| GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING<br>GOODS AND SERVICES TAX<br>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,<br>AHMEDABAD – 380 009. |  |
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ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2022/09
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/02)

Date : 23.05.2022

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| Name and address of the appellant | : | Baroda Medicare Private Limited,<br>Sunshine Global Hospital,<br>285/1, Plot No. 3, Manjalpur,<br>Vadodara – 390 011. |
| GSTIN of the appellant | : | 24AADCB2295A1Z7 |
| Advance Ruling No. and Date | : | GUJ/GAAR/R/106/2020 dated 30.12.2020 |
| Date of appeal | : | 04.2.2021 |
| Date of Personal Hearing | : | 20.07.2021/ 22.03.22 |
| Present for the appellant | : | Shri Dhruvank Parikh, CA |

The appellant, M/s. Baroda Medicare Private Limited is running 3 multi-specialty hospitals under the Brand name 'Sunshine Global Hospitals' at Manjalpur, Vadodara and Surat.

2. The appellant filed an application for advance ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the 'GAAR'), wherein it raised the following questions for advance ruling –

*(i) Whether the supply of medicines, surgical items, implants, consumables and other allied services & items provided by the hospital through their hospital in-house pharmacy, as well as food, room rent, other services to the in-patients, is part of composite supply of health care treatment; and hence not taxable under CGST / SGST ?*

*(ii) Whether the supply of Occupational Health Check-up (OHC) service by the hospital i.e. nursing staff, Doctors, Paramedical staff on hospital's payroll, working in different corporate for providing health check-up service, ambulance facility, and allied medical services to their employees and also the camps conducted for health check-up outside the hospitals, to be treated as Health Care service and hence not taxable under CGST / SGST?*

3. The GAAR, vide Advance Ruling No. GUJ/GAAR/R/106/2020 dated 30.12.2020 has ruled as follows –

(i) *The supply of medicines, surgical items, implants, consumables and other allied items provided by the hospital through their hospital in-house pharmacy used in the course of providing health care services as well as supply of food and room on rent to in-patients admitted to the hospital for diagnosis or medical treatment or procedures is a composite supply of In-Patient Healthcare Service. Supply of in-patient health care services by the applicant hospital as defined in Para 2(zg) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is exempted from CGST as per Sl. No. 74 of the above Notification.*

(ii) *The applicant will be liable to pay GST @ 18% (CGST @9% + SGST 9%) on the payment received directly from the business entity for health services provided to employees of the business entities in relation to Occupational Health Check-up (OHC) or preventive care along with ambulance facility and allied medical services under "Human health and social care services" in terms of S. No. 31 of the Table of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.*

4. Aggrieved by the aforesaid Advance Ruling, to the extent ruling given in respect of question (ii), the appellant has filed the present appeal.

5.1 The appellant has submitted that some hazards are common for all industries, like hazardous substances, dust, machinery related accidents, trips and falls, physically demanding work, heat and cold, etc. It has been submitted that the best way to avoid any accident to happen is to have preventive & safety process in place and get an individual's health check done regularly; that in many companies, it is becoming mandatory to have a pre-employment health check-up done even before hiring an employee. The appellant has submitted that the occupational health checks can be required for variety of staff, at various stages of their occupation, starting before a new person is assigned to particular job.

5.2 The appellant has submitted that these are the services which are provided by any clinical establishment through their Nursing staff, Doctors, Paramedical staff etc. at their place to look after any medical emergencies, medical treatment, health check-up of organization staff. It has been submitted that the primary purpose is to offer timely health check-up, medical treatments, and other allied medical services as and when required by the organization towards their staff needs in the workplace and allow the employer to make changes to improve worker health and safety. It has further been submitted that occupational health is defined as the highest degree of physical, mental and social well-being of workers

in all occupations; it is the branch of healthcare which deals with all aspects of health and safety at the workplace; it lays strong emphasis on the prevention of hazards at a primary level. It is submitted that occupational health is essentially preventive medicine.

5.3 The appellant has submitted that there are 29 enlisted diseases under Schedule VIII read with Sections 89 and 90 of the Factories Act, 1948 and to diagnose / prevent and take care of these diseases, occupational health check up and prevention is being provided by the appellant to the business entities.

5.4 The appellant has submitted that the impugned advance ruling provides for classification of occupational health check up under 'Human Health and Social Care Services' in terms of Sr. No. 31 of the table of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The appellant has referred to the explanatory notes to the scheme of classification of services related to "Human health services" (Group 99931) and has submitted that services provided by the appellant merit classification under Service Code 999312 as far as occupational health – check ups are concerned as the said Service Code is wide enough to consist general medical services consisting of the prevention, diagnosis and treatment by doctors of medicine of physical and / or mental diseases, such as : (a) consultations; (b) physical check-ups, etc. It has been submitted that the Board has given specific note for this SAC (Services Accounting Code), specifically mentioning that these services are not limited to specified or particular conditions, diseases or anatomical regions; that they can be provided in general practitioners' practices and also delivered by outpatient clinics, at home, in firms, schools etc. or by phone, internet or other means. The appellant has submitted that the said SAC is very well covered within the purview of Sr. No. 74 – Heading 9993 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

5.5 The appellant has submitted that the services being rendered by the appellant doesn't fall within the meaning of social services as mentioned herein above along with the relevant SAC as the Occupational Health Check-up is not in the nature of Social Services but in the nature of Health Care Services.

5.6 The appellant has relied on a judgement delivered by European Court of Justice in the case of Peter d'Ambrumenil, Dispute Resolution Services Ltd. Vs. CCE [2012] 36 STT 537 (ECJ) wherein the Hon'ble Court held that conducting medical examinations or taking medical samples of individuals for employers or insurance companies or certification of medical fitness are exempt, if such services are intended principally to protect health of person concerned.

6.1 The appellant has submitted that the term "Health Care Services" have erroneously been interpreted by the GAAR and it has erroneously been mentioned in the impugned advance ruling that the activity of the appellant viz. services of Occupational Health Check – up and Preventive care, including ambulance services being provided, will not fall under the category of "Health Care Services". It has been submitted that the GAAR, at one end doesn't want the

services to get classified in the category of "Health Care Services" and immediately thereafter mentions that the activity merits classification under "Human Health and Social Care Services". The appellant has submitted if the activity merits classification in the broad heading of "Human Health and Social Care Services" as per the GAAR, how can same not be considered as Health Care Services? It has further been submitted that the impugned advance ruling erroneously mentions that the "Health Care Services" do not include the services of the Occupational Health Check-up facilities, which is commonly known as corporate health check-up schemes, provided to business entities by the applicant as the said services are provided in order to detect any medical indicator or to ensure timely diagnosis of any disease so that prophylactic measures can be taken.

6.2 The appellant has referred to the definition of "health care services" given at clause (zg) of Para 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. The appellant has also referred to various rules of Draft Occupational Safety, Health and Working Condition (Central) Rules, 2020, and has submitted that the entire scheme and objective of Occupational Health Check up is medical examination of a patient. It is further submitted that when it is a case of medical examination of a patient, the word 'diagnosis' defined in various dictionaries is broad enough to include occupational health check up.

6.3 The appellant has further submitted that the word 'care' includes preventive care as well, wherein the measures are taken to prevent disease from occurring rather than curing them and occupational health checkup is also focused on the same along with diagnosing the disease.

6.4 The appellant has also submitted that in order to be eligible to claim benefit of exemption, what is important is that the above said Health Care Services must be supplied by a clinical establishment, an authorized medical practitioner or para-medics and not to whom, as it can also be provided to firms, schools etc.

6.5 It has been submitted that when the laboratory testing facilities are considered as Health Care Services, Occupational Health Care service is broad enough to include within its ambit laboratory services as well.

7.1 The appellant has also referred to Notification No. 24/2010-ST dated 22.06.2010 and Section 65(105)(zzzzo) of the Finance Act, 1994, whereby Service Tax was made applicable on the service provided or to be provided by any hospital, nursing home or multi-speciality clinic –

(a) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-speciality clinic; or

(b) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up

> or treatment is made by the insurance company directly to such hospitals, nursing home or multi-speciality clinic.

The appellant has submitted that the Central Government, vide Notification No. 30/2011-Service Tax dated 25.04.2011, fully exempted the said taxable service referred to in sub-clause (zzzzo) of clause (105) of section 65 of the Finance Act, 1994.

7.2 The appellant has further submitted that even with the introduction of Negative List in the Service Tax regime, Sr. No. 2 of Notification No. 25/2012-ST dated 20.06.2012 was similar to Entry No. 74 of Notification No. 12/2017-Central Tax (Rate).

7.3 It has been submitted that considering the definition of "Health Care Services", there is no disparity when provided by a Clinical Establishment to a patient inside the clinical establishment or outside the said establishment, in a corporate entity, as the basic intention is to grant exemption on the Health Care Service. The appellant has also submitted that across the country, none of the Hospitals or clinical establishments was paying Service Tax on the Corporate Health Check-ups offered by them during the Service Tax regime. It has also been submitted that the department has never raised an objection / disputed the non-taxability of occupational health check-ups under the service tax regime.

8. The appellant, vide further written submission dated 10.08.2021, has submitted that under the proposed agreement of Occupational Health Check Ups to be undertaken, the Appellant shall agree to provide round the clock Doctors, Nurses, medical assistants, Paramedical staff / personnel, etc. for offering treatment , diagnosis , allied healthcare services to the recipient of supply on their site; that the number of such personnel deployed may be varied based on the needs of the recipient of supply. It has been submitted that accordingly, the consideration will be based on the requirements of the recipient of supply. It has further been submitted that these personnel's may be deployed throughout in all shifts including holidays and shall look after emergencies, medical treatment, medical Check-ups, etc. of the employees of the recipient unit. These contracts may include providing of Doctors, Nurses other para medical staff / personnel, etc. of the Appellant.

9. The appellant has requested to grant exemption as per Entry No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

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 given fresh hearing on 22.03.2022. The authorized representative of the appellant appeared for the personal hearing, which was conducted online on 22.03.2022, and re-iterated the contents of the appeal and also the additional written submission made vide their letter dated 10.08.2021. In view

of the submissions made he requested to grant exemption as per Entry 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and set aside the ruling of GAAR in respect of Question No. 2.

**FINDINGS :-**

11. We have considered the submissions made by the appellant in the appeal filed by them, in the written submissions as well as at the time of personal hearing, ruling given by the GAAR and other evidences available on record.

12. The issue raised by the appellant in the present case is whether the supply of Occupational Health Check – up service by the hospital i.e. nursing staff, doctors, paramedical staff on hospital's payroll, working in different corporate for providing health check-up service, ambulance facility, and allied medical services to their employees and also the camps conducted for health check-up outside the hospitals, to be treated as Health Care service and hence not taxable under CGST/SGST.

13.1 The appellant has claimed that the aforesaid services proposed to be provided by it are covered under Entry at 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, which reads as follows –

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

13.2 The expressions "health care services", "clinical establishment" and "authorized medical practitioner" have been defined at Para 2 of the Notification No. 12/2017-Central Tax (Rate) as follows -

> *"(k) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical*

*professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;"*

*"(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 appellant under their proposed agreement of Occupational Health Checkups will provide round the clock Doctors, Nurses, medical assistants, Paramedical staff etc for offering treatment, diagnosis, and allied healthcare services at the site of their recipient unit. The consideration will be based on the requirements of the recipient unit. The above personnel deployed at the unit shall look after emergencies, medical treatment, medical check-ups etc of the employees of the unit. They will be carrying out regular health check up of employees viz. pre-employment health check up ; prevent work related injuries, diseases and potential health hazards; monitor health status at periodic intervals ; providing immediate treatment as when required which may involve getting ambulance services in case patient needs ICU or immediate hospital admission.

14.2 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 is covered under the definition of "health care service" provided at clause (zg) of para 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

14.3 The GAAR in para 15.1 held that the purposes of Occupational Health Check-ups are: (i) whether the person is fit for employment to the particular post, (ii) Prevention of work related injuries, diseases and potential health hazards, (iii) Monitoring the health status of the employees, (iv) Arrangement of treatment if the need arise, (v) Checking of fitness of the employee for the purpose of resumption of duty and (vi) assessment of the work condition with a view to ascertain that a particular employee can work under such conditions or otherwise. However GAAR erred in holding that Health Care Services do not include the services of Occupational Health Check-ups or preventive care. The Occupational

Health Check-ups or preventive care is covered under Service Code 999312. This code includes: " i. general medical services consisting of the prevention, diagnosis and treatment by doctors of medicine of physical and / or mental diseases, such as: a. consultations b. physical check-ups etc. Note: These services are not limited to specified or particular conditions, diseases or anatomical regions. They can be provided in general practitioner's practices and also delivered by outpatient clinics at home, in firms, schools etc. or by phone , internet or other means …..Note: These services can be provided in specialized practitioner's practices and also delivered by outpatient clinics, at home , in firms , schools etc. or by phone, internet or other means" The services to be provided by the appellant very well covers under the referred code. And that the above entry specifically merits classification at Entry No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as the said Service Code is wide enough to cover general medical services consisting of the prevention, diagnosis and care and they can be provided in general practitioner's practices and also delivered by outpatient clinics at home, in firms, schools etc or by phone, internet or other means.

14.4 It is clear that objective of medical examination is diagnosis. The definition of diagnosis, as per Cambridge dictionary means a judgement about what particular illness or problem is, made after examining and as per freedictionary.com is the act of process of identifying or determining the nature and cause of a disease or injury through evaluation of patient's history, examination and review of laboratory data, are broad enough to include occupational health check –ups within the meaning of word diagnosis. Further, occupational health check-ups provide preventive care which falls in the scope of the word 'care'.

15.1 As per Entry at 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 Health Care Services must be supplied by clinical establishment, an authorized medical practitioner or para-medics and these services are not limited to specified or particular conditions, diseases or anatomical reasons as well as these services can be provided in general practitioner's practices and also delivered by outpatient clinics, at home, in firms, schools etc or by phone, internet or other means.

15.2 In view of above definition of Health Care Services, it is clear that there is no disparity when provided by a clinical establishment to a patient inside the clinical establishment or outside the said establishment.

16. In para 16 of ruling passed by GAAR, it was held that occupational health check-ups are classified under 'Human Health and Social Care Services in terms of Sr. No. 31 of the Notification No. 11/2017-CT (Rate) dated 28.06.2017.

The Entry at the referred Sr. No. 31 is as below:

**31. Heading 9993** Human health and social care services

The referred Notification further contains a detailed Annexure showing the detailed nature of services under the Heading 9993. The same is reproduced below:

| S.No. | Chapter, Section, Heading or Group | Service Code (Tariff) | Service Description |
|---|---|---|---|
| 603 | **Heading 9993** | | **Human health and social care services** |
| 604 | **Group 99931** | | **Human health services** |
| 605 | | 999311 | Inpatient services |
| 606 | | 999312 | Medical and dental services |
| 607 | | 999313 | Childbirth and related services |
| 608 | | 999314 | Nursing and physiotherapeutic services |
| 609 | | 999315 | Ambulance services |
| 610 | | 999316 | Medical laboratory and diagnostic-imaging services |
| 611 | | 999317 | Blood, sperm and organ bank services |
| 612 | | 999319 | Other human health services including homeopathy, unani, ayurveda, naturopathy, acupuncture and the like |
| 613 | **Group 99932** | | **Residential care services for the elderly and disabled** |
| 614 | | 999321 | Residential health-care services other than by hospitals |
| 615 | | 999322 | Residential care services for the elderly and persons with disabilities |
| 616 | **Group 99933** | | **Other social services with accommodation** |
| 617 | | 999331 | Residential care services for children suffering from mental retardation, mental health illnesses or substance abuse |
| 618 | | 999332 | Other social services with accommodation for children |
| 619 | | 999333 | Residential care services for adults suffering from mental retardation, mental health illnesses or substance abuse |
| 620 | | 999334 | Other social services with accommodation for adults |
| 621 | **Group 99934** | | **Social services without accommodation for the elderly and disabled** |
| 622 | | 999341 | Vocational rehabilitation services |
| 623 | | 999349 | Other social services without accommodation for the elderly and disabled nowhere else classified |

| | | | |
|---|---|---|---|
| 624 | **Group 99935** | | **Other social services without accommodation** |
| 625 | | 999351 | Child day-care services |
| 626 | | 999352 | Guidance and counseling services nowhere else classified related to children |
| 627 | | 999353 | Welfare services without accommodation |
| 628 | | 999359 | Other social services without accommodation nowhere else classified |

We find that GAAR has classified the service under major heading 9993 as mentioned at Sr.31 the Notification No. 11/2017-CT (Rate) dated 28.06.2017. The said major or group code has been granted exemption under Sr. No. 74 of exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended. The GAAR has failed to examine as to whether the description of service provided by the appellant is covered within the description of service given at Sr. No. 74, of the said exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended. As discussed at Para 14.3 above the service to be provided by the appellant viz. Occupation Health Check Ups wherein they will provide round the clock Doctors, Nurses, Medical assistants, Para-medical staff/ personnel for offering treatment, diagnosis , allied healthcare services to the recipient of supply at their site is very well covered under SAC 999312. The said service is covered within the description of service mentioned at Sr. No. 74 of above referred exemption notification.

Further on going through explanatory notes of SAC 9993 i.e. Human Health and Social Care Services and headings and sub-heading mentioned under above SAC, we find that other that the Human Health Services (SAC 99931), which is exempted when provided by a clinical establishment an authorized medical practitioner or para-medics, the following services are mentioned:

(a) 99932 Residential care services for the elderly and disabled
(b) 99933 Other Social Service with accommodation
(c) 99934 Social Services without accommodation for the elderly and disabled
(d) 99935 Other Social Service with accommodation

From the above, it is evident that the services by way of Occupation Health Check-ups or preventive care are not covered by abovementioned social services mentioned at Sr.(a) to (d).

17. Further, in previous Service Tax regime, vide Notification No. 24/2010-ST dated 22.06.2010 and Section 65(105)(zzzzo) of the Finance Act, 1994, whereby Service Tax was made applicable on Occupational Health Check-up Services. The Government subsequently exempted the above service vide Notification No. 30/2011-ST dated 25.04.2011. The definition of Health Care Service is similar in

GST regime as compared to Finance Act, 1994. We find that the GAAR failed to appreciate the same.

18. The appellant has not submitted any agreement related to occupational health check up service proposed to be provided by it, either before the GAAR or this Authority, as this is a proposed activity and no such agreement has yet been entered into. It is observed that the appellant has not started providing occupational health check-up services.

19. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/106/2020 dated 30.12.2020 of the Gujarat Authority for Advance Ruling in the case of M/s. Baroda Medicare Pvt Ltd, Sunshine Global Hospital with respect to Question No. 2 and hold that supply of Occupation Health Check-up Service by the hospital i.e. nursing staff, Doctors, Paramedical staff on hospital's payroll working in different corporate for providing health check-up services, ambulance facility and allied medical services to their employees and also the camps conducted for health check-up outside the hospitals to be treated as Health Care Service and exempted under GST in terms of Entry at 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, as amended.

**(Milind Torawane)**
Member (SGST)

**(Seema Arora)**
Member (CGST)

Place: Ahmedabad
Date: 23.05.2022.

**Note:** The provisions of both the Central GST Act, 2017 and the Gujarat GST Act, 2017 are similar. Therefore, unless a mention is specifically made, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

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