



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING  
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D.No.12-468-4,  
adjacent to NH-16, Service Road, Kunchanapalli, Guntur District, AP-522501)

**Present:**

**Sri Sanjay Pant (Member) (Central Tax)**

**Sri M.Girija Shankar (Member) (State Tax)**

The 19<sup>th</sup> day of December, 2022

Order /AAAR/AP/07 (GST)/2022

|   |                                   |                                                                                                                                                                                                      |
|---|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Name and address of the appellant | M/s. Krishna Institute of Medical Sciences Limited<br><br>4-120/A, North Bypass road, NH-5, Backside Agriculture Market yard, Mukthinuthalapadu Village, Ongole, Prasakasam, Andhra Pradesh - 523001 |
| 2 | GSTIN                             | 37AACCK2540G1ZS                                                                                                                                                                                      |
| 3 | Date of filing of Form GST ARA-02 | 02.05.2022                                                                                                                                                                                           |
| 4 | Hearing ( Virtual)                | 04.11.2022                                                                                                                                                                                           |
| 5 | Authorized Representative         | Sri K.V Suresh Babu,                                                                                                                                                                                 |
| 6 | Jurisdictional Authority - Centre | Assistant Commissioner (ST) Nellore Circle, Nellore Division.                                                                                                                                        |

**(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the APGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the APGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act,

2017 [hereinafter referred to as "the CGST Act and APGST Act"] by M/s. Krishna Institute of Medical Sciences Limited (herein after referred to as the "Appellant") against the Advance Ruling No. AAR No.04/AP/GST/2022 dated 21.03.2022 issued by Authority for Advance Ruling, Andhra Pradesh.

### **1. Background of the Case:**

The appellant, M/s. Krishna Institute of Medical Sciences Limited is a public limited Company, and a multi-specialty hospital, rendering healthcare services and claiming exemption on the said service vide notification no. 12/2017 Central Tax Rate. Apart from healthcare services, the Company also makes pharmacy supplies based on doctors prescriptions to outpatients, which is taxable and accordingly the Company remits taxes on the same. The Company has been permitted to administer COVID-19 vaccine.

The Appellant sought clarification with regard to the activity of administering of COVID-19 vaccination by hospitals and approached the Authority for Advance Ruling on the following questions:

**Question:** Whether administering of COVID-19 vaccination by hospitals is Supply of Good or Supply of Service?

**Question:** Whether administering of COVID-19 Vaccine by clinical establishments (Hospitals) qualify as "Health care services" as per Notification No. 12/2017 Central Tax Rate dated 28.06.2017?

**Question:** Whether administering of COVID-19 vaccination by clinical establishment is exempt under GST Act?

**The Authority for Advance Ruling Andhra Pradesh in its orders in AAR No.04/AP/GST/2022 dated 21.03.2022 held:**

**Answer:** Administering of COVID-19 vaccination by hospitals is a **Composite supply**, wherein the principal supply is the 'sale of vaccine' and the auxiliary supply is the service of 'administering the vaccine' and the total transaction is taxable at the rate of principal supply i.e, 5%.

**Answer:** Administering of COVID-19 Vaccine by clinical establishments (Hospitals) is not qualify under "Health care services" as per Notification No. 12/2017 Central Tax Rate dated 28.06.2017 and not eligible for exemption.

Aggrieved by the impugned order, the appellant has filed the present appeal on the following grounds.

## **2. Grounds of Appeal:**

**2.1 Submission of Appellant against the Advance Ruling.** The Appellant submits that the Learned Authority erred in interpreting the basic fact of the case that the recipient is visiting the hospital not to purchase (buy) the vaccine but to get served through vaccination.

### **2.2 The process of vaccination is supply of Service:**

The learned authority misunderstood the process of vaccination to be 'sale of vaccine'. The Appellant submits that the hospital is not selling the vaccine to the recipient. As per Section 2(52) of CGST Act, if it has to be treated as sale of good, the title of the movable property has to be transferred to the recipient and he will be owner of the good. However, there is no transfer of good as such during the process, the vaccine vial consists of multiple doses and one such dose is injected into the body of the recipient. The recipient is called to be served rather than being called as owner of vaccine. The true essence of the supply is service, wherein the recipient's desire to get immune will be fulfilled. Before administering the vaccine, the title of the vaccine does not pass, after administration of vaccine there remains nothing to become subject of title.

### **2.3 Healthcare service:**

As per Notification No. 12/2017, serial number 74, HSN code 9993 "*services by way of healthcare services by a clinical establishment, an authorized medical practitioner or paramedics*" is exempted. The HSN Code 999312, healthcare service includes prevention of physical or mental disease. The sole objective of vaccination is prevention of dreadful virus, which is to be undertaken by medical professionals only. The learned authority believes that only inpatient services by hospital is only exempt and not outpatient healthcare services. It has been stated by the learned authority in third para of page no. 8 of the ruling that 'by no stretch of imagination, the receipt of vaccine can be considered as inpatient services rendered by the hospital in this regard. In this regard, we would like to submit that not only inpatient services are being exempt, but outpatient healthcare service, diagnosis, care for illness, etc are also exempt under GST. It is admitted that the said supply will not be considered as inpatient service but

examination should not limit to that extent because the outpatient services are also exempt, therefore, the authority should have applied the test of examination over outpatient service as well, which was not done. Hence, we submit that the vaccination process is covered under outpatient services and thereby exempt under GST.

#### **2.4 Why the supply should not be considered as Supply of Good:**

The learned authority in second para of page no 7 of the ruling has stated that "where he purchases the vaccine and gets it administered subsequently", in this regard we would like to submit that; the understanding of the learned authority is absolutely incorrect because the recipient cannot purchase the vaccine (it is not sold at pharmacy outlets). The recipient can only get the vaccine administered by the medical professionals. As there is no option for purchase of vaccine, it can never be considered as supply of good.

#### **3. Virtual Hearing:**

The proceedings of hearing were conducted through video conference on 04.11.2022. The authorized representative Sri. K.V. Suresh Babu attended and reiterated the submissions already made.

#### **4. Discussion and Findings:**

We have gone through the submissions made by the appellant in light of the ruling pronounced by the Authority for Advance Ruling. On perusal of the elaborate submissions made by the appellant at the time of hearing and taking into consideration the facts of the case, we make the following observations.

The primary contention of the appellant is that whether the activity of receipt of vaccine by the consumer is covered under supply of goods or services or both. The lower Authority had taken the stance that it is a composite supply wherein the principal supply is receipt of vaccine i.e., supply of goods and the administration of vaccine is supply of service, which is auxiliary.

In **para 2.1 and para 2.2**, the appellant alleges that the lower Authority misunderstood the process of the vaccination as sale of vaccine. Moreover the appellant submits that,

- a) Hospital is not selling the vaccine to the recipient.

- b) The true essence of the supply is service, wherein the recipient's desire to get immune will be fulfilled.

In the instant case, there is no doubt that the applicant qualifies to be a clinical establishment but, the supply transaction is predominantly of sale of goods and not the service component of healthcare. The dominant intention of the recipient is the receipt of the vaccine followed by its administration and hence the principal supply is supply of vaccine and not the process of vaccination.

The appellant himself acknowledges that the vaccine vial consists of multiple doses and one such dose is injected to the body of the recipient, as a part of the vaccination process. On the other hand he claims that there is no transfer of goods as such, which is a contradiction. This understanding of the appellant regarding vaccination process is flawed and distorted. The individual goes to the covid vaccination Center for the receipt of vaccine, by following the government guidelines of registering himself/herself in the portal and gets an appointment on a scheduled date to receive the vaccine, etc. Once the individual is vaccinated, there is transfer of goods undoubtedly, as the recipient receives the stipulated amount of dosage of medicine.

On successful vaccination, every individual is being issued with a certificate to the effect that the person has been vaccinated with XXX vaccine on XXX date. This in itself is an evidence that the vaccine (goods) has been injected into the body of the (supplied / transferred to the) individual / person. Further, with reference to appellant's contention that 'the recipient cannot purchase the vaccine (it is not sold at pharmacy outlets)' is also a 'mis-conception'. As the vaccine is being controlled directly by the Government, the Government has set a procedure. Any person wishes to have the vaccine, can procure the same at specified cost i.e. in other words purchase the same for himself / herself by way of following the set procedure. Thus, making the vaccine available to individuals in systematic way, does not take away the essential nature of the transaction i.e. getting supplied with goods at a price which in normal terms 'sale' and squarely qualify to be treated as supply of goods.

In this regard we invite reference to, the clarification issued vide F.No.2079203 /2021/ Immunization, Ministry of Health & Family Welfare, Department of Health & Family Welfare, regarding the prices, the GST tax Component on the price of vaccine and the service charge to be collected per

dose, has been stipulated by the Government of India, which is presented as under:

| S. No. | Vaccine    | Price per dose as declared by manufacturer (Rs.) | GST@ 5% (Rs.) | Maximum Service charge per dose inclusive of all taxes (Rs.) | Maximum price that can be charged by the private CVCs (Rs.) |
|--------|------------|--------------------------------------------------|---------------|--------------------------------------------------------------|-------------------------------------------------------------|
| 1      | COVISHIELD | 600                                              | 30            | 150                                                          | 780                                                         |
| 2      | COVAXIN    | 1200                                             | 60            | 150                                                          | 1410                                                        |
| 3      | SPUTNIK V  | 948                                              | 47.40 ~ 47    | 150                                                          | 1145                                                        |

**"Price per dose declared by the manufacturer is the price at CVC (COVID Vaccination Centers), inclusive of all expenses.**

*As provided in the Revised Guidelines for implementation of National COVID Vaccination Program (dated 08/06/21) it is instructed to regularly monitor the prices being charged by the private CVCs (COVID Vaccination Centers) from the citizens."*

As the government itself had declared the tax component on goods and the service charge component on services, it has been rather apparent without any ambiguity that they are two different supplies and invariably, the vaccine is the goods component in the entire transaction, accompanied by administration of the vaccine as the service component. The appellant's claim that the true essence of the supply is service, which fulfills the recipient's desire to get immunized, is a farfetched contention in the present context.

In **para 2.3**, the appellant argues that the administration of Covid-19 vaccine by clinical establishments (hospitals) would qualify as "Health Care Services" as per Notification No.12/2017 Central Tax (Rate) dt.28.06.2017.

| Sl. No. | Chapter, Section, Heading, Group or | Description of Services | Rate (per cent.) | Conc |
|---------|-------------------------------------|-------------------------|------------------|------|
|---------|-------------------------------------|-------------------------|------------------|------|

|    |              |                                                                                                                                                                                                                                                            |     |     |
|----|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|
| 74 | Heading 9993 | Services by way of- (a) <b>health care services by a clinical establishment</b> , 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 |
|----|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|

*Definitions. - For the purposes of this notification, unless the context otherwise requires,*

*(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 recognized 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;"*

Entry 74 exempted the services by way of Health care services by clinical establishment / authorized medical practitioner or paramedic.

The issue to be decided is whether the administration of Covid-19 vaccine by clinical establishments (hospitals) would qualify as "Health Care Services" or not.

"Health Care Services" are defined under 'Definitions' at (zg) of Notification No.12/2017 Central Tax (Rate) dt.28.06.2017. As per the definition, only diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy qualifies as "Health Care Services". Needless to say, that when a person approaches a clinical establishment (hospital) for health care service like diagnosis/treatment/care for illness, injury, deformity, abnormality or pregnancy qualify for exemption under Entry 74 of Notification No.12/2017 Central Tax

(Rate) dt.28.06.2017. It is to also note that diagnosis/treatment/cure are services which are rendered by clinical establishments after being affected by disease.

In the present case, the service rendered by the appellant is administration of Covid-19 vaccine which is also called Vaccination or Immunization. In order to find out whether the service of administering a vaccine fits into the "Health Care Services" exempted vide Notification No.12/2017 Central Tax (Rate) dt.28.06.2017, we need to understand the term 'Vaccination'. The definition of Vaccination as per the Centers for Disease Control and Prevention is as follows:

*'The act of introducing a vaccine into the body to produce protection from a specific disease.'*

In the light of the above definition it is understood that vaccination produces protection against disease and it is administered before the advent of disease. The above discussed service of administering a vaccine does not fit into the definition of "Health Care Services" as per Notification No.12/2017 Central Tax (Rate) dt.28.06.2017.

In **para 2.4**, the appellant argues that, the recipient cannot purchase the vaccine as it is not sold at pharmacy outlets, hence it cannot be considered as supply of good. However, the service of administering the vaccine has all the necessary elements to classify it as supply of goods and this has already been discussed supra. The outlet of supply or the supplier cannot decide whether a transaction can be classified as supply or not. There is transfer of medicine to the recipient when he approaches the Covid Vaccination Centre for vaccination, the recipient of vaccine makes a conscious choice of vaccine, and also pays a price for it as per the guidelines of the government.

Finally, we confirm that exemption is not allowed in the instant case against the claim of the applicant. While validating the decision of the lower authority that taxability of the supply comes under 'composite supply', wherein the principal supply is the 'sale of vaccine' and the auxiliary supply is the service of 'administering the vaccine' and the total transaction is taxable at the rate of principal supply i.e, 5%.

**ORDER**

With the foregoing, we confirm and uphold the ruling of the AAR.

Sd/- Sanjay Pant  
Chief Commissioner (Central Tax)  
Member

Sd/- M. Girija Shankar  
Chief Commissioner (State Tax)  
Member

//t.c.f.b.o//



To

  
Deputy Commissioner (ST)  
**DEPUTY COMMISSIONER (ST)**  
J.O. Chief Commissioner of State Tax,  
Government of A.P., Vijayawada

1. M/s. Krishna Institute of Medical Sciences Limited, 4-120/A, North Bypass road, NH-5, Backside Agriculture Market yard, Mukthinuthalapadu Village, Ongole, Prasakasam, Andhra Pradesh - 523001 **(By Registered Post)**

**Copy to**

1. The Assistant Commissioner of State Tax, Nellore Circle, Nellore Division.  
**(By Registered Post)**
2. The Superintendent, Central Tax, CGST Nellore -3 Range, Nellore Division.  
**(By Registered Post)**