempted supplies.

6. He pleaded that the Hon'ble Appellate Authority for Advance Ruling should pass a ruling on the applicability of Rule 89 so that they can pursue the refund of input tax credit paid on rent taken on premises in the interest of natural justice.

DISCUSSION AND FINDINGS

7. The Appellant is running a Cardiology Specialized Hospital which provides healthcare services. The said hospital is run on the premises taken on lease basis by the Appellant for which GST is paid by him on the rental amount.

8. The Appellant had sought for a ruling before the Advance Ruling Authority on the question whether GST is leviable on the rent payable on the leased premises. On this question the AAR vide the impugned order had held in the affirmative, pronouncing that GST is leviable on the rent paid / payable for the premises taken on lease. In the present appeal before us against the impugned order, the following issues are in appeal, viz.

a) The Appellant has contended that the AAR has erred in holding that GST is leviable on the rent paid / payable for premises, taken on lease by the Applicant.

b) Since the Appellant does not have any taxable output supply, the GST paid on the rent of the premises cannot be set off against any output supply. In other words, ITC of the GST paid on the rent cannot be availed as credit as the output supply is not taxable.

c) There is no provision to get refund of ITC to the extent of GST paid/payable on rent of premises and hence the purpose of paying the GST on rent of premises does not serve any purpose. The Appellate Authority is required to pass a ruling on the applicability of Rule 89(h) of the KSGT Rules so that the Appellant can pursue the refund of input tax credit paid on the rent taken on the premises.

9. In terms of CGST Notification No 11/2017 – Central Tax (Rate) dated 28-06-2017 and KGST Notification (11/2017) No FD 48 CSL 2017 Bengaluru dated 29-06-2017, GST is leviable @ 18% (CGST @ 9% + SGST @ 9%) on the rent paid / payable for premises taken on lease by the Appellant for running the hospital vide Sl.No.16 (Real Estate Services) of the said Notifications. The appellant has stated that the AAR has erred on this point. The plea made by the Appellant before us is that the input tax credit of the GST paid on the rent cannot be availed as credit by them since their output supply is not taxable and hence they should be allowed to get a refund of the ITC to the extent of the GST paid/payable on the rent. They have also sought a decision from us on the applicability of Rule 89 of the KGST Rules.

10. The healthcare services which the appellant provides as his outward supply, is exempted from GST by virtue of entry Sl. No 74 of Notification No 12/2017 CT (R) dated 28.06.2017 as amended.

11. Thus, what emerges from the above is that:

a) No GST is payable on outward healthcare supplies, as these are exempted supplies;

b) "Renting in relation to immovable property" has been defined under the definition clause 2(zz) of the CGST Notification No 12/2017- Central Tax (Rate) dated 28-06-2017 and KGST Notification (12/2017) No FD 48 CSL 2017 Bengaluru dated 29-06-2017 to mean allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. By virtue of these Notifications, services by way of renting of residential building for use of residence only is exempt from levy of GST vide Sl.No.12 of the said Notifications.

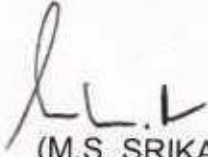
c) In terms of CGST Notification No 11/2017 – Central Tax (Rate) date 28-06-2017 and KGST Notification (11/2017) No FD 48 CSL 2017 Bengaluru dated 29-06-2017. GST is leviable @ 18% (CGST @ 9% + SGST @ 9%) on the rent paid / payable for premises taken on lease by the Applicant for running the hospital vide Sl.No.16 (Real Estate Services) of the said Notifications.

12. As regards the plea that this Authority is required to pass a ruling on para 8(b) and 8(c), we observe that these issues are outside the realm of our consideration. The scope of the Appellate Authority for Advance Ruling under section 101 of the Act is limited to passing such order, as it thinks fit, confirming or modifying the ruling appealed against or referred to. There was no question raised before the AAR seeking a ruling on the aspect of ITC used in providing exempted supplies and refund of Input Tax credit. This issue has been raised for the first time before us in appeal. We are of the view that, there can be no appeal on issues on which no ruling was sought before the Authority for Advance Ruling under section 97 of the Act and which was not examined by the AAR. As such, the plea of the Appellant on this issue is dismissed, as non-sustainable.

13. In view of the above discussions, we pass the following order:

ORDER

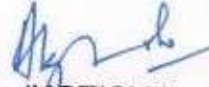
We uphold the Order KAR ADRG 4/2018 dated 21.03.2018 passed by the Advance Ruling Authority and accordingly the Appeal filed by the Appellant - M/s. Tathagat Heart Care Centre LLP stands dismissed on all counts.



(M.S. SRIKAR)

Member

Karnataka Appellate Authority
for Advance Ruling



(A.K. JYOTISHI)

Member

Karnataka Appellate Authority
for Advance Ruling