



NITYA'S INSIGHT

AAR Update | Corporate office liable to pay GST on support services (including employee cost) to other units

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Dear Reader,

This is to update you on a recent order of the Authority on Advance Rulings in Karnataka ('AAR') in the case of **Columbia Asia Hospitals Private Limited, 2018-TIOL-113-AAR-GST**. The AAR in this case has held that the activities carried out by employees at the corporate office for units located in other States amounts to supply under Section 7 read with Schedule I of the Central Goods and Services Tax Act, 2017 ('CGST Act').

In this case, the applicant was providing healthcare services from various locations. The employees of the applicant at corporate office performed activities such as accounting, administration, maintenance of IT system etc. ('specified activities') for all the units located in different states. While the corporate office was paying GST on cross-charges to units for expenses such as renting of immovable property, travel, consultancy etc., it did not include employee cost used for providing support to other units ('impugned activity') in cross-charges.

It is pertinent to note that the applicant did not object to levy of GST on cross-charges. For the impugned activity, the applicant contended that though the specified activities qualify as services between distinct persons under GST law, the same will fall under Entry 1 of Schedule III of the CGST Act (services by employee to employer) and will not attract GST.

The AAR whilst treating the impugned activity as supply of services, made the following observations:

- Entry 1 of Schedule III of the CGST Act will only cover services between employee to employer and not the cases where one unit is providing services to the other through its employees.
- Impugned activity is a support function undertaken by one unit for another and will fall under Entry 1 of Schedule I (activity carried out between related or distinct persons without consideration). Hence, such activity will qualify as supply under GST law.

NITYA Comments

The correctness of this ruling is questionable for the reasons provided as under:

- *The applicant raised a limited question as to whether the impugned activity will be covered under Entry 1 of Schedule III or not. In our view, such an activity does not qualify as a supply at first place. There is sufficient jurisprudence under service tax law on similar issue. Recently, an AAR also held that where a foreign HO is reimbursing expenses to Indian Liaison Office (LO), LO is not supplying any service to HO and these activities are outside the purview of supply.*
- *The employees of an entity work for the organization per se and not for corporate office or branch office specifically. Further, corporate office performs various activities for the company and not for branch offices. Hence, it will be incorrect to hold that employees of corporate office provide service to other units.*

In the light of above, we recommend the following course of action:

- **Taxpayers making taxable supplies:**

Considering the revenue neutrality of the issue (that recipient units will be eligible to avail credit) and to avoid any litigation, the corporate office can cross-charge common costs & expenses to other units.

The invoice value will be termed as open market value [in terms of second proviso to Rule 28 of Central Goods and Services Tax Rules, 2017 ('CGST Rules')] and hence the department cannot dispute the valuation mechanism. The taxpayers can adopt this practice from July 1, 2017 onwards and cross-charge for the past as well (if not already done).

- Taxpayers making exempted supplies:

Where the taxpayers make exempted supplies (like the applicant in this AAR), GST on cross-charges will become a cost. Further, the taxpayer will not have liberty to adopt any value under second proviso to Rule 28 of the CGST Rules and need to adopt open market value for cross-charge. For the reasons stated above and considering the additional tax burden, the taxpayers can choose not to pay GST and litigate the matter (if situation arises).

We hope that you will find this update useful. For any clarification, please feel free to revert.

Regards,

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