

Placement of medical instruments without consideration in hospitals is a Supply of Service: The Kerala Authority of Advance Ruling (AAR)

Fact of the Case

M/s. Abbott Healthcare Private Limited (“the Applicant”) is engaged in sale of pharmaceutical products, diagnostic kits etc. As a part of its business activity, the Applicant places specified medical instruments to unrelated hospitals, labs etc. for their use for a specified period without any consideration. In order to execute the placements of instruments, the Applicant enters into reagent Supply and Instrument Use Agreement (“the Agreement”) with various hospitals, labs etc.

It is to be noted that this case has been remanded by Kerala HC [2020 (34) G. S. T. L. 579 (Ker.)], after the Court has termed the orders of AAR [2018 (18) G. S. T. L. 109 (A. A. R. – GST)] and AAAR [2019 (23) G. S. T. L. 49 (App. A. A. R. – GST)] which held that placement of medical instruments by the Applicant under the Agreement was covered under ‘composite supply’ and liable to GST, as ‘wholly without jurisdiction’.

Issue:

Whether the placement of medical instruments to unrelated hospitals, labs etc. under the Agreement without any consideration for a specified period constitutes supply of service?

Decision of the Case

The Hon’ble AAR, Kerala, in Advance Ruling No. KER/97/2021 decided on June 07, 2021 held as under:

- ❖ Perused the Agreement to note that the hospitals or labs where the medical instruments is installed have the right to use the medical instruments during the period specified under the Agreement but the title and the ownership of the same continues to be with the Applicant and the same are to be returned after the specified period or termination of the Agreement.
- ❖ Observes that, in order to fall under the definition of supply under Section 7(1) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) following conditions have to be fulfilled:
- ❖ The activity/ transaction involves goods or services- Fulfilled as medical instruments fall under the definition of goods (i.e., Section 2(52) of the CGST Act) and the right to use the same for the specified period under Agreement falls within the scope of transfer.
- ❖ The activity/ transaction is in the course or furtherance of business- Noted that the definition of business (i.e., Section 2(17) of the CGST Act) is wide enough to include the activity/ transaction in its scope.
- ❖ The activity/ transaction is made for a consideration- Notes that as per the Agreement, the hospitals or labs purchase the medical instrument exclusively from the Applicant for a minimum value every month with obligation to pay the deficit amount in case the purchase in a month falls short of the minimum agreed value constitutes a valid consideration under Section 2(31) of the CGST Act.
- ❖ Rejected the Applicant’s contention that consideration in the CGST Act, must be in monetary form as it is evident from Section 2(31) *ibid*, and held that as per clause (b) of Section 2(31) *ibid*, every Act

or abstinence that is a motivation to induce a person is consideration and there is no requirement that it must be in monetary form.

- ❖ Held that, the Applicant grants a non-transferable right to use the medical instruments for a specified period without transfer of ownership. Further, the Applicant has all rights, titles and interest in the medical instruments other than the right to use the same. Therefore, the placement of the medical instruments by the Applicant at the hospitals, labs etc. qualifies as supply of service as per Para 1(b) of the Schedule II of the CGST Act.

The AAR, Kerala, in Abbott Healthcare Pvt. Ltd. [Advance Ruling No. KER/97/2021 decided on June 07, 2021] held that the placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without transfer of ownership and consideration, against an agreement containing minimum purchase obligation to purchase medical instruments for specified period, constitutes a 'supply of services'.