

## **Abbott Healthcare Private ... vs The Commissioner Of State Tax ... on 7 January, 2020**

Petitioner: ABBOTT HEALTHCARE PRIVATE LIMITED

Petitioner is engaged in the sale of pharmaceutical products, diagnostic kits etc. It places its diagnostic instruments at the premises of unrelated hospitals, laboratories etc. for their use for a specified period without any consideration.

An agreement has also been entered between petitioner and its customers (unrelated hospitals/labs) for supply of medical instruments for their use without consideration for specified period AND supply of specified quantities of reagents, calibrators, disposables etc. at the prices specified in the agreement, through its distributors on payment of applicable GST. Distributor purchase goods from petitioner on Principal to Principal basis and sell them to hospitals/labs as an independent supply for a price charged separately with GST.

There is not direct supply by petitioner to hospitals/labs w.r.t. supply of reagents, calibrators and disposables. Supply of instruments composed of 20% of turnover of reagents, calibrators and disposables.

The agreement entered into between the parties also contains a clause which provides that if the hospital fails to purchase specified minimum quantum of reagents, calibrators etc., then the petitioner is entitled to recover from the hospital an amount equal to the deficit in the actual purchases, vis-a-vis, the minimum purchase stipulated under the contract.

The consignment of instruments which was being transported to a laboratory without any consideration was seized by the Assistant State Tax Officer.

Petitioner applied AAR to know whether supply of medical instruments constitutes a "supply" or whether it constitutes "movement of goods otherwise than by way of supply".

### **AAR:**

It looked into the backdrop of the contractual terms under which the supply was affected and observed that instruments supplied by petitioner cannot work without supply of reagents, calibrators and disposables, thereby constituting a COMPOSITE SUPPLY. Where the principal supply is instruments attracting the higher rate of 18% as compared to lower rate of 5% on reagents, calibrators and disposables.

Petitioner's representative argued that this was not the matter for which advance ruling has been applied for.

### **Held:**

AAR need not to go into backdrop of contractual terms. These are two different supplies because both the supplies are taking place by two different persons. One has to satisfy the definition of composite supply. Composite supply must take into account supplies as effected at a given point in time on "as is where is" basis. Moreover, supply of instruments by petitioner is for a short term period. Writ petition

allowed by quashing department orders and matter has been remit back to AAR for a fresh decision on the query raised before it by the petitioner company.