


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2022/03
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/10)

Date : 17.02.2022

Name and address of the appellant	:	M/s. Oswal Industries Ltd., (M/s. Nimba Nature Cure Village), Block No.258, Ahmedabad-Mehsana Expressway, Village-Ola, Post-Isand, Tal-Kalol, District:Gandhinagar-382740.
GSTIN of the appellant	:	24AAACO3443L1ZI
Advance Ruling No. and Date	:	GUJ/GAAR/R/25/2020 dated 09.07.2020
Date of appeal	:	17.08.2020
Date of Personal Hearing	:	20.10.2020/13.01.2022
Present for the appellant	:	Shri Anil Gidwani, Advocate

The appellant M/s. Oswal Industries Limited (M/s. Nimba Nature Cure Village), has submitted that they are engaged in providing Naturopathy treatment since last 6 years. It is one of the largest Naturopathy Centers in India, and offers AYUSH approved treatments of Naturopathy, Ayurveda, Yoga including Meditation, Physiotherapy and special Therapy. It also provides Advanced Hydrotherapy and Heat Treatment like Stone Therapy. As it functions as an integrated Health Care Center, the regimen demands that all the patients should be in-patients (IP), as the treatments offered are of prolonged duration and to be closely monitored in natural environment. Hence, it also provides accommodation and food to each patient seeking treatment.

2. It has further been submitted that the treatment of Naturopathy in Nimba is provided with the help of qualified Naturopaths, all holding degree of BNYS from recognized Universities of India. It also provides alternative therapies from traditional Chinese Acupuncture Treatment, Reflexology and Acupressure Therapy etc. The treatment is provided at appellant's Center for treatment of ailments like Chronic Backaches and Headaches, besides Respiratory Disease, Gastro Intestinal Diseases and Muscular Skeleton Diseases.

3. The appellant filed an application for Advance Ruling before the Gujarat Authority for Advance Ruling (hereinafter referred to as the 'GAAR') and submitted that in Pre-GST regime, they had been availing exemption from payment of Service Tax as per Sl.No.2(i) of the Notification No.25/2012-ST dated 20.06.2012. It has been submitted that the jurisdictional Central Excise Commissionerate, vide letter dated 19.01.2015 and 10.03.2015 had informed the appellant that any healthcare services when provided by way of diagnosis or treatment or care for illness, injury, abnormality of pregnancy in any recognized system of medicines provided in any institutions only were exempted from payment of service tax under the Mega exemption Notification No.25/2012-ST dated 20.06.2012 (Sl.No.02) and health care services other than those above did not fall under the purview of the said exemption. They were requested to take suitable action accordingly. The appellant has further stated that after implementation of the GST, as per Entry No.74 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, the appellant is eligible for exemption.

4. The appellant sought ruling from the GAAR on the following question –

- (i) *“Whether the applicant is eligible to get the benefit of entry No.74 of exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?”*

5. The GAAR examined the issue and observed that the package offered by the appellant, as evident from their website indicates that the therapy offered by them is strictly on a residence basis; that the total consideration mainly revolves around two factors viz. (i) the type of room and (ii) whether single or double occupancy; that the package of the appellant consists of the 3 components viz. (a) Accommodation, (b) Food; and (c) Therapy; that the packages would not be possible without any one of the 3 components. It has been observed that the packages offered by the appellant are naturally bundled and would be aptly covered under the definition of Composite Supply. Further, the principal supply would be the accommodation services since the therapy can in no way be administered without accommodation. In fact, there is no option available for the customer to avail the wellness package without opting for the accommodation. Thus, GAAR found that the accommodation service attains the nature of the principal supply and other two components attain the nature of ancillary services.

6. The GAAR has further observed that the supply of services provided by the appellant, which is a composite supply, is classifiable under Sub-Heading No.996311 under 'Room or unit accommodation services provided by Hotels, Inn, Guest House, Club and the like'. As the exemption at Entry No.74 of Exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 is applicable to services falling under the Heading 9993, whereas the nature of services provided by the appellant is covered under Sub-Heading 996311, as discussed above.

Therefore, the exemption available at Entry No.74 of Exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 is not applicable to the appellant.

7. In view of the foregoing, the GAAR, vide Advance Ruling No. GUJ/GAAR/R/25/2020 dated 09.07.2019 held as follows :-

“The applicant M/s. Oswal Industries Ltd. (M/s. Nimba Nature Cure Village) is not eligible to get the benefit of entry No.74 of exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.”

8.1 Aggrieved by the aforesaid advance ruling issued by the GAAR, the appellant has filed the present appeal.

8.2 The appellant has submitted that the process of treatment provided at their centre is as follows:-

- (i) All patients have to fill an application form giving full details of their disease particulars, past and present.
- (ii) The filled-up form will go for the scrutiny of Nimba’s doctor, and if found suitable and treatable under Naturopathy regimen, the case / cases will be approved for treatment.
- (iii) Duration of the treatment will be prescribed by the doctor.
- (iv) Since healing under naturopathy takes a longer duration of treatment, Nimba does not take patients less than for 7 days.
- (v) On receiving consent from the patient, a Reservation Confirmation letter is issued clarifying duration of stay and tentative expenditure.
- (vi) All patients must carry the Reservation Confirmation letter and show the same to the Gate for entry to the Centre
- (vii) On arrival, the patient is subject to medical scrutiny before formal registration as a patient, and a ward (room) will be allocated.
- (viii) Doctor prepares a Case Diary comprising all daily treatment plan, therapy and diet.
- (ix) Treatment proceeds as per case diary and doctor examine daily and advice patient accordingly.

8.3 The appellant has submitted that in pre-GST regime, the Deputy Commissioner, Central Excise, Kalol Division vide letter F.No. V/ST-Div/Nimba/2014-15 dated 10.03.2015 had informed that the services provided by their company were exempt from service tax if they were providing in naturopathy

system of medicines. It has been submitted that on implementation of Goods and Services Tax (GST), the levy of GST by way health care services by a clinical establishment, an authorized medical practitioner or para-medics has been exempted by the Government vide Sr. No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. The appellant has referred to the definition of “health care services” provided under clause (zg) of the said Notification.

8.4 The appellant has further submitted that by virtue of entry no. 74A of Notification No. 12/2017-Central Tax (Rate) and CBIC Circular No. 32/06/2018-GST dated 16.02.2018, entire charges, including retention money, food charges and fees payments being charged from in-patients, by medical institutes / clinical establishments / hospitals, providing health care services as defined under clause 2(zg) of the said Notification have been categorically exempted from the levy of GST.

8.5 As submitted by the appellant, the main purpose and objective of provision of accommodation facilities to the patients availing the Naturopathy, Ayurveda and Yoga based treatments, rendered by their centre, is the medical treatment and accommodation is just an incidental requirement of such treatment, therefore, the entire package of such medical treatments, along with the provision of food and accommodation to the in-patients, shall be considered as composite supply within the meaning of section 2(30) of the CGST Act, 2017 with services portion of Naturopathy / Ayurveda/ Yoga services as the principal supply and the provision of food and accommodation to the in-patients as incidental / secondary supply. As the Naturopathy services provided by the appellant are exempt, the entire package of services shall be considered as exempt and accordingly remain outside the purview of the levy of GST.

9.1 The appellant has submitted that it is engaged in providing all recognized alternative health care services such as Naturopathy, Ayurveda, Yoga and Meditation, Physiotherapy and Special Therapies, at their premises with the help of highly qualified professional Doctors in the field of Naturopathy, researchers and support staff.

9.2 The appellant has further submitted that the classification of services provided by it is Heading 9993 (human health and social care services) most appropriately appears at Sr. No. 31 of Notification No. 11/2017-Central Tax (Rate) and as per Annexure to the said Notification, the specific service provided by them appears at Sr. No. 612. It has been submitted that the services provided by them gets covered under Service Accounting Code 999319 which covers health services of Naturopathy, which are provided by qualified practitioners, other than medical doctors.

9.3 The appellant has submitted sample case history (chart) prepared by the Doctor / qualified professionals at the time of admission of patient and the treatment method adopted for the ailment of the patients admitted.

9.4 The appellant has relied upon the advance ruling in the case of M/s. Alcon Resort Holdings Pvt. Ltd. [2019-TIOL-209-AAR-GST] and has submitted that they are providing the same set of services to all the patients who obtain admission for their ailment and their ailment is cured by the qualified professionals / Doctors through the process of Naturopathy, Ayurveda and Yoga.

9.5 The appellant has submitted that the GAAR has relied on the contents available on the website and that too on the single page of the website. It has further been submitted their website clearly specifies on the home page that they are providing services related to Naturopathy and it is one of the largest Naturopathy centers in India.

9.6 It has been submitted that the main services of Nimba Nature Cure Village is to provide services related to health through Naturopathy and treatment of each ailment takes specified time for cure, but not less than seven days under the system of Naturopathy; that when a patient intends for treatment of Naturopathy, then in such case the patient has to stay at the Naturopathy centre for a time period as advised by the Doctor / qualified professional, which is in any case, not less than 7 days and has to follow the diet chart regimental activity as per the prescription of the Doctors for curing the ailment for which the patient intends treatment under Naturopathy; that during the treatment, the patient cannot decide the days of stay or the type of foods as per his wish and has to follow the entire treatment programme strictly as advised by the Doctor / qualified professional.

10. There has been change in one of the two Members of this authority consequent upon the transfer and posting of the Chief Commissioner, Gujarat Goods and Services Tax, after Personal Hearing has been held in this case. The appellant was therefore asked whether they require fresh hearing or not. The appellant vide their mail dated 10.01.22 informed that they would like to be heard again. Accordingly, personal hearing in the matter was held on 13.01.22 wherein the advocate for the appellant reiterated the contents of their appeal. He submitted that, Nimba Nature Cure Village, Unit of Oswal Industries Ltd., is a therapeutic centre and Naturopathy is prime activity. The treatment and days of stay is decided by their doctor. Only qualified doctors are working at the centre. No admission to the centre is given until the doctors diagnose or carry out checks on the patient. He submitted that medical health insurance does not cover their treatment cost. However Central Govt. Health Scheme has extended the benefit of treatment at their centre to the Central Govt. employees. He submitted that there is no outdoor patient department at their centre. He further submitted that their service was exempted under the Service Tax regime. That GAAR erred in considering their service as rental of rooms. That treatment cannot be provided without accommodation service. Accommodation and food is secondary service. That to set aside the order of GAAR and allow their application for classifying services provided by them, towards Naturopathy at Nimba Nature Cure Village, as services by way of health care services by a clinical establishment and grant benefit of exemption notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

FINDINGS :-

11. We have considered the submissions made by the appellant in the appeal filed by them, written submission vide letter dated 26.10.2020 as well as submissions at the time of personal hearing and Ruling given by the GAAR.

12. The issue raised in the present case is whether the appellant is eligible to get the benefit of Sr. No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and corresponding Notification No. 12/2017-State Tax (Rate) dated 30.06.2017 (the Central Tax (Rate) Notification referred to includes the reference to corresponding State Tax (Rate) Notification also).

13.1 It would, therefore be appropriate to refer to the relevant entry at Sl. No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which reads as follows :-

<i>Sl. No.</i>	<i>Chapter, Heading, Group Service Code (Tariff)</i>	<i>Description of Services</i>	<i>Rate (per cent)</i>	<i>Condition</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
74	Heading 9993	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	Nil	Nil

13.2 It is apparent that clause (a) of Sr. No. 74 of the said Notification exempts services by way of health care services by a clinical establishment, an authorized medical practitioner or para medical practitioner or para medics. The appellant is an institution / establishment and does not fall under the category of an authorized medical practitioner or para medical practitioner or para medics. The appellant has also not claimed itself to be an authorized medical practitioner or para medical practitioner or para medics. The services being provided by the appellant also does not appear to be falling under clause (b) of Sl. No. 74 of the said Notification, nor has the appellant claimed the benefit of the same. Therefore, it needs to be examined whether the appellant is providing services by way of health care services by a clinical establishment. The phrases “health care services” and

“clinical establishment” have been defined at paragraph 2 of the aforesaid Notification as follows:-

- (s) *“clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;*
- (zg) *“health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;*

14.1 The term “clinical establishment” has been defined to mean a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called. The appellant has not submitted whether and if so under which category of “clinical establishment” (hospital, nursing home, clinic, sanatorium or other), it falls. As such, the appellant has not submitted anything about these terms in the appeal filed before this authority.

14.2 The appellant had submitted before the GAAR that the Legislative Assembly of the State of Gujarat has not passed a resolution under Article 252 of the Constitution of India adopting the Clinical Establishment Act, 2010, therefore, it is not at all possible for them to get Registration under the Clinical Establishment Act, 2010.

14.3. It is under these circumstances that it would be beneficial to know how the aforesaid terms are understood in the common and industry parlance.

15.1 The Government of India, Ministry of Health & Family Welfare (Department of AYUSH) vide NoR. 15016/5/2004-Y&N dated 04.09.2006 addressed to the Secretaries (Health) of all States and Union Territories, on the subject of ‘guidelines for the registration of Naturopathy practitioners and for the accreditation of Naturopathy institutions’, *inter-alia* recommended the State Governments that a system be set up for the accreditation of institutions on the basis of the guidelines enclosed therewith.

15.2 In the said guidelines, “Naturopathy Institutions” has been defined to mean (i) Medical colleges conducting the Bachelor of Naturopathy and Yogic Sciences (BNYS) Course and Postgraduate Courses and (ii) Hospitals. Further, “Hospital”

has been defined to mean a Naturopathy Hospital with minimum of 10 In Patient beds and an Out-Patient Department. The said guidelines also provide that a Naturopathy Hospital will have to conform to various norms if it is to obtain accreditation.

15.3 The Draft Naturopathy Standards for Clinics and Hospitals with different Bed capacities (1 to 10 Beds, 11 to 25 Beds, 26 to 50 Beds, 51 to 100 Beds, 100 and above Beds) and Teaching Hospitals is available on the website <http://www.clinicalestablishments.gov.in/WriteReadData/476.pdf>.

15.4 The said Draft Naturopathy Standards, *inter-alia* describes the functions as follows –

“B. Functions

This section includes the basic services provided by facilities. It is subdivided into two parts.

B.1 Core functions (Clinical services)

(OPD Clinics & Outdoor Patient’s facilities in health care organization with 1 to 100 and above bed strengths)

.....

Indoor patient’s facilities:

The indoor department of the hospital shall have separate male and female wards and distribution of beds at the rate of 65 sq. ft. area per bed with the following facilities :-

.....

B.2 Auxiliary Functions (support services for ex-diagnostic)

.....”

15.5 Similarly, draft “Development of Minimum Standards of Clinical Establishments – Ayurveda’ is available on the website <http://www.clinicalestablishments.gov.in/WriteReadData/86.pdf>.

15.6 The said draft standards of Clinical Establishments for Ayurveda, *inter-alia* prescribes space requirement of 100 Sq. Ft. for OPD and 500 Sq. ft of IPD for Hospital with minimum of 10 Beds. Similarly, space requirement in case of Hospital up to 11-25 beds is OPD – 250 Sq. Ft. and IPD – 1250 Sq. ft. The space requirement for OPD (Out Patient’s Department) and IPD (In Patient’s Department) has been prescribed for 26-50 Bedded Hospital, 51-100 Bedded Hospital and Hospitals having more than 100 beds. Similarly, the equipment requirement for OPD and IPD of Hospitals with different bedded capacities has been prescribed.

15.7 Thus, it appears from the foregoing that the Clinic is an “outdoor care facility managed by a single Physician (Naturopathy, Ayurvedic or other) or a

group of Physicians with or without a day care facility, where no overnight stay or care is provided". Hospital, on the other hand, is a health care facility with different bed capacities for indoor care and has ability to monitor and treat patients requiring an overnight stay, apart from providing care to outdoor patients. We have referred the aforesaid standards / guidelines to understand how the terms Hospital, Clinic etc. are understood in the common and industry parlance, not to see whether the appellant conforms to those standards / guidelines or otherwise.

15.8 The appellant has submitted that it functions as an integrated Health Care center and regimen demands that all the patients should be IP (In-Patient). It implies that the appellant does not provide health care to Out Patients and it does not have Out Patients' Department. The appellant has also not submitted anything whereby it could be said that a 'clinical establishment' could be only for 'Indoor Patients' without having any facility for 'Outdoor Patients', more so when various standards / guidelines suggest that clinic / hospital must have adequate facilities for care of the Outdoor Patients.

16.1 The appellant has submitted that since healing under Naturopathy takes a longer duration of treatment, Nimba does not take patients less than for 7 days.

16.2 Thus, the appellant not only does not provide care to Outdoor Patients, it does not provide care even in case of Indoor Patients if the stay is for less than 7 days. The condition of minimum stay of 7 days at the appellant's premises is irrespective of the ailment of the person. Though the appellant has asserted that it does not take patients less than for 7 days as healing under Naturopathy takes a longer duration, no evidence, much less from authoritative source, has been submitted in support of such an assertion. When the guidelines / standards meant for Naturopathy institutions suggest that even Outdoor Patients can be given care under Naturopathy, not taking patients who do not stay for minimum 7 days at appellant's premises only gives an impression that in the packages offered by the appellant, primacy is being given to stay at the appellant's premises wherein Naturopathy and / or Ayurvedic care also forms a part of the packages. From the submissions made by the appellant it is found that the persons desiring to avail the facility at the appellant's centre has to take stay packages wherein minimum stay period is 7 days. It is not understood as to how a medical practitioner can decide that a particular illness, injury, deformity, abnormality can be treated in fixed number of days. It is also not the case of the appellant that after completion of the stay the patient has to undergo some test to conclude that the treatment has been effective and he can be discharged.

17.1 In case an Outdoor Patient is provided care, the diet to be taken may be prescribed by the doctor providing care / treatment under Naturopathy / Ayurveda. It is said that each and every item in the Indian kitchen has medicinal property under Ayurveda. However, since the appellant do not provide care to Outdoor Patient, there is no scope of prescription of diet under Naturopathy / Ayurveda, which the person may take at his own home or from outside the appellant's premises.

17.2 The appellant's submission that the patients are provided food as diet which is prescribed by the treating doctor and no outside food will be allowed lest it hamper the progress of the treatment appears to be in continuum of appellant's policy of no Outdoor Patient care and minimum 7 days stay at the appellant's premises.

18.1 The appellant has submitted that it is engaged in providing all recognized alternative health care services such as Naturopathy, Ayurveda, Yoga and Meditation, Physiotherapy. It has also been submitted that the appellant also helps to heal the ailing people through alternative therapies from traditional Chinese Acupuncture Treatment, Reflexology and Acupressure Therapy etc.

18.2 As per the definition of "clinical establishment", the institution offers services or facilities in any recognized system of medicines in India. The recognized system of medicines in India has been defined in clause (h) of section 2 of the Clinical Establishments (Registration and Regulation) Act, 2010 as follows-

“(h) “recognised system of medicine” means Allopathy, Yoga, Naturopathy, Ayurveda, Homoeopathy, Siddha and Unani System of medicines or any other system of medicine as may be recognised by the Central Government;”

18.3 Thus, the health care services under Naturopathy, Ayurveda and Yoga being provided by the appellant are "recognized system of medicine" in India, whereas Physiotherapy, Acupuncture Treatment, Reflexology and Acupressure Therapy etc. cannot be said to be recognized system of medicine in India.

19.1 The GAAR has observed that in the packages offered by the appellant, 3 types of rooms are offered either on a single occupancy basis or double occupancy basis and the rates of the room per night forms the major part of the consideration towards the selected package. Accordingly, the GAAR has held that the appellant is providing composite supply wherein supply of accommodation service is the principal supply.

19.2 The appellant, on the other hand, while agreeing that the package of medical treatment along with the provision of food and accommodation to the In-Patients (Indoor Patients) shall be considered as Composite Supply, has contended that the service portion of Naturopathy / Ayurveda / Yoga services is the principal supply and the provision of food and accommodation to the In - Patient are the incidental / secondary supply. However, the appellant has not submitted anything to contradict the findings of the GAAR that the rate of the room per night forms the major part of the consideration towards the selected package. In case of the composite supply, value is one of the guiding factors, though not the sole factor, in determination of the principal supply.

20. As the appellant does not provide care or treatment to Outdoor Patients and as a corollary do not prescribe diet to be taken at home / from outside appellant's premises, does not provide care even in case of Indoor Patients if the stay is for less than 7 days and the rate of the room per night forms the major part of the consideration towards the selected package, the appellant do not fall under the 'clinical establishment'.

21.1 At this stage, we may refer to the judgement of the Constitutional Bench of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilipkumar & Company [2018 (361) E.L.T. 577 (S.C.)], wherein it has been held as follows -

“41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provision, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.”

42 to 47

48. The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.”

21.2 It has been clearly laid down in the aforesaid judgement that the exemption clause, at the threshold stage should be interpreted strictly and the burden of proving that the case of the appellant squarely falls within the exemption notification is on the appellant. However, as discussed herein above, the services being provided by the appellant does not appear to fall within the ambit of Sr. No. 74 of Notification No. 12/2017-Central Tax (Rate) and the appellant has not been able to establish that its case squarely falls within the said entry of exemption notification claimed by it.

21.3 In view of the foregoing discussion, we are of the view that the services being supplied by the appellant cannot be termed as services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics. As such, the services of the appellant cannot be held to be covered under

Sr. No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017-State Tax (Rate) dated 30.06.2017.

22.1 The appellant has referred to Central Board of Indirect Taxes & Customs (CBIC) Circular No. 32/06/2018-GST dated 16.02.2018 in support of the contention that the entire charges, including retention money, food charges and fees payments being charged from In – Patients by medical institutes/ clinical establishment/ hospital would be exempt from the levy of GST.

22.2 The relevant text of point 5 of CBIC Circular No. 32/06/2018-GST dated 16.02.2018 is reproduced below –

S. No.	Issue	Clarification
5.	<p><i>Is GST leviable in following cases :</i></p> <p>(1)</p> <p>(2) <i>Retention money :</i> <i>Hospitals charge the patients, say, Rs. 10000/- and pay to the consultants/technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Will GST be applicable on such money retained by the hospitals?</i></p> <p>(3) <i>Food supplied to the patients : Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may</i></p>	<p><i>Health care services provided by a clinical establishment, an authorised medical practitioner or paramedics are exempt. [Sl. No. 74 of notification No. 12/2017-C.T. (Rate), dated 28-6-2017 as amended refers].</i></p> <p>(1)</p> <p>(2) <i>Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of notification No. 12/2017-C.T. (Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.</i></p> <p>(3) <i>Food supplied to the in-patients as advised by the doctor/nutritionists is a part of</i></p>

	<p><i>be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</i></p>	<p><i>composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</i></p>
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22.3 It is observed that in the clarification given at Point 5(2) of the aforesaid Circular No. 32/06/2018-GST, the issue being examined is in respect of retention money of Rs. 2,500/- out of total hospital charges of Rs. 10,000/- (out of which Consultant / Technician is paid Rs. 7,500/-). Thus, the major portion of the total hospital charges is towards payment to Consultant / Technician. Even the remaining minor portion of the hospital charges retained by the hospital is for providing ancillary services such as nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. In this context, it has been clarified that the hospitals also provide healthcare services. In the present case, the appellant does not fall under the definition of 'clinical establishment' as already discussed and the major portion of the package offered by the appellant is towards accommodation. Therefore, this clarification is not applicable in the facts of the present case.

22.4 It has also been clarified at Point 5(3) of the aforesaid Circular No. 32/06/2018-GST that food supplied to the In-Patients as advised by the doctor / nutritionists is a part of composite supply of healthcare and not separately taxable; that other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. This clarification is also not applicable in the present case inasmuch as neither the appellant is a 'clinical establishment' / hospital, nor the principal supply of the appellant is that of 'healthcare service', as already discussed.

23.1 The appellant has submitted that it had been availing exemption from Service Tax as per Sr. No. 2(i) of Notification No. 25/2012-Service Tax and referred to letter F.No. V/ST-Div/Nimba/2014-15 dated 10.03.2015 of the Deputy Commissioner, Central Excise, Kalol Division.

23.2 We have perused letter F.No. IV/16-/ST-Div/Misc-Tech/2014-15 dated 19.01.2015 and letter F.No. V/ST-Div/Nimba/2014-15 dated 10.03.2015 of the Deputy Commissioner, Central Excise, Kalol Division addressed to the appellant (M/s. Nimba Nature Cure Village). In the letter dated 19.01.2015, it has been mentioned that the appellant had not specifically mentioned in its letter as to what type of naturopathy therapy services were being provided by it to clients / customers in its establishment. The said letter dated 19.01.2015 has referred to definition of 'Health Care Service' and 'Clinical Establishment' defined under clause (t) and (j) of paragraph 2 of Notification No. 25/2012-Service, the definition of 'recognised system of medicines' defined under Section 2(h) of the Clinical Establishments Act, 2010 and concluded as follows –

“ Hence, it appears that any Health care services when provided by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized systems of medicines provided in any institutions only are exempted from payment of service tax under the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 (Sl. No. 2) and healthcare services other than those above do not fall under the purview of the said exemption.

It is therefore, requested to kindly examine your Service Tax liability in the light of the above clarifications and if your services conform to the above, it is exempted under the said notification, if not, then comply with the provisions of the Finance Act, 1994 and the rules made there under.”

23.3 Further, the text of the letter dated 10.03.2015 of the Deputy Commissioner, Central Excise, Kalol Division is as follows –

“ Kindly refer to your letter dated 06.02.2015 (received in this office on 12.02.2015) on the above-mentioned subject.

In this regard, it is submitted that as clarified earlier vide this office letter dated 19.01.2015, if your establishment is providing Health Care Services by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in naturopathy systems of medicine, then the same is exempted vide Notification No. 25/2012-ST dated 20.06.2012 (Sl. No. 2), if not, then the same are leviable to Service Tax.

It is therefore, requested to take suitable action accordingly.”

23.4 Thus, it is evident that the appellant was advised vide aforesaid letters dated 19.01.2015 and 10.03.2015 to examine their Service Tax liability in the light of the relevant statutory provisions. None of the aforesaid letters contain any conclusive decision as to admissibility or otherwise of exemption from payment of Service Tax to the services provided by the appellant. Therefore, the said letters do not assist the appellant.

23.5 We make it clear that we have not expressed any opinion on the admissibility or otherwise of exemption from payment of Service Tax to the services provided by the appellant as neither the said issue is before this authority nor this authority has the jurisdiction to decide the matters of service tax.

24. The appellant has relied upon the advance ruling in the case of M/s. Alcon Resort Holdings Pvt. Ltd. [2019-TIOL-209-AAR-GST = 2019 (27) G.S.T.L. 293 (A.A.R.– GST)]. However, it is observed that various issues discussed herein above have not been considered by the Goa AAR in the said Advance Ruling, therefore we are not inclined to follow the same. It is more so when the advance ruling is binding only on the applicant who had sought is and on the concerned officer or the jurisdictional officer in respect of the said applicant, as per section 103 of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017.

25. In view of the foregoing, we confirm the Advance Ruling No. GUJ/GAAR/R/25/2020 dated 09.07.2020 by holding that M/s. Oswal Industries Ltd. (M/s. Nimba Nature Cure Village) is not eligible to get the benefit of Sr. No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and corresponding Notification No. 12/2017-State Tax (Rate) dated 30.06.2017.

(Milind Torawane)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 17.02.2022