KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING

6TH FLOOR, VANIJIYA THERIGE KARAYALAYA, KALIDASA ROAD,

GANDHINAGAR, BANGALORE-560009

BEFORE THE BENCH OF

Shri. A.K.JYOTISHI, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO: - KAR/AAAR/ 05/2018-19 **DATE:-12.12.2018**

Name and address of the appellant	M/s. Columbia Asia Hospitals Pvt.Ltd, The Icon,2nd Floor, No.8,80 Feet Road, HAL III Stage, Indiranagar, Bengaluru-560075
GSTIN or User ID	29AACCC2943F1ZS/ 291800000248ARI
Advance Ruling Order against which appeal is filed	No.KAR ADRG 15/2018, Dated 27.07.2018
Date of filing appeal	14-09-2018
Represented by	Sri. Naveen Rajapurohit, CA
Jurisdictional Authority-Centre	Assistant Commissioner of Central Tax, AED-5, Bangalore East Commissionerate.
Jurisdictional Authority-State	LGSTO-45A Bengaluru
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs.20,000/- made vide Challan CPIN No.18092900058149 dated 12.09.2018

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act,2017 and the Karnataka Goods and Service Tax Act,2017(hereinafter referred to as CGST Act,2017 and KGST Act,2017) 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 corresponding similar provisions under the KGST Act.

The present appeal has been filed under Section 100 of CGST Act, 2017 and the KGST Act, 2017 by M/s. Columbia Asia Hospitals Private Limited (hereinafter referred to as 'Appellant') against Advance Ruling No. KAR ADRG 15/2018 dated 27.07.2018 pronounced by the Karnataka Authority for Advance Ruling.

Brief facts of the case:-

1. The appellant is registered under GST with GSTIN No. **29AACCC2943F1ZS** and is engaged in providing health care services The appellant is a private limited company having an international healthcare group operating a chain of modern hospitals across Asia. The appellant is presently operating across six different states having eleven hospitals out of which six units are in the state of Karnataka.

2. The appellant filed an application on 14.03.2018 before the Karnataka Authority for Advance Ruling under Section 97 of CGST/KGST Act, 2017 read with Rule 104 of CGST/KGST Rules, 2017 in form GST ARA-01, seeking a ruling on the following question:

> *Whether the activities performed by the employees at the Corporate Office in the course of or in relation to employment, such as accounting, other administrative and IT System Maintenance for the units located in the other states as well i.e distinct persons as per Section 25(4) of the Central Goods and Services Tax Act,2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act <u>or</u> it shall not be treated as supply of Service as per Entry 1 of Schedule III of the CGST Act?*

3. Before the Authority for Advance Ruling, the appellant enumerated the following facts:

3.1. The appellant has its "India Management Office (IMO)" i.e Corporate Office in Karnataka and some of the activities like accounting, administration and Maintenance of IT System are carried out by the employees stationed at IMO which forms part of the registered person in Karnataka and the consequential benefit of which flows across the Company/units located in other states. Further, certain services such as rent paid on immovable property, telephone services and business consultancy services are availed at the IMO but, since these services are used for the entity as a whole, the cost of such services is attributable to all registered persons located in other states as well. Accordingly, the GST paid on certain expenses such as rent paid on Immovable Property and other equipments, travel expenses, consultancy services, communication expenses etc, which were incurred towards services used by the IMO are availed by the registered person in the State of Karnataka and subsequently, registered person in Karnataka is discharging IGST on the expenses proportionately attributable to the other units located outside the State of Karnataka, treating the same as taxable supplies .

3.2. Allocation of such expenses to other registered units by the IMO is only for the purpose of determining the profit of each cost centre i.e registered unit. An example of how the services are apportioned is as follows:

- If the Company has received rental services amounting to Rs.1,00,000/- plus GST of Rs.18,000/-,which are towards management office, the Company in Bangalore would avail the input tax credit to the extent of Rs.18,000/- and subsequently the Company, Bangalore would raise invoices on other units for an amount

determined on the basis of turnover of respective unit to the total turnover of all the units in the said tax period and the applicable GST is discharged on the same.

➢ Assuming the turnover of Company's unit at Pune is Rs.10,00,000/- and the total turnover of all units of the Company is Rs.1 Crore, then the value of the invoice is determined as follows:

$$\frac{\text{Rental Services received at IMO* Turnover of Pune}}{\text{Total turnover of all units}}$$

$$= \frac{1{,}00{,}000/- * 10{,}00{,}000/-}{1{,}00{,}00{,}000/-} = \text{Rs.}10{,}000/-$$

3.3. Therefore, Company in Bangalore would raise an invoice for Rs.10,000/- on the Company in Pune and discharge the applicable GST on this amount.

3.4. However, with respect to employee cost there are no invoices raised by the management Office treating the same as activities carried out by employees in the course of or in relation to his employment which does not amount to supply of service. The Appellant explained before the Authority that, the activities carried out by employees from the IMO for accounting and other administrative functions with respect to other units, would amount to supply of services between distinct persons without consideration as per Entry 1 of Schedule 1. However, by virtue of specific relaxation provided in Entry 1 of Schedule III of the CGST Act, which states that *"Services by an employee to the employer in the course of or in relation to his employment" shall not be treated as supply of service."*, the same shall not be treated as supply of services

4. The appellant also submitted before the Authority that, the employment relationship between the employee and employer exists with a single legal entity as whole and is not confined to the location of registered person from where the said employee renders service. When an employee renders any service to other registered persons i.e distinct persons of the same legal entity, the nature of activity still assumes the character of services by an employee to the employer in the course of or in relation to his employment as he is an employee for the legal entity as a whole and not for any registered person. Hence, the services rendered by employees towards accounting and other administrative functions which benefit the other units of the entity, still remain the character of 'services by an employee to the employer in the course of or in relation to his employment' and shall not be treated as supply of service as per Entry I of Schedule III. Therefore, GST shall not be applicable on the said activities as the same is not a supply of service.

5. The Karnataka Authority for Advance Ruling, vide Advance Ruling No.KAR ADRG 15/2018, dated 27.07.2018 held that the IMO and its different units registered in different states are to be treated as 'related persons' and therefore, in terms of the entry 2 of Schedule 1, the activities of accounts and management done by the IMO for the individual units located both within the State and outside the State amount to supply of services from the IMO, even if made without consideration.

6. Regarding the issue relating to the activities performed by the employees at the Corporate office, the Authority held that, there is an employee-employer relationship only in the Corporate office. Since the Corporate office and its other units registered in other States are distinct persons as per Section 25(4) of the CGST Act, the employees in the IMO have no employee-employer relationship with the other distinct offices. The services provided to the the corporate office by the persons working in the corporate office are in the nature of employee-employer relationship. Since the corporate office and the units are distinct persons under the Act, there is no such relationship between the employees of one distinct entity with another distinct entity as per the GST Act, even if they are belonging to the same legal entity.

7. Being aggrieved by the above mentioned Ruling of the Authority (hereinafter referred to as 'Impugned Order'), the applicant has filed an appeal on 14.09.2018 under section 100 of the CGST Act, 2017 / KGST Act, 2017 on the following grounds:

7.1 The Advance Ruling Authority has erred in holding that the activities carried out by employees at IMO in the course of or in relation to employment such as accounting, other administrative and IT systems maintenance which indirectly benefit units located in the other states as well i.e distinct persons as per Section 25(4) of the Act shall be treated as supply as per entry 2 of schedule I of the Act.

7.2 The appellant has submitted that the activities carried out by employees at IMO, the consequential benefit of which may flow to other locations, may have been treated as 'supply' under entry 2 of Schedule 1, if the said entry is read in isolation. However, the same is to be read with entry 1 of Schedule III which specifically excludes 'services by an employee to the employer in the course of or in relation to his employment" as neither a supply of goods or a supply of service.

7.3 They submitted that the term 'employer' has not been defined under GST Act. However, in common parlance an employer means "a person or entity which hires the services of another"; that in the instant case, the employee shall work as per the directions of the Company whether he is located at the IMO in Karnataka or at any of the branch offices located in other States; that the same is evident in the employment contract; that the relevant clause (1.6) of the service contract of the employee and company is as given below:

> "Your appointment will be subject to-
>
> *1.6. your agreement that you will be prepared to travel or reside and work in any of the company's facilities, in India or abroad, for such period as is necessary for the proper performance and exercise of your duties in connection with this employment or as the Company shall from time to time direct. And such an even, you will be governed by the rules and regulations in these regards as may be applicable to you in the deputed place, from time to time"*

7.4 Further, they submitted that the functions/duties of the employee cant be restricted to employment with the registered person as per Section 25(4) of the Act merely on account of

the location from where he renders his employment service; that the employment relationship exists between the employee and the legal entity and not confined to the location of the registered person from where the said employee renders services; that the employee is an employee for the legal entity as a whole and not for any one registered person; that the functions of the head office are inherent basic stewardship functions of the legal entity. It is a central function necessary for all units and can be considered as an extended arm of all the units.

7.5 The Appellant submitted that under the GST law, units in different States may be required to obtain separate registrations, but the existence of the Company goes beyond the confines of GST laws. The multiple registrations under the Act are merely procedural aspects for the purposes of compliance of GST procedures/activities which is the responsibility of the entity as a whole. Employment is generally not confined to the geographical boundaries of the State or to the registered person.

7.6 They submitted that strategic directions are given by the Head/Corporate office of the Company to its units/ branches. Activities such as payment of salary to employees, income tax withholdings, provident fund deductions, legal support, strategic directions, technical support and shared knowledge base may be concentrated in one location (in the instant case, Bangalore where the IMO is located) which may indirectly benefit all the offices across the country and the employees performing the said activities are employed to benefit all the offices of the Company; that disregarding employer-employee relationship merely to fasten GST liability is not correct.

7.7 They submitted that at the time of obtaining registration under GST, key managerial personnel details are required to be given in respect of all the registrations; that the key managerial personnel are employed by the Company and not by the registered person located in a particular State. In order to buttress their arguments, the appellant have cited following decision given by the Tribunals in relation to services rendered by employee towards accounting and other administrative functions pertaining to other units

> **<u>In the case of Franco India Pharmceutical (P) Ltd Vs Commr. Of ST Mumbai{2016 (42)S.T.T.1057 (Tri-Mumbai)} :</u>** "In said case, the salary cost of employees deputed for marketing work was attributed to the group companies. The Department was of the view that the group companies are separate entity having identity of their own"-
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> In this case, the Hon'ble Tribunal in its order held that the Service rendered by an employee to either one employer or many as in case of joint employment cannot make any difference to the tax treatements of the emoluments earned by the employee. The draft circular issued by the Board dated 27.07.2012 was referred wherein Joint Employment was explained as below:
>
> 5. "*There can also be cases where staff is employed by one or more employers who normally share the cost of such employment. The services provided by such employee will be covered by the exclusion provided in the*

definition of service. However, if the staff has been engaged by one employer and only made available to other for a consideration, it shall not be a case of Joint employment".

6. " Another arrangement could be where one entity pays the salary and other expenses of the staff on behalf of other joint employers which are later recouped from the other employers on an agreed basis on actual. Such recoveries will not be liable to service tax as it is merely a case of cost reimbursement".

In view of the above, the appellant submitted that the mere arrangement of hiring the employees in one employer-company and allocating the cost to other employer-companies without any margin, will not be treated as consideration for any service.

In the case of Milind Kulkarni Vs Commissioner of C.Ex, Pune {2016 (44) STR.71(Tri-Mumbai)}:- "In this case the staff of the appellant were deputed from India to client locations outside India and the branches collect the salary from the appellant and disburses the same to the staffs deputed from India. The Department was of the view that the branch is providing service to the appellant and the appellant is liable to pay tax under reverse charge mechanism."

In this case, the Hon'ble Tribunal was held that the employees are the employees of the organization itself. Such transfer of amount from the appellant to the branch was nothing but reimbursement and taxing such reimbursement would amount to taxing of fund. The Tribunal observed that-

"we *do not need to examine whether the flow of funds from the head office to the branch is consideration or reimbursement as the test of services having been received in India fails. Nevertheless, we do so. A branch by its very nature, cannot survive without resources assigned by the head office. The business of the appellant –assessee is such that credibility in the eyes of its overseas clients lies in the name and style of the appellant-assessee. It cannot be substituted by any other entity. The activity of the head office and branch are thus inextricably enmeshed. Its employees are the employees of the organization itself. There is no independent existence of the overseas branch as a business. The economic survival of the branch is entirely dependent on finance provided by the head office. Its mortality is entirely contingent upon the will and pleasure of the head office".*

Hence, even in a case where flow of funds take place from Head Office to Branch, mere apportionment of employee cost can't be construed as service and employees are the employee of the Organization itself.

7.8 In view of the above, the appellant pleaded that the employee is working for an organization and the organization shall be treated as his employer and not a particular branch. Thus entry 1 of Schedule III of the Act holds goods and the services by an employee to the employer in the course of his employment shall not be treated as 'supply'. Based on the above interpretation of the statute, the appellant pleaded that the Impugned Order may please be set aside.

PERSONAL HEARING:

8. The appellants were called for a personal hearing on 25.09.2018 but the same was adjourned on their request. Another personal hearing was granted on 15.11.2018 and they were represented by Sri. Naveen Rajapurohit, Chartered Acccountant, who reiterated the arguments in the grounds of appeal and also furnished additional written submissions.

9. In the additional written submissions, the appellant stated that the expenses incurred by the IMO in Karnataka are for services availed by it from third party service providers. Payment to such service providers is being made by IMO and ITC thereof is also availed by it where tax component exists. Being a central administrative body of the entity as a whole, the cost of such expenses is attributed to other registered units in the books of accounts for determining the profitability of each unit. In this regard, they submitted that mere allocation of expenses incurred by the corporate office (IMO) of a company would not entail that there has been a supply of service by it to its units which should be liable to tax; that being a corporate office of a legal entity, it is only facilitating the overall operations of the entity as a whole. It cannot be construed to have provided any supply of service to the different units of the same entity.

10. They relied on the case of M/s HT Media Ltd vs Commissioner of Service Tax, New Delhi reported in 2017 (7) GSTL 364 (Tri-Del), wherein the appellant in that case, as a nodal group company, was incurring certain expenses towards common services being used and availed by the group companies and thereafter, recovering the said expenditure from the group companies on a proportionate basis. Service tax authorities demanded service tax on such reimbursements alleging provision of taxable infrastructure support services by the appellant to its group companies. The Tribunal set aside the demand and held that the appellant did not provide any infrastructure support service to its group companies but was merely acting as a nodal group company for facilitation of such services for use by the group and payment thereof to the service provider; that such services were commonly shared by all the group companies and hence, such expenditure was proportionately apportioned to other group companies.

11. In view of the above, they submitted that mere allocation of cost incurred for other group companies holding separate service tax registration and reimbursements received on account of such allocation does not make it liable to service tax in the absence of any service element being involved therein; that in their case as well, certain services i.e travel expenses, business consultancy expenses, etc availed centrally by IMO may also be availed by the other registered units, payment for which is made by IMO. Applying the above principle, it may be said that, allocation of such expenses to other registered units would not in itself tantamount to supply of

services by IMO to such units; that there would not be any consideration flowing from one GST registration of the company to the other.

12. They further stated that there are certain service i.e renting of immovable property, telephone/communication services, etc incurred by the IMO which are primarily used for the operations of the IMO itself; that such services do not have any direct nexus with other registered units. Due to this reason alone, the IMO is working for the entity as a whole and the expenditure incurred on such services is also apportioned to other registered units, without involving even a rare chance of providing a service to such other units; that they have adopted the cross-charge mechanism for allocating the other expenses on the basis of proportionate turnover instead of following the Input Service Distributor (ISD) method; that the concept of ISD nowhere necessitates that the cost apportionment pertaining to such credit shall also be liable to tax. The appellant at the time of procurement of services from third party vendors pays applicable taxes and these services is apportioned to other units/States, based on their turnover; that if such apportionment is considered as a taxable supply, the Company would be required to pay the taxes again on the same supply even though the Corporate office / IMO has not provided any additional service to the units. Therefore, they submitted that the apportionment of other services cost, from the corporate office to the units located in other States, shall not be considered as a supply for the purpose of levy of GST, rather, they can be distributed to other locations through the ISD route.

13. They pointed out that though the applicability of GST on the activities performed by the employees at IMO for units located in other states was explicitly raised before the AAR, the Ruling in its finding and discussions also touched on the issue relating to the applicability of GST on cross-charge of expenses other than employee cost, but the same was not included in the Ruling part of the order. However, they pleaded that in the interest of justice, mere allocation of expenditure incurred by the corporate office to units located in other states shall not tantamount to 'supply' and thus not liable to GST. On the above grounds, they requested that the AAR ruling be set aside.

DISCUSSION & FINDINGS:

14. We have gone through the records in detail and have taken into consideration all the submissions made by the Appellant in writing as well as the detailed arguments made by their Advocate during the personal hearing. The short point for determination is whether the services rendered by the employees at the Corporate office of the Appellant (India Management Office) in the areas of accounting, administrative work and IT system maintenance, which benefits the Appellant's units in other parts of the country, will be treated as a 'supply; as per entry 2 of Schedule 1 of the CGST Act.

15. For the sake of clarity, we reproduce the relevant portions of the CGST Act which have a bearing on the issue at hand.

15.1 In terms of Section 22 of the Act, every supplier shall be liable to be registered in the State from where he makes a taxable supply.

15.2 Section 25 states that every person who is liable to be registered under Section 22 shall apply for registration in every State in which he is so liable within 30 days from the date on which he becomes liable to registration.

15.3 Sub-section 4 of Section 25 states that every person who has obtained a registration in more than one State, shall, in respect of each such registration, be treated as 'distinct person' for the purpose of this Act.

15.4 Section 9 of the CGST & KGST Act levies a tax on all intra-state supplies of goods and services or both.

15.5 Section 5 of the IGST Act levies a tax on all inter-state supplies of goods and services.

15.6 Section 7 (1) of the CGST Act states that "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;

(b) ----

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) ---

15.7 Schedule I of the CGST Act describes the activities to be treated as supply even if made without consideration. As per entry 2 of the said Schedule, supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is to be treated as a 'supply'.

15.8 Section 7(2) of the CGST Act states that notwithstanding anything contained in sub-section (1), activities or transactions specified in Schedule III shall be treated neither as a supply of goods or supply of service. As per entry 1 of the said Schedule III, services by an employee to the employer in the course of or in relation to his employment is not a supply of service.

16. In the light of the above legal provisions, let us understand the activities of the Appellant and determine the applicability of the above provisions of law. The Appellant is an international healthcare group operating a chain of modern hospitals across Asia. The hospitals owned by the Company are engaged in providing secondary and tertiary healthcare services. The Appellant is currently operating across 6 different States having 11 hospitals out of which 6 hospitals are in the State of Karnataka. In terms of Section 22 of the CGST Act, the Appellant is registered in each of the 6 states. Each GSTIN is a distinct person in terms of Section 25(4) of the said Act.

The management operations of the 11 hospitals in India are centralized in the Head Office of the India Management Office (IMO), at Bangalore.

17. The Head Office or the IMO handles certain operations such as Accounting, Administrative work and maintenance of IT systems in respect of all the units in India. The IMO is part of the registered person in Karnataka. The IMO incurs certain expenditure in the course of its operation which includes rent paid on immovable property and other equipments, travel expenses, consultancy services, communication expenses etc. Since the IMO operations are for the benefit of all the 11 units of the Company in India, the expenses incurred in operating the IMO are allocated to other registered units for the purpose of determining the profit of each cost center. The allocation of costs to each of the registered units in India is based on the turnover of the respective unit. On such allocated cost, the Appellant is raising a tax invoice on the other registered units and paying GST on such allocated cost. However, the Appellant is not allocating the cost of employees at the IMO to their other units since, in their understanding, the services rendered by the employee to the employer in the course of or in relation to his employment shall be treated as neither a supply of goods nor supply of service in terms of entry 1 to Schedule III of the CGST Act.

18. In view of the above, the Appellant approached the Authority for Advance Ruling for a decision on the question *"Whether the activities performed by the employees at the Corporate office in the course of or in relation to employment for the units located in other states (distinct persons) shall be treated as a supply in terms of the entry 2 of Schedule I of the CGST Act or whether it will not be treated as a supply in terms of the entry 1 of Schedule III of the said Act?"*

19. The AAR held that the services of the employees at the Corporate office which benefit the other units of the Company will be treated as a supply of service in terms of entry 2 of Schedule I of the CGST Act. In the course of its discussions, the AAR observed that there is an employee-employer relationship only with respect to the IMO and the services of the employees at the IMO. No such relationship exists between the employees at the IMO and the other units of the Company which are distinct units in terms of Section 25(4) of the CGST Act and hence entry 1 of Schedule III will not apply.

20. In their appeal before us against the above ruling, the Appellant argued that the functions of the employee cannot be restricted to employment with the registered person merely on account of the location from where he renders his employment services; that the employment relationship exists between the employee and employer i.e legal entity and not confined to the location of registered person; that the organization as a whole is to be treated as an employer and not a particular branch. Therefore, the Entry 1 of Schedule III applies in their case and the AAR ruling is required to be reversed.

21. In the additional submissions made by the Appellant during the course of the personal hearing, it was argued that the mere allocation of expenses incurred by the IMO would not entail that there has been a supply of service by it to its units which should be taxed. They submitted that although he Appellant has adopted the cross-charge mechanism for allocating the expenses

to the other units on the basis of proportionate turnover, the correct route to be followed is the ISD route. They pleaded that the allocation of expenditure incurred by the IMO to units located in other states shall not be held as a 'supply' and not liable to GST.

22. There is no dispute that each unit registered in different States is a 'distinct person' as per Section 25(4) of the CGST Act. When two units of the same business entity in different States take separate GST registration, then each registered unit will be considered as a distinct entity/ person as per the GST law. Every distinct person will have to maintain separate records for their principal place of business. The laws relating to filing of returns and other compliance procedures shall apply to both of them separately. Every distinct person is liable to pay GST on all supplies of goods and services or both made by it and every distinct person is treated as a separate taxable person. In the event of supplies between distinct persons, there will not be a consideration element as the transaction is within units of the same business entity. However, Section 7(1)(c) of the CGST Act provides that the scope of supply extends to activities referred to in Schedule I which are made or agreed to be made without a consideration. Entry 2 of Schedule I refers to supply of goods or services or both between distinct persons even if made without consideration. The provisions of entry 2 of Schedule I of the CGST Act clearly state that transactions between distinct persons are to be treated as a 'supply' even if made without consideration. The bone of contention is whether the activities of the IMO, involving the services of the personnel stationed at the IMO and the expenses incurred in operating the IMO, all of which benefit and flow to the other distinct units of the Appellant, would amount to a 'supply' between distinct persons and constitute a taxable supply in terms of Section 7 of the CGST Act.

23. It is noted that prior to the introduction of GST, the events which were liable to tax under the existing laws were the events of manufacture, sale and the provision of a taxable service. Under the GST regime of taxation, the taxable event which attracts the levy of GST is the 'supply' of goods or services, in terms of Section 9 of the CGST (and SGST) Act or Section 5 of the IGST Act, depending on whether the transaction of 'supply' is intrastate or interstate. Thus the object of tax in GST is clear and far more comprehensive and is certainly broader than any single earlier law that has been subsumed in it. The object of tax in GST is 'supply' as understood in Section 7 of the Act. It is a concept which, going purely by what has been written down in the GST law, is wider than the concepts of 'manufacture', 'sale of goods', 'provision of services' which were the objects of taxation in respective laws concerning Central Excise, VAT or Service Tax. In order to construe what is 'supply' one starts with the layman's understanding of the expression as meaning 'to make something available to another or to fulfill the want of another'.

24. Under the GST law, the word 'supply' has not been defined but rather the scope of what constitutes 'supply' is stated in Section 7 of the CGST Act which reads as under:

> *7. (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;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

The word 'includes' in Section 7 (1) of the CGST Act, gives a wider meaning to the words or phrases in the Statute. The word includes is usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word 'includes' is used in the main Statute, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include. [[para 23] - Commercial Taxation Officer, Udaipur vs Rajasthan Taxchem Ltd. 2007 (209) ELT 0165 S.C.- relied on].

Clause (a) of Section 7 (1) recognizes the forms of transactions by which a supply is effected. It presupposes an agreement between the two transacting parties to engage in the dealings, and the condition that such a dealing is in course of furtherance of business, and not otherwise.

Clause (b) recognizes imports of services for a consideration as an activity that would be construed as a 'supply' even if it is not made in course of furtherance of business.

Clause (c) lays down that the activities that are specified in Schedule I would be deemed to be falling within the meaning of 'supply' even when such a transaction is made or agreed to be made without a 'consideration' or recompense.

Clause (d) refers to Schedule II which lays down the activities to be treated as supply of goods or supply of services.

Subsection (2) of Section 7 states that "Notwithstanding anything contained in sub-section 1", certain activities specified in Schedule III shall be treated as neither as a supply of goods or supply of service. Entry 1 of Schedule III talks of the "services by an employee to the employer in the course of or in relation to his employment", which will not be a supply.

25. Therefore, for an activity to qualify as "supply" in terms of Section 7 of the CGST Act, the following conditions are to be fulfilled:

(i) The activity has to involve a transaction in either 'goods' or 'services' or both;

(ii) The activity should be undertaken for a consideration

(iii) There should be agreement to engage in the transactions of the nature specified;

(iv) The activity should be in course or furtherance of business

Broadly speaking, when the above circumstances are accomplished by (at least) the two persons involved in the transactions, then it can be inferred that the activity is a 'supply' under GST law and thereby chargeable to GST. There are however, certain exceptions to the above principles viz.

(i) Certain activities have been termed as a 'supply' even when they are made without a consideration. Such supplies have been listed in Schedule I to the CGST Act; and

(ii) Certain activities, even when made for a consideration, have been termed as not a supply of either goods or services and thus kept outside the scope of levy of GST. These activities have been listed in Schedule III of the CGST Act.

26. In the case of the Appellant, the IMO is the corporate office of the legal entity Columbia Asia Hospitals Pvt Ltd. It is a central administrative body of the entity as whole. The role of the head office in an organisation takes various forms and is affected by both internal and external factors. Nevertheless, some general tendencies are apparent. Broadly speaking, there are three core functions for a head office, viz:

a) The strategy role: This includes the formulation of corporate strategy, the definition of a business portfolio and the development of the organizational structure and the culture of the organization.

b) The co-ordination role: Included in this role is the exploitation of synergies between business units, the development of the core competence of the company and the provision of expert advice to different units.

c) The control and policy role: Included in this role is basic control of business units, setting performance targets for units, monitoring units' achievements, and ensuring a positive image for the company and lobbying political authorities.

In addition to these core functions, the head office also has a service provider role. In this role, the head office provides those services that business units require, such as ICT systems and training systems. In the case of the Appellant's organisation, the Head Office or the India Management Office is the nodal office which caters to various business processes of all their

units located in Karnataka as well as in other States. The IMO handles activities like, accounting, payment of salaries, income tax deductions, provident fund deductions, legal support, strategic directions, technical support and shared knowledge base which benefit all their offices across the country. The IMO is a registered person in Karnataka and is a distinct person in terms of Section 25(4) of the CGST Act. The execution of the above mentioned activities by the IMO which is for the benefit of all their other units is in the nature of a service by the IMO. As such there is a supply of service by the IMO to the other distinct units of the Company.

27. As per entry 2 of Schedule 1 of the CGST Act, any supply between distinct persons is to be treated as a 'supply' in terms of Section 7 of the said Act. In view of this deeming fiction in the law, the service supplied by the IMO to its other units by way of performing activities which benefits the other distinct persons is liable to be charged to GST. In accounting terminology this concept is referred to as 'cross charge'. The IMO will cross charge the other units of the same entity, the cost of rendering its services which benefit its other units, by raising a tax invoice and charging applicable GST. The valuation for the supply of the service rendered by the IMO to the other distinct persons will be done in terms of Rule 28 or 30 of the CGST Rules. In arriving at the cost of provision of the service by the IMO, the cost of employees working in the IMO has to be factored into. This is because the activities performed at the IMO cannot be done without human workforce and hence the cost of such workforce is an integral part of the service provided by the IMO.

28. The Appellant has argued that in terms of entry 1 of Schedule III of the CGST Act, the services by an employee to the employer in the course of or in relation to his employment is not a 'supply' and hence the activities of the employees cannot be treated as a supply. The Appellant has also gone on to argue in great detail that the employer in their case is the entity M/s Colombia Asia Pvt Ltd and not the IMO. We find that the AAR has, in their discussions held that, there is an employee-employer relationship only at the IMO and not with the entity as a whole. Undoubtedly, an individual is employed by the entity and serves the organisation. However, the applicability of the entry 1 of Schedule III is to be understood in the background of the GST legal provisions. As already stated earlier, every unit of an entity who is required to obtain a registration in more than one State shall, in respect of each such registration be considered as a distinct person in terms of Section 25(4) of the CGST Act. In other words an entity may have several registered units in different States. Each registered unit albeit part of the same business entity, is treated as a 'distinct person' under the GST law. A distinct person has an independent identity under GST law and the provisions of the GST laws, its procedures and compliances are applicable to every distinct person as an independent registered person. The liability to GST on the supplies made by a distinct person is to be discharged by the said distinct person as a registered person and, the liability cannot be shifted to another distinct person on the grounds that they are part of the same entity. Further, any act of commission or omission by any distinct person attracts penal action on the said distinct person. A transaction between distinct persons even without consideration is termed as a supply under Section 7(1)(c) of the CGST Act read with entry 2 of Schedule I of the said Act. When viewed in this background, the employees stationed at the location of a particular establishment of a distinct person are deemed to be rendering their services only to that establishment of a distinct person and not to any other distinct person even though all distinct persons are of the same business entity. Such services of employees, when rendered in the course of their employment are not considered as a 'supply of service' in terms of entry 1 to Schedule III. However, when the services of employees are benefiting other distinct persons, then such services of employees will be considered as a 'supply of service' by one distinct person to another. It is in this perspective that the entry 1 to Schedule

III should be viewed and understood. The employee-employer relationship is to be viewed separately for every registered unit of the business entity. Therefore, in the instant case, the services of the employees at the IMO in so far as they are benefiting the other registered units of the Appellant are to be considered as a 'supply of service' by one distinct person to another, and by virtue of the entry 2 of Schedule I, supply of services between distinct persons even if without consideration is a "supply" within the scope of Section 7 and is liable to GST.

29. The next question that emerges is what and how should the value of such supplies made by the IMO to their branch offices be established. For this purpose, Section 15(4) of the CGST Act read with Rule 28 of the CGST Rules comes into play in terms of which, the value of the supply of goods or services or both between distinct persons as specified in Section 25(4) of the Act shall be:

a) the open market value of such supply;

b) If the open market value is not available, be the value of supply of goods or services of like kind and quality;

c) if the value is not determinable under clause (a) or (b), be the value determined by the application of Rule 30 or 31, in that order.

Rule 30 of the CGST Rules states that where the value of a supply of goods or services or both is not determinable by any of the preceding rules of Chapter IV, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such service.

Rule 31 of the CGST Rules provides that where the value of a supply of goods or services or both cannot be determined under Rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 and the provisions of Chapter IV of the CGST Rules. Provided that in the case of supply of services, the supplier may opt for this rule ignoring Rule 30. .

30. The Appellant in their additional written submission have also argued that the expenses incurred by the IMO are for services availed by it from third party service providers; that the cost of such expenses is attributed to other registered units in the books of accounts for determining the profitability of each unit; that they had adopted the cross charge mechanism for allocating the other expenses on the basis of proportionate turnover instead of following the Input Service Distributor (ISD) route which is squarely applicable in this case; that mere allocation of expenses would not entail that there has been a supply of service by the IMO to its units. In this regard, let us understand the difference between the concept of an ISD and the cross charge mechanism. The IMO may be using the services of a third party in the course of its activities on which GST is paid. In terms of Section 16(1) of the CGST Act, "Every registered person shall, …… be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business..." The 'registered person' in this Section refers to the person registered under Section 25 and not to the legal entity. Therefore the ITC of the GST paid on the receipt of services or goods from a third party by the IMO can be availed by the IMO. If there are certain services commonly used by all the distinct persons, then the ITC can be distributed to all the units by the ISD route. There is a fundamental

difference between the concept of ISD and that of cross charge. In the ISD concept, only ITC on input services which are attributable to other distinct entities are distributable. However, in a cross charge mechanism, all expenses incurred by a distinct person for the purpose of carrying out activities the outcome of which benefits other distinct persons is required to be cross charged. Cross charging of expenses may or may not involve ITC and relates to both goods as well as services.

31. In the case of cross charge, there is an element of service rendered by the person who cross charges his other units even though they belong to the same legal entity. On the other hand, in the case of ISD, there is no element of service at all, but a mere distribution of credit. Further, certain expenses like rent paid on the immovable property, housekeeping services, etc incurred in maintaining and operating the IMO will not be distributable under the ISD route, rather they are required to be allocated to the other units only by way of cross charge. Therefore, the argument of the Appellant that the ISD mechanism is squarely applicable to them and not the cross charge method is not legally correct. The ISD mechanism is purely for the purpose of distributing the CGST/SGST/IGST tax on the receipt of input services by the office of the supplier of taxable goods or services or both having the same PAN. The ISD mechanism is subject to certain conditions laid down in Section 20 of the CGST Act. As per the ISD provisions, the office of the supplier of taxable goods or services or both receives tax invoices for input services which are used by all their units having the same PAN. The ITC on such invoices is distributed to the other units having the same PAN.

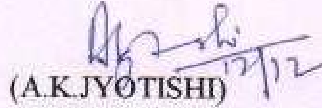
32. In the instant case, the issue is not regarding the distribution of ITC by the IMO. During the personal hearing, the Advocate had stated that as on date, the Appellant had not obtained an ISD registration and they were in the process of doing so. We will not dwell on this aspect as it is not relevant to the issue at hand. The question that emerges in this appeal is whether the IMO is providing a service to its other distinct units by way of carrying out activities such as accounting, administrative work, etc with the use of the services of the personnel working in the IMO, the outcome of which, benefits all the other units and whether such activity is to be treated as a taxable supply in terms of the entry 2 of Schedule I read with Section 7 of the CGST Act. In view of our findings and discussions above, we clearly answer the question in the affirmative. The cost of the employees working in the IMO is an integral part of the cost of the services rendered by the IMO to its other distinct units. The services of the employees at the IMO in so far as they are benefitting the other registered units of the Appellant, will not be termed as 'employee-employer relationship' and will therefore not fall within the purview of entry 1 to Schedule III.

33. The Appellant has placed reliance on a few CESTAT decisions (cited supra) to buttress their case. We have gone through all case laws relied upon and hold that the said decisions will not be applicable to the matter at hand since they were rendered in the context of the Service Tax law. The taxable event under the Service Tax law and under GST are vastly different and hence the ratio of decisions rendered in the light of the taxable event under Service Tax provisions cannot be applied to the transactions under GST regime. As such the case laws relied upon by the Appellant are not of any assistance to this case.

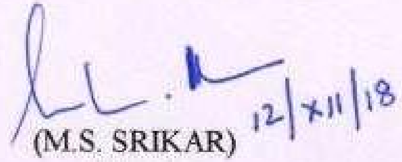
34. In view of the above discussions, we uphold the Ruling dated 27.07.2018 passed by the Karnataka Authority for Advance Ruling as under:

The India Management Office (IMO) of the Appellant is providing a service to its other distinct units by way of carrying out activities such as accounting, administrative work, etc with the use of the services of the employees working in the IMO, the outcome of which benefits all the other units and such activity is to be treated as a taxable supply in terms of the entry 2 of Schedule I read with Section 7 of the CGST Act. .

35. The appeal is disposed off in the above manner.



(A.K.JYOTISHI)
Member
Karnataka Appellate Authority



(M.S. SRIKAR)
Member
Karnataka Appellate Authority