

Distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do any business and establishment charges received from State Government are eligible for exempted supply

The appeal against the Advance Ruling No. AAR No.10/AP/GST/2022 dated 30.05.2022 issued by Authority for Advance Ruling, Andhra Pradesh by M/s. Andhra Pradesh Medical Services and Infrastructure Development Corporation (APMSIDC).

Background

The Andhra Pradesh Health & Medical Housing & Infrastructure Development corporation (APMHIDC), which was renamed as Andhra Pradesh Medical Services & Infrastructure Development Corporation is registered under Public Society Act 1350 in the year 1987 and established vide G O.Ms.No.309, HM&FW (F 1) Dt.22.05.1987 under the administrative control of Health Medical and Family Welfare Department. APMSIDC had preferred an Advance ruling on the following questions.

a. Whether the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do any business amounts to supply under section 7 of CGST/SGST Act?

b. Whether the establishment charges received from State Government as per G.O. RT 672 dated 20-05-1998 and G.O. RT 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or3A of Notification 12/2017 Central Tax (rate)?

*The Answer of the questions is **affirmative***

Grounds of Appeal:

That the Advance ruling authority has not considered the facts exactly. The APMSIDC (Appellant) is procuring the goods from various vendors, which is no doubt a supply. Proper tax has been affected by the vendors and full taxes have been paid. The reference made of the tender documents etc., are in this regard only. However, the question in the Advance ruling is not about the procurement made by Appellant, which are any way, no doubt a supply. The question is whether the distribution effected by Appellant as per the instructions of Government are amounting to supply.

Making reference to the tender conditions of procurements made by Appellant and concluding there from that the transaction under question is supply, amply makes it clear that the AAR is referring to a different transaction which is not at all questioned. Full GST had already been made on those procurement.

Post such procurement APMSIDC distributes drugs and surgical equipment's as per the instructions of the District Health Officers (DHO) and other Government Officials.

Important point that needs to be considered that APMSIDC gives drugs to PHCs and Hospitals as per the instructions of the DHO. The indents are finalized by the DHO based on the need. No charges are made from PHCs or Hospitals as they are government entities themselves. Thus, based on the instruction of government officers, Drugs are given to Government Doctors on no-charge.

- i. APMSIDC have no right to choose how much drugs shall be given, to whom to be given at what time etc.,
- ii. APMSIDC is at best acting as a courier agency, analogically. Hence if at all anything is held as supply, it can at best be the commission or charges of the courier but not the commodity as such. Drawing a parallel. APMSIDC is only distributing (not selling, transferring, exchanging or bartering, relinquishing). Even in the extreme case what can be held as supply is the establishment charges of APMSIDC but not value of commodity.
- iii. Hence none of the elements of business are present in that. Viz., there is no buyer or choice of buyer or determination of quantity or determination of value etc.,
- iv. Moreover, even if the transaction is held as supply, there will not be any revenue to government as the transactions have already suffered tax and there is no value addition. There will only be a procedure of filing of returns to show the same amounts as outward supplies and claim same as Input tax.

However, the AAR had not considered or discussed the above factors submitted by the appellants.

The emphasis is made on that clause of definition of business which states that any trade, commerce, manufacture, profession, vocation, adventure, wager or similar activity, whether or not it is for a pecuniary benefit; and it is held that there need not be any pecuniary benefit. But there shall be some activity in the form of trade, commerce, manufacture etc., which is missing in this transaction. Having procured the goods after having paid the full taxes, the internal distribution by one instrumentality of Stage (APMSIDC) to another Instrumentality (PHCs and Hospitals) without any charge from the recipients of goods is not having any of the characteristics of trade, commerce etc., In fact it is not even a commercial or financial transaction.

In response to the second question if the establishment charges are eligible for the exemption under item 3 or 3A of Notification 12/2017 it was held that as the transaction is only ancillary to the principal supply it shall be treated as part and parcel of the first supply. Hence the reasoning is heavily dependent on the determination of the nature of transaction under first question. Besides that, if the concept of supply shall be applied there shall be one of more taxable supplies, which are naturally bundled in the ordinary course of business.

The AAR had not discussed any of these ingredients and had concluded on the taxability without having regard to the fact that Primary health is one of the constitutional functions under 243G of constitution and is eligible for exemption.

Discussion and Findings:

We have gone through the submission 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 of the facts of the case, the issues to be decided are as follows:

a. Whether the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC

- *on behalf of government without any value addition*
- *without any profit or loss*
- *without even the intent to do any business*
- *amounts to supply under section 7 of CGST/SGST Act.*

A careful reading of the question preferred by the Appellant brings to light that there are two transactions involved in the issue in question. The first transaction is the **transaction of procurement** by the Andhra Pradesh Medical Services and Infrastructure Development Corporation hereafter referred to as APMSIDC. In order to understand the procurement transaction of the APMSIDC, it is necessary to understand the activities of the APMSIDC.

The establishment and activities of the APMSIDC are as follows:

- *The Andhra Pradesh Health & Medical Housing & Infrastructure Development corporation (APMHIDC), which was renamed as Andhra Pradesh Medical Services & Infrastructure Development Corporation is registered under Public Society Act 1350 in the year 1987 and established vide G O.Ms.No.309, HM&FW (F 1) Dt.22.05.1987 under the administrative control of Health Medical and Family Welfare Department.*
- *The Government vide G.O.Rt.No.672, HM & FW (M1) Dept., Dt.20 05.1998 has notified the APMHIDC as a nodal agency for procurement of medicines and subsequently the Government vide G.O.Ms.No.78, HM & Fw (M2) Dept., Dt.24.02.2001 has entrusted the job of procurement of equipment to the*
- *Corporation. Further, the Government vide G.O.Ms.No.99, HN4&FW (!12) Dept., 05.05.2010 have entrusted the sanitation services to APMSIDC with a request to select the implementing agencies for each District adopting an open and transparent tender process.*
- *As per G.O.Rt 672 dated 20-5-1998 and G.O.Rt 1357 dated 19-10-2009, the acquisition and distribution of drugs was undertaken by the organization.*
- *As per G.O.Rt 672 dated 20-5-1998 and other procurement procedures issued by the government on 13-01-2016, the organization started procurement of equipment and distribution of the same to Hospitals and PHCs.*
- *The Corporation is functioning with No Profit and No Loss basis.*
- *No grants-in-aid are provided to the Corporation and it is sustaining on its own resources by way of collection of supervision charges on the works executed.*
- *The revenue is generated by collecting supervision charges at the rate of 7% on the cost of construction and Maintenance works and 2% on the cost of procurement and distribution of drugs, consumables and equipment for Hospitals.*

The procedure for procurement is enunciated at para (6) of G.O.Rt 1357 dated 19-10-2009. As per the procedure mentioned in the above said order, the APMSIDC procures medicines by adopting e-procurement process using the common platform already established by the Government of Andhra Pradesh. An excerpt of a sample tender issued by the APMSIDC for procurement of medicines is as follows:

TENDER NO 129 (2021/22) PROCUREMENT OF SURGICAL CONSUMABLES

APMSIDC : : DRUGS mms.

Purchaser/Tender Inviting Authority - Managing Director, APMSIDC, Mangalagiri 522503, Guntur District, Andhra Pradesh

(Hereinafter referred to as Tender Inviting Authority unless the context otherwise requires), (page 5).

All bills/Invoices should be raised in duplicate and the bills should be drawn as Per GST Rules in the name of MD, APMSIDC, Mangalagiri, Andhra Pradesh.

On examination of all the facts and procedures detailed above, it can be concluded that the process of procurement by the APMSIDC is GST compliant where there is a purchaser, supplier and consideration and GST is discharged on the consideration.

The second transaction involved in the issue in question is the transaction of **distribution of medicines by the APMSIDC**. The issue to be now decided is whether the process of distribution of medicines undertaken by the APMSIDC falls within the scope and definition of supply or deemed supply under Schedule 1 of the APGST Act 2017.

Section 7 of the APGST Act 2017

Scope of supply (1) For the purposes of this Act, the expression-supply includes

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

The term supply has been inclusively defined in the Act. The following parameters should be adopted to characterize any transaction to be a supply.

- *Supply of goods or services or both (Supply of anything other than goods or services does not attract GST).*
- *Supply should be made for a consideration.*
- *Supply should be made in the course or furtherance of business.*
- *Supply should be a taxable supply.*

Let us check the presence of above referred parameters in the instant issue.

- *Supply of goods or services or both (Supply of anything other than goods or services does not attract GST) Yes. Supply of Service i.e. 'Warehousing and distribution of drugs, consumables and equipment for Hospitals'.*
- *Supply should be made for a consideration - Yes. There is consideration - '2% on the cost of procurement and distribution of drugs, consumables and equipment for Hospitals' - towards establishment charges.*

Consideration has been defined in Section 2 of CGST Act, 2017 as detailed below:

(31) "consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided *that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply, unless the supplier applies such deposit as consideration for the said supply;*

In the instant case, payment is being made, in money i.e. on the cost of procurement and distribution of drugs, consumables and equipment for Hospitals', in respect of, supply of service i.e. 'Warehousing and Distribution of Medicines and surgical equipment to the PHCs and Government Hospitals as per directions of DHOs' by the recipient i.e. by the State Government.

- *Supply should be made in the course or furtherance of business - No. This parameter is not available in the instant case.*
- *Supply should be a taxable supply - Yes. This is a taxable supply.*

Now let us examine the process of distribution of medicines taken up by APMSIDC.

The process of distribution of medicines by the APMSIDC is discussed at para (5) of G.O.Rt 1357 dated 19-10-2009 which is as follows:

Availability of medicines

1. The principal objective of the procurement policy is to ensure timely availability of required medicines at all health facilities. This shall be achieved by adopting the following norms strictly :

i) APHMHIDC shall be responsible for ensuring that adequate quantities of medicines are available at all the hospitals and health centres in the State.

ii) APHMHIDC shall establish appropriate transportation and logistics arrangements to deliver the medicines indented by each health facility at its door step, as against the current system of hospitals and PHCs having to fetch medicines for themselves from the Central Drug Stores (CDS).

iii) The Corporation shall arrange to supply medicines systematically to all the hospitals through a specified route on pre-specified dates for each hospital / PHC.

From a synchronous reading of the scope of supply and deemed supply and the activities undertaken by the APMSIDC, it can be concluded that the transaction of making the medicines available to the hospitals and PHCs by the APMSIDC do amount to supply or deemed supply of medicines. There is no purchaser and seller involved in the activity of making the medicines available by the APMSIDC to hospitals and PHCs. The APMSIDC is only responsible for ensuring that adequate quantities of medicines are available at all the hospitals and health centres/ establish appropriate transportation and logistics arrangements to deliver the medicines indented by each health facility at its door step/ arrange to supply medicines systematically to all the hospitals. In other words, the APMSIDC is the nodal agency for distribution of medicines to various hospitals and PHCs in terms of G.O Rt.No. 1357 dated 19-10-2009.

Therefore, the second transaction of distribution of medicines by the APMSIDC to various hospitals and PHCs in terms of G.O Rt.No. 1357 dated 19-10-2009 fall within the ambit of supply and therefore is taxable.

However, as the taxable value of service is nothing but the on the cost of procurement and distribution of drugs, consumables and equipment for Hospitals'. This needs to be verified thoroughly in light of Exemption vide Sl.No.3 of Notification No.12/2017-CT (Rate) Dtd.28.06.2017, as detailed below:

For better understanding the Sl.No.3 of Notification No. 12/2017-CT (Rate) Dtd.28.06.2017 is reproduced hereunder:

'Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution'.

Here in the instant case, the appellant is providing Pure Service (supply / distribution of drugs, consumables and equipment for Hospitals) to State Government by way of an activity in relation to a function entrusted to a Panchayat under Article 243G (Sl.No.23 of Eleventh Schedule of Article 243G of Constitution is - Health and sanitation, including hospitals, primary health centres and dispensaries).

Therefore, the service provided by the appellant in the instant case is qualifying all the conditions stipulated at Sl.No.3 of Notification No. 12/2017CT (Rate) Dated 28.06.2017 and thereby GST 'Rate chargeable' to the said service is 'Nil'.

a. The second issue to be decided is whether the establishment charges received from State Government as per G.O.RT 672 dated 20-05-1998 and G.O.RT 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or 3A of Notification 12/2017 Central Tax (rate).

The applicant contends that the establishment charges received from the State Government of Andhra Pradesh are out of the budgetary grants provided in the State Budget. The above receipts are provided to the Corporation only for the services rendered by the entity, but are not in relation to any goods provided. In case of drugs and surgical, Corporation is procuring the goods as per the mandate of the Ministry of Health and will be distributed to the PHCs and other Hospitals as per the indents raised by them. All the commodities are remitted as per the instructions and Corporation is not at all concerned with any of the goods. The Corporation does not incur any profit or loss on any of the commodities. Hence the remuneration earned by Corporation is for the pure services alone and the same is also evidenced by the above-referred Government Orders.

The Government of Andhra Pradesh at para 6.7 of G.O.RT 1357 dated 19-10-2009 says as follows:

“The Corporation shall be entitled to claim a service charge of 7% of the value of medicines procured for meeting the cost of procurement management, administration, quality testing, storage, transportation and establishing real time inventory management system,”

Therefore, the APMSIDC receives 2% of the value of medicines procured for meeting the cost of procurement management, administration etc. Are these establishment charges received by the APMSIDC from the government exempt as per entry 3 or 3A of Notification 12/2017- Central Tax (Rate) dt: 28.06.2017.

In order to claim exemption on the establishment charges under Entry 3 or 3A of Notification No. 12/2017 - Central Tax (Rate) dt:28.06.2017 the following conditions must be satisfied

- 1) The service shall be a pure service.*
- 2) The service has to be provided to Government/Government authority / Government entity*
- 3) The service rendered should be in lieu of an activity in relation to functions entrusted to Panchayat/ Municipality under 243G or 243W of the constitution.*

Let us check the presence of above referred parameters in the instant issue.

1) The service shall be pure service - Yes. The APMSIDC renders the service of distribution of medicines to hospitals and PHCs which is a 'pure service'.

2) The service has to be provided to Government/Government authority / Government entity - Yes. The APMSIDC is providing service to Andhra Pradesh State Government.

3) The service rendered should be in lieu of an activity in relation to functions entrusted to Panchayat/ Municipality under 243G or 243W of the constitution - Yes.

As discussed above, the service rendered by the APMSIDC is in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India. (the appellant is providing Pure Service (supply / distribution of drugs, consumables and equipment for Hospitals) to State Government by way of an activity in relation to a function entrusted to a Panchayat under Article 243G (Sl.No.23 of Eleventh Schedule of Article 243G of Constitution is - Health and sanitation, including hospitals, primary health centres and dispensaries).

Therefore, it is rightly eligible for exemption under Entry 3 or 3A of Notification No. 12/2017 - Central Tax (Rate) dt:28.06.2017.

The Ruling passed by AAR vide AAR No.10/AP/GST/2022 Dtd.30.05.2022 does not appear to be Legal and Proper and accordingly modify the order as given below.

ORDER

Question: 1. Whether the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do business in the same amounts to Supply under Section 7 of CGST/SGST Act.

Answer: Affirmative.

Since the Appellant is providing 'service' receiving 'consideration' despite not satisfying the parameter of 'in the course or furthering of the business' amount to Supply under Section 7 of CGST/SGST Act. However, the benefit of Notification No.12/2017-CT (Rate) Dtd. 28.06.2017 is available to this supply.

Question: 2. Whether the establishment charges received from the State Government as per G.O.Rt 672 dated 20-5-1998 and G.O.Rt 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or 3A of Notification 12/2017 Central Tax (Rate)?

Answer: Affirmative.

The establishment charges received from the State Government as per G.O.Rt 672 dated 20-5-1998 and G.O.Rt 1357 dated 19-10-2009 by APMSIDC are eligible for exemption as per Entry 3 of Notification 12/2017 Central Tax (Rate).