

GST Implication on Healthcare Sector

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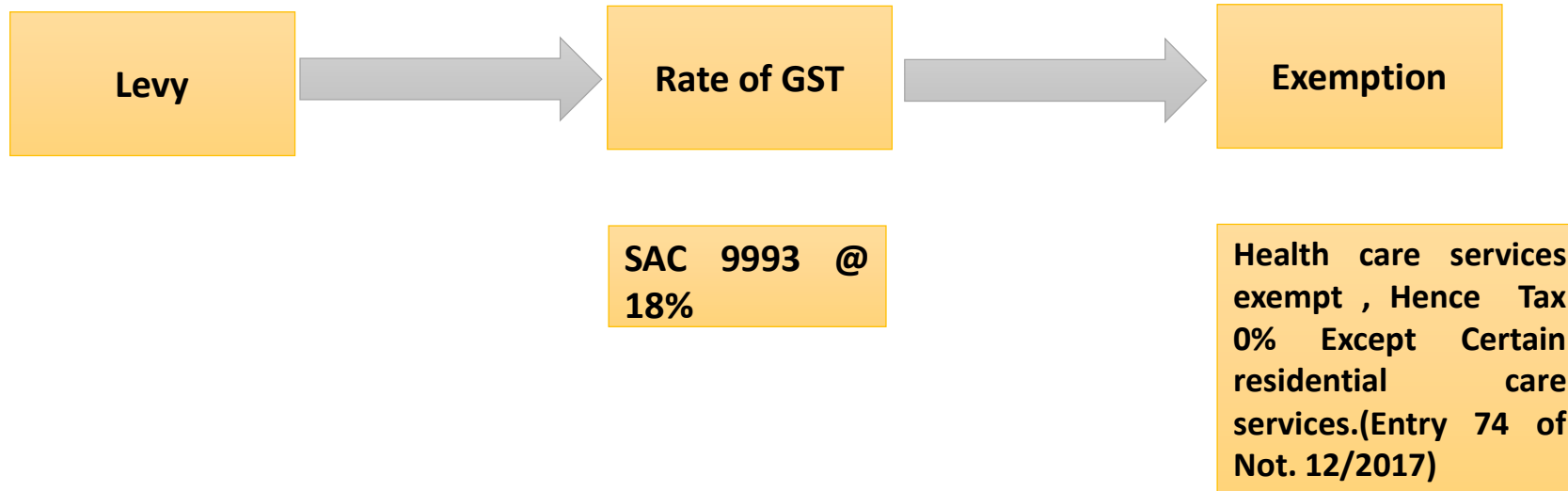
Levy & Rate of tax



**Section 9(CGST):- Levy & collection
Section 5 (IGST Act)**

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person,

Thus from above section it is clear that section 9 covers within its ambit all the supplies of goods or services or both. Law makers had exempted certain supply of services by mentioning those supplies in GST Exemption notification 12/2017 CT Rate.



S.No	Activities	Exempt/ Taxable
1	Medicines, Consumables & implants to in-patients	Exempt
2	Food Supplied to patients	Exempt
3	Room rent	Exempt
4	Diagnostic & pre or post consulting	Exempt
5	Diagnosis Centers	Exempt
6	Retention Money Hospital	Exempt
7	Sale of medicines	Taxable
8	Food supply to attendents & visitors	Taxable
9	Hospital having Rental Income of premises	Taxable
10	Hospital having Income of ROOMS provided to Attendants	Taxable

Rate of GST

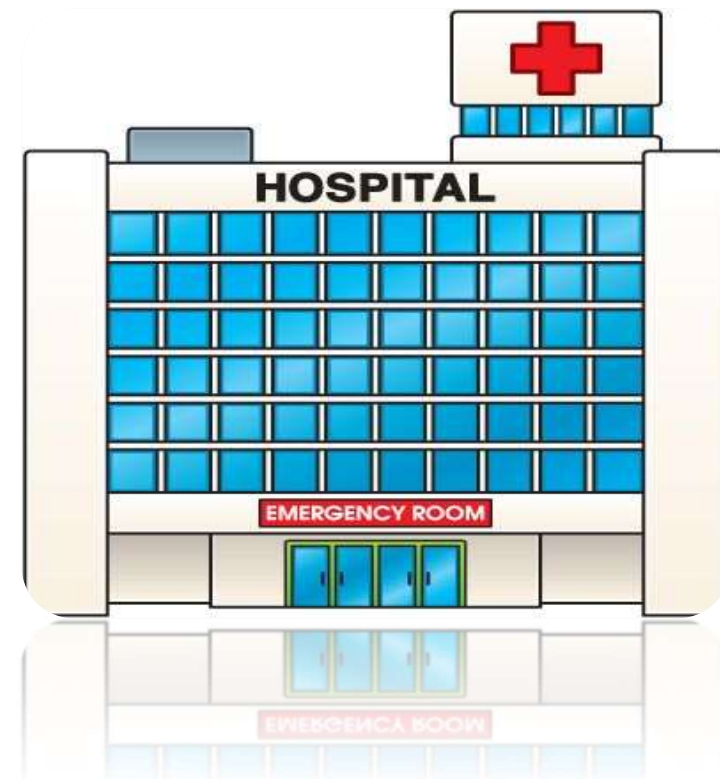


Rate of GST on health care services Notification 11/2017

SAC Code		Description	Rate
99931	999311 999312 999313 999314 999315 999316 999317 999319	Human Health Care Services Inpatient services Medical and dental services Childbirth and related services Nursing and Physiotherapeutic services Ambulance services Medical Laboratory and Diagnostic-imaging services Blood, sperm and organ bank services Other human health services including homeopathy, unani, ayurveda, naturopathy, acupuncture and the like	18% but exempted via notification 12/2017
99932	999321 999322	Residential care services for the elderly and disabled. Residential health-care services other than by hospitals. Residential care services for the elderly and person with disabilities.	18%

Exemption
Notification

**Entry No. 74 of Notification No.
12/2017**

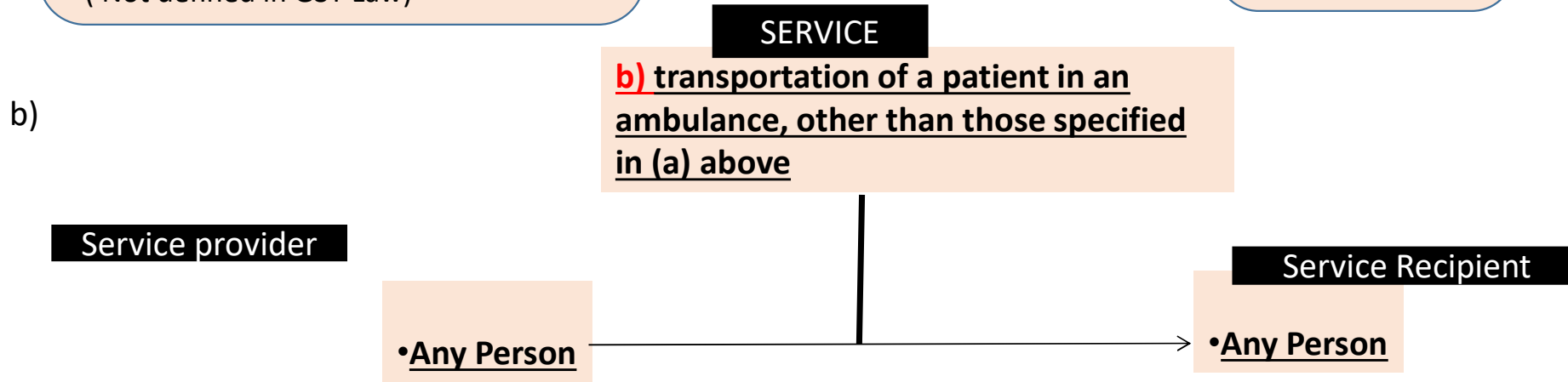
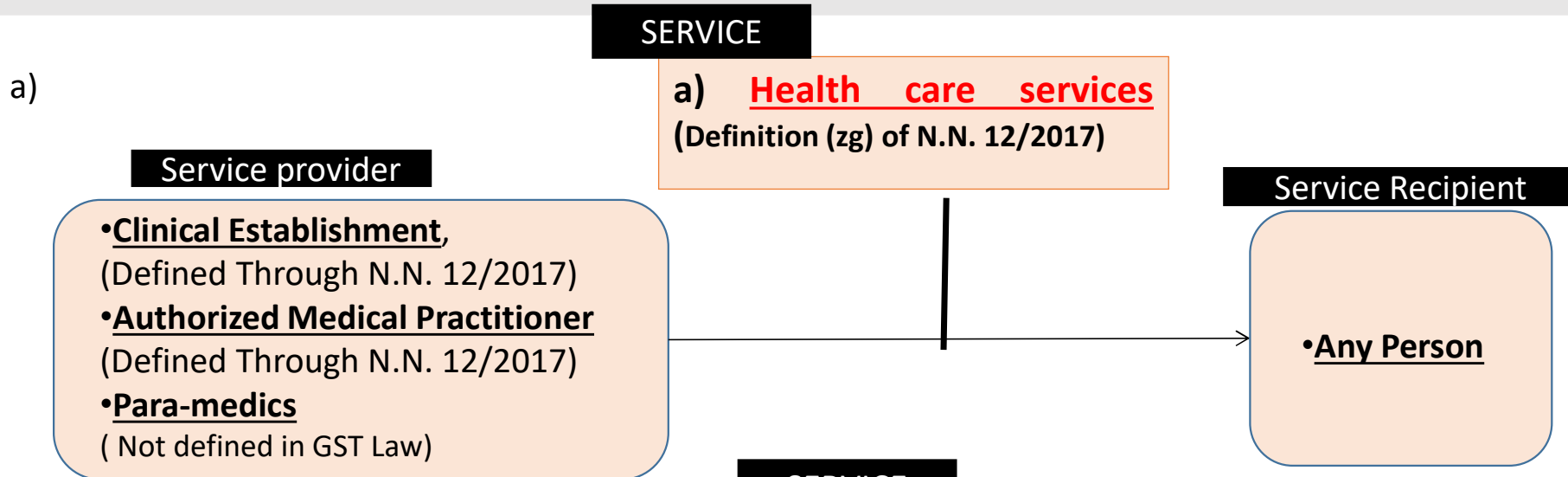


Entry No. 74 of notification No. 12/2017 Ct- Rate
Entry No. 77 of Notification No. 9/2017- IT Rate

Eg. Nurses,
Physiotherapist

Services by way of—

- a) **health care services** by a **clinical establishment**, an **authorized medical practitioner** or **para-medics**;
- b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

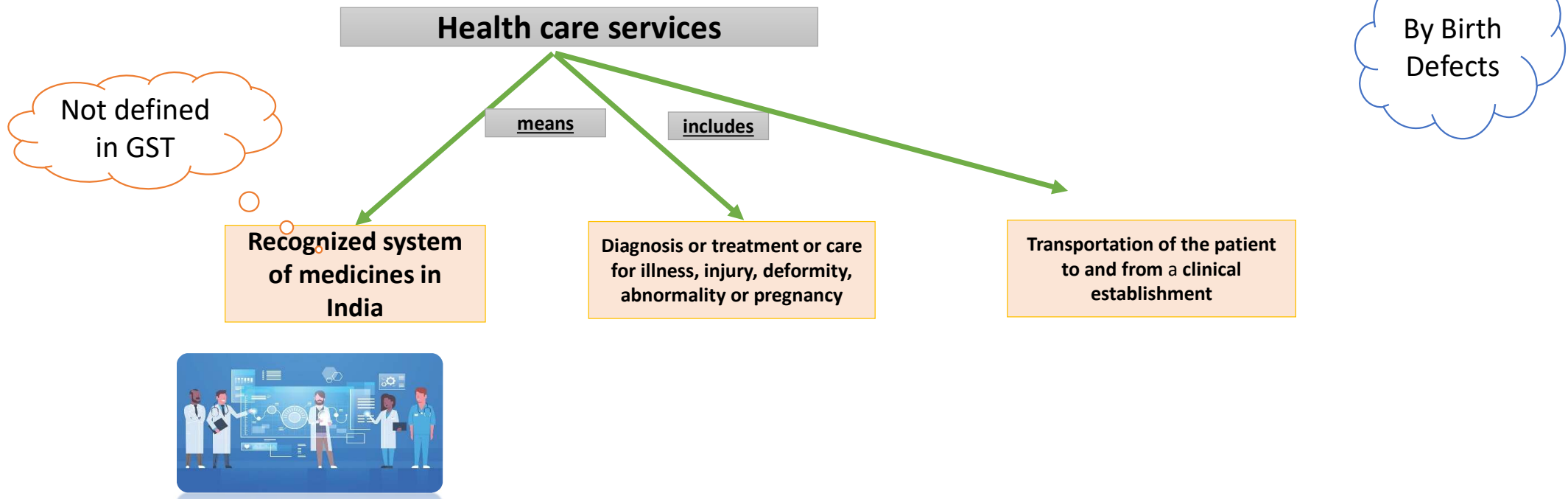


Meaning of Healthcare services

As per definition (zg) of Notification No. 12/2017- CT Rate

“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;**



Recognized System of Medicines in India

Allopathy

A name for conventional medicine used by some followers

Siddha

Traditional system of medicine originating in ancient times in South India

Yoga

A set of Physical and mental exercises, originally from India, intended to give control over mind and body

Unani

Body comprises of four basic elements and disturbance in this equilibrium result in disease.

Naturopathy

A system of treatment of disease that avoids drugs and surgery and emphasizes the use of natural agents (such as air, water) and physical means.

Homeopathy

A system of treating disease in which sick people are given very small amount of natural substances

Ayurveda

Traditional system of medicines that seeks to treat mind, body and spirit by diet, herbal remedies, exercise and meditation.

Clinical Establishment

As per definition 2(s) of notification No. 12/2017- Ct Rate

"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 recognized 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;

Covers diagnostic centers

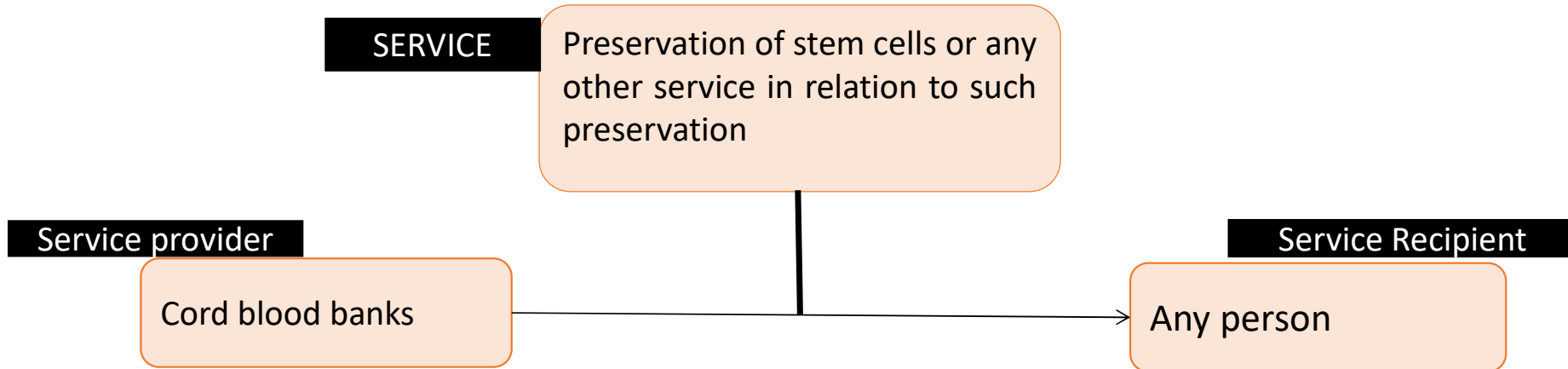
2(k) "Authorised medical practitioner" means

- a medical practitioner registered with any of the councils of the recognized 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;

Para medics is not defined in GST Law. But as per general meaning para medics are trained health care professionals. Eg. Nursing staff, physiotherapists, technicians, lab assistants etc.

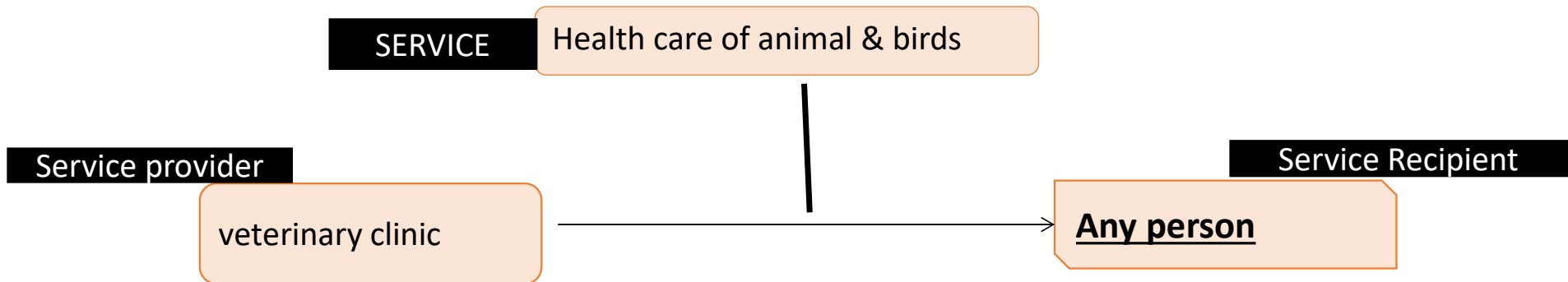
Entry No. 73 of Notification No. 12/2017- Ct Rate
Entry No. 76 of N.N. 9/2017-IT rate

Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation



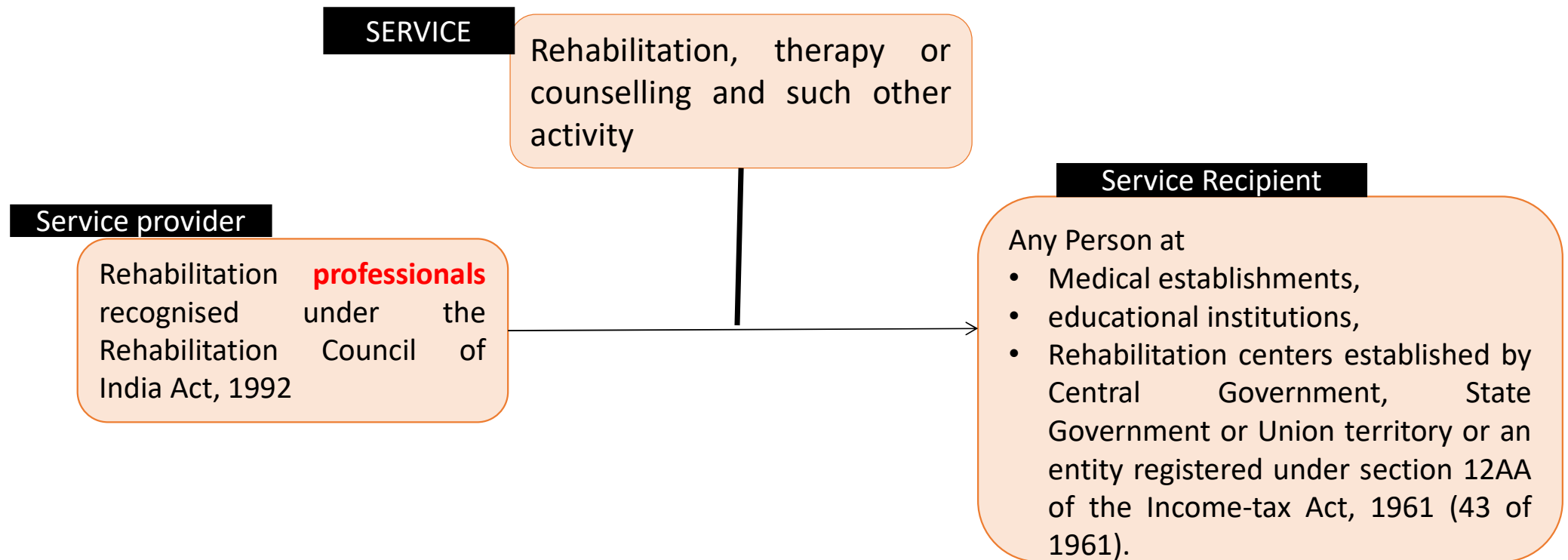
Entry No. 46 of Notification no. 12/2017- CT Rate

Services by a veterinary clinic in relation to health care of animals or birds



Entry No. 74A of Notification no. 12/2017- CT Rate

Services provided by rehabilitation **professionals** recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961).



LATEST GST
CIRCULAR



Relevant Notifications & Circular



Circular No. 32/06/2018

Sr. No.	Issue	Clarification
1	Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer- employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?	Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.
2	Retention money: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?	Healthcare services have been defined to mean 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[para 2(zg) of Notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.
3	Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.	Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

Circular No. 51/25/2018

APPLICABILITY OF GST ON AMBULANCE SERVICES PROVIDED TO GOVERNMENT BY PRIVATE SERVICE PROVIDERS UNDER NATIONAL HEALTH MISSION

The service tax exemption at Sl. No.2 of Notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide Sl. No. 74 of [Notification No. 12/2017-CT \(R\) dated 28.06.2017](#). The service tax exemption at serial No. 25(a) of notification No. 25/2012 dated 20.06.2012 has also been substantially, although not in the same form, continued under GST *vide* Sl. Nos. 3 and 3 A of the Notification No. 12/2017-CT (R) dated 28.06.2017. The said exemption entries under Service Tax and GST notification read as under.

Service Tax	GST
<p>Sl. No. 2: (i) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.</p>	<p>Sl. No. 74: Services by way of- (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</p>
<p>Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation</p>	<p>Sl. No. 3: <u>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</u> or a Governmental authority or a Government Entity 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.</p>

Service Tax	GST
<p>Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation</p>	<p>SI. No. 3A: Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent, of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity 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 243 W of the Constitution.</p>

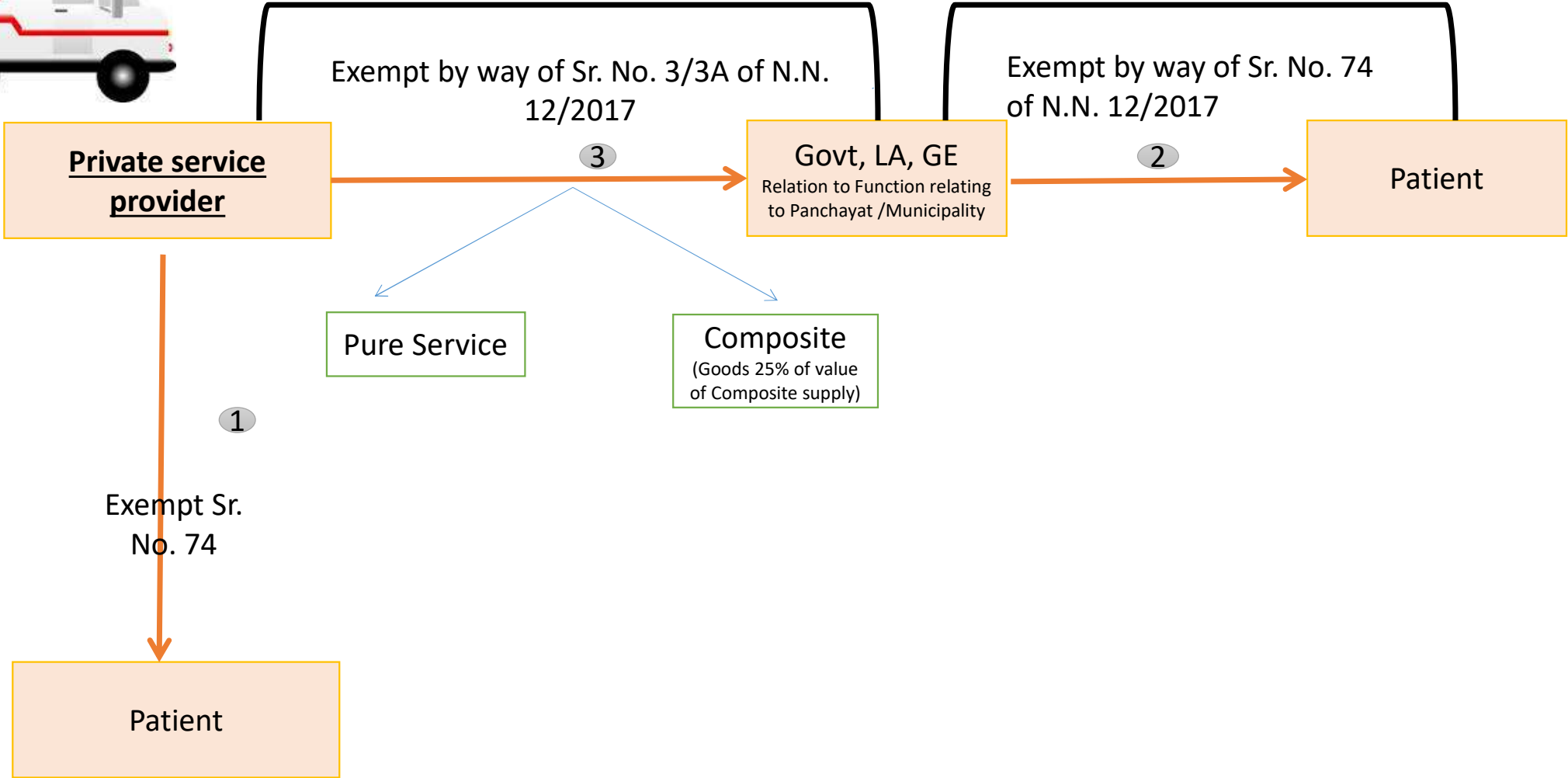
3. Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. Function of 'Public health' is entrusted to Municipalities under Article 243 W of the Constitution read with Twelfth schedule to the Constitution. Thus ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243W of the Constitution.

4. In view of the above, it is clarified that the clarification contained in the Circular No. 210/2/2018- Service Tax dated 30th May, 2018 with regard to the services provided by Government and PSPs by way of transportation of patients in an ambulance is applicable for the purpose of GST also, as the said services are specifically exempt under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 vide SI. No. 74.

5. As regards the services provided by PSPs to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, it is clarified that the same would be exempt under—

- a) SI. No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving supply of any goods, and
- b) SI. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

Summary Circular No. 51/25/2018



Circular No. 92/11/2019-GST

Free samples and gifts:

- i. It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the expression "supply" includes 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. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where the activity falls within the ambit of Schedule I of the said Act.
- ii. Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of 'supply' on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

Concept of Credit on Free Samples

Case 1

Pay GST on samples supplied and avail ITC (Schedule 1)



Valuation as per Rule 27 (FMV) leading to Rule 30: Cost of Production + 10% of cost of Production

Case 2

Reverse the credit involved in free samples supplied

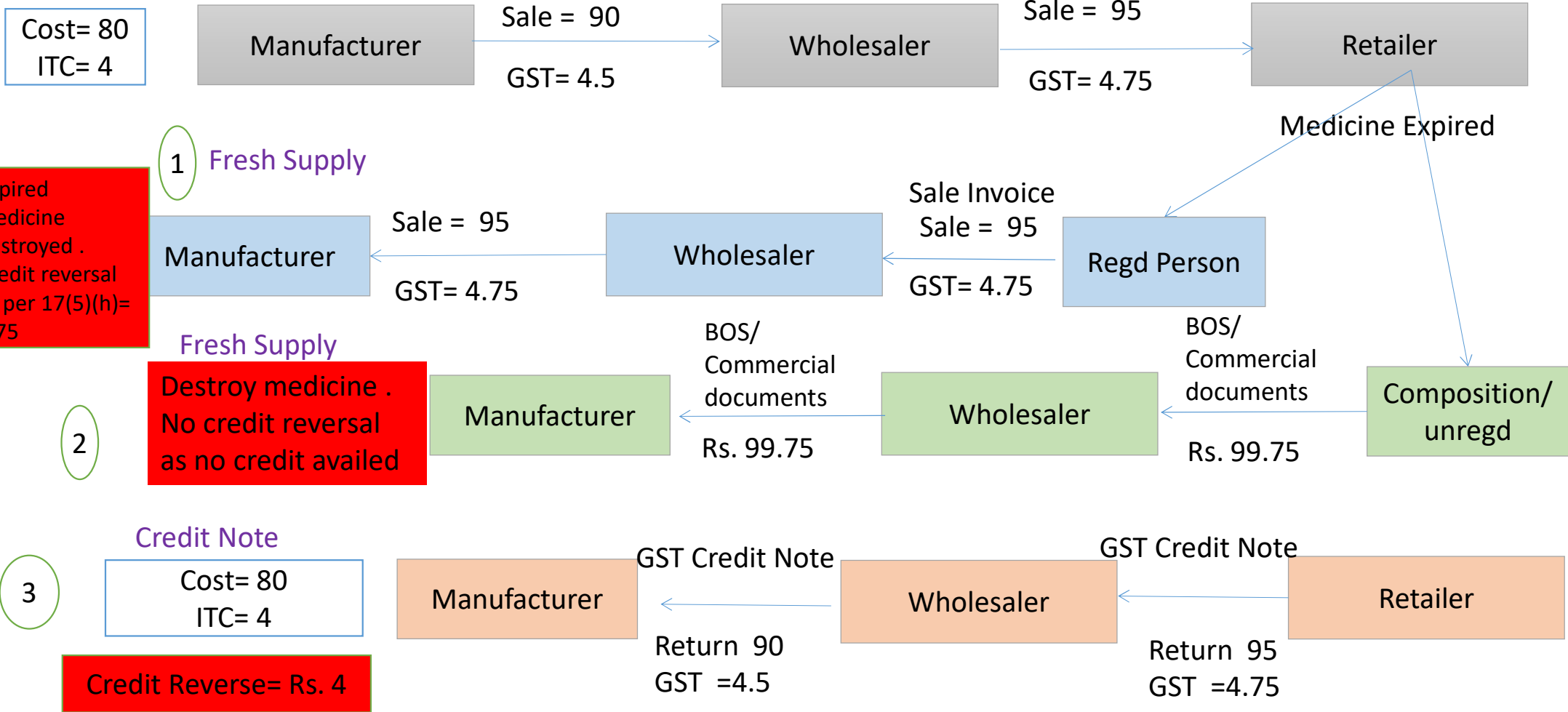


The same gets reversed in the hands of supplier.



Credit is blocked as per section 17(5)(h)

Circular No. 72/46/2018:- Circular to clarify procedure in respect of time expired drugs or medicines



Note:- Sec. 34(2) Time period when commercial credit note to be issued.



Case Laws



Sri Ganga Ram Hospital v. Commissioner of Central Excise, Delhi-1* [2018] 94 taxmann.com 226 (New Delhi - CESTAT)

Classification of services (OR) - Section [65\(104C\)](#) of the Finance Act, 1994 - Support services of business or commerce - Assessee, a hospital, was engaged in health care services to patients - To provide such services, it had engaged professionals and doctors on contractual basis - These doctors were provided space in hospital with required facilities to attend to patients coming to hospital - These doctors were paid professional fee in terms of contracts - Fee paid to doctors was computed based on a pre-determined ratio on amount received by assessee from patients - Adjudicating Authority held that part of amount retained by assessee out of total charges collected from patients was liable to service tax under category of 'support services of business or commerce' - Whether Adjudicating Authority was justified in his view - Held, no [Para 13] [In favour of assessee]

GST/Service Tax : Where assessee, a hospital, was engaged in health care services to patients and to provide such services it had engaged doctors on contractual basis and it retained certain amount out of total charges collected from patients, assessee was not liable to pay service tax on retained amount under category of 'support services of business or commerce'

AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH J C Genetic India (P.) Ltd., In re[[2019] 104 taxmann.com 88]

Classification of services - Madhya Pradesh Goods and Services Tax Act, 2017 - Healthcare services - Heading 9993 (Healthcare services by clinical establishment) –

- **Whether mere involvement in sophisticated testing and providing consultancy would not be a sufficient criterion, though necessary, for qualifying as a Clinical Establishment per se** - Held, yes –
- **Applicant is a Healthcare company, engaged in diagnosis, pre and post-counselling therapy and prevention of diseases by providing necessary sophisticated tests - Applicant has a collaboration with diagnostic companies accredited by NABL and DS1R –**
- Whether since **applicant do not have their own authority for giving clear report/opinion on their own for tests**, and they have to get all **tests conducted and certified by NABL accredited laboratory**, **applicant are functioning as sub-contractors to accredited companies and not as an independent Clinical Establishment** - Held, yes –
- Whether since **applicants have failed to prove their own authority and recognition for testing and giving clear report/opinion on their own, which can only be done by a NABL accredited laboratory, applicants are not qualified to avail benefit as envisaged under exemption Notification of 12/2017-Central Tax (Rate), dated 28-6-2017 [S.No.74 and Para 2(s)] and corresponding notification issued under MPGST Act, for 'healthcare services' and 'clinical establishment' is not applicable to them** - Held, yes –
- Whether thus, though services provided by applicant maybe healthcare services but they do not qualify to be a clinical establishment - Held, yes [Paras 7.3, 7.4, 7.6 and 7.8] [In favour of revenue]

GST: Healthcare services provided by a company which is not an independent clinical establishment are not exempt from GST. The Applicant has neither come forward with the names of such companies with which the Applicant claims to have collaboration, nor have the Applicant produced any document evidencing their own status of accreditation by NABL, which obviously is the sole accreditation body for testing and calibration laboratories. In absence of anything brought on record by the Applicant, we are compelled to believe that the Applicant is making a vain attempt to circumvent the essential condition for qualification of Clinical Establishment.

Ernakulam Medical Centre (P.) Ltd., In re vs.([2019] 103 taxmann.com 182 (AAAR-KERALA)/[2019] 74 GST 49 (AAAR-KERALA)(MAG)/[2019] 23 GSTL 418 (AAAR-KERALA))

Supply of Medicines to In Patients & Out Patients

Classification of services - Kerala State Goods and Services Tax Act, 2017 - Healthcare services -

• **Heading No. 9993 [Healthcare services by clinical establishment]** - Section 2(30) of the Central Goods and Services Tax Act, 2017/Section 2(30) of the Kerala State Goods and Services Tax Act, 2017 - Supply - Composite supply

QUESTION:

• Whether **since invoice/bill raised for treatment as an in patient is a single bill charging for all facilities/services utilized for treatment** in hospital including room rent, nursing care charges, laboratory, consumables, medicines, equipment charges, doctor's fee, etc., in case of an inpatient, **hospital has provided a bundle of supplies which is classifiable under health care services and is exempt from tax?**

Answer

• Held, yes –Exemption available. Composite Supply for In patients.

QUESTION:

• Whether however, **in case of out patients health care service provided by hospital is restricted to consultation of doctor and medicines bought by outpatients from pharmacy owned by hospital is billed separately** and cannot be considered as composite supply to extend exemption and, hence, **supply of medicines and allied items to outpatients is liable to GST being a taxable supply**

Answer

• Held, yes [Para's 10, 14 and 15] [In favour of revenue]

• GST: **Supply of medicines and allied items to out patients by Hospital is not bundled with doctor's consultation and is liable to GST being a taxable supply.**

In re M/s. Medivision Scan and Diagnostic Research Centre P. Ltd. (GST AAR Kerala)

M/s. Medivision Scan and Diagnostic Research Centre Pvt. Ltd. is a clinical establishment engaged purely in **diagnostic sentinels** such as clinical biochemistry, micro biology, chemotology, clinical pathology, radiology, ECG, radiometry, pulmonary function test etc. They are coming under the purview of Clinical Establishment Act and are rendering services through qualified laboratory technicians, paramedical technicians, doctors and radiologist. Moreover, as per Sec23(1)(a) of the CGST Act, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or exempt from tax are not liable to get registration. In the circumstances they sought advance ruling on the following:

Question

(i) Whether diagnostic service provider has to take registration under GST.

(ii) Whether the applicant is exempt from GST considering the exemption provided in the Notification No.12/2017-CT (Rate) dtd.28-06-2017.

Answer

(i)By virtue of section 23 of State Goods and Services Tax Act, any person engaged exclusively in the business of supplying goods or services or both, that are not liable to tax or wholly exempt from tax under GST Act, are not liable to take registration. However, such persons are liable to obtain registration if they are receiving any goods or services liable to tax under reverse charge as per notifications issued under Section 9(3) of the State Goods and Service Tax Act.

(ii)As per SL. No.74 (Notification No.12/2017-CT Rate Dt: 28/06/2017, services by way of diagnosis come under the category of health care services covered under SAC 9993 in connection with health care services provided by a clinical establishment and are, therefore exempted.

Sayre Therapeutics (P.) Ltd., In re vs. ([2018] 93 taxmann.com 418 (AAR - KARNATAKA)/[2018] 54 GSTR 309 (AAR - KARNATAKA)/[2018] 13 GSTL 224 (AAR - KARNATAKA)/[2018] 69 GST 87 (AAR - KARNATAKA))

• Classification of services - Health care services (NR) - Applicant is involved in **diagnosis, pre and post counselling**, therapy and prevention of diseases by providing tests that are sophisticated and relevant

Question:

• **Whether medical team of applicant is involved in complete cycle and, hence they facilitate diagnosis process and, therefore, services provided by applicant qualify to be health care services?**

• Since applicant qualifies to be a clinical establishment and services offered/provided by applicant qualify to be health care services, intra-state supply of said services **attract NIL rate of central tax**

• **Answer:Held, yes [Paras 11 and 12] [In favour of applicant]CGST : Where applicant is involved in providing services of diagnosis, pre and post counselling, therapy and prevention of diseases by providing tests that are sophisticated and relevant, medical team of applicant facilitate diagnosis process, applicant qualifies to be a clinical establishment and services provided by it qualify to be healthcare services which attract nil rate of central tax.**

Saifee Hospital Trust vs Comm Service Tax- Iii Mumbai on 29 May, 2019

In the erstwhile **VAT era**, the issue of taxability of medicine drugs, stents, and implants during the course of medical treatment under MVAT was argued before the Hon'ble Maharashtra Sales Tax Tribunal.

The tribunal after discussing all the facets of sales, deemed sales, works contract, intention behind sale of drugs etc. held the following:

1. **Supply of medicine, drugs, stents & implants during the course of medical treatment doesn't amount to sale** (deemed sale) under MVAT Act
2. There is no machinery provision to levy VAT on **supply of food as a composite charge** is levied under the umbrella of health service.
3. Charges for **special bed & mattresses are not exigible** to tax.

Columbia Asia Hospitals (P.) Ltd., In re ([2018] 100 taxmann.com 212 (AAR - KARNATAKA)

AUTHORITY FOR ADVANCE RULINGS, KARNATAKA)

•Applicant is engaged in providing health care services categorizing them as in-patients and out-patients services - It is also engaged in supply of medicines to in-patients and out-patients - It also operates restaurant/canteen in its premises, which are used for supplying food and other eatable items to its patients and their attendants.

• Whether two or more supplies of goods or services or both which are naturally bundled in which principal supply is exempt and others are taxable can be treated as a composite supply of principal supply and if such principal supply is not a non-taxable supply and such composite supply with principal supply being exempt supply would be treated as an exempt composite supply?

•HELS YES : It can be treated as a composite supply of principal supply and if such principal supply is not a non-taxable supply and such composite supply with principal supply being exempt supply would be treated as an exempt composite supply

•Whether applicant is eligible to claim credit of input tax paid on inputs, input services and capital goods which are attributable to supplies of goods or services which are taxable under provisions of CGST Act and not attributable to exempt supplies of goods or services under CGST Act ?

•Where applicant is engaged in providing health care services and also supplies medicines to patients and also operates restaurant/canteen in its premises, **it is eligible to claim credit of input tax paid on inputs, input services and capital goods which are attributable to supplies of goods or services which are taxable under provisions** of CGST Act and **not attributable to exempt supplies of goods or services under CGST Act.**

•Cross Charge *Whether supply of goods from corporate office to separately registered units would amount to supply of goods and services - Held, yes - Whether however since employees of corporate office have no relationship of employee-employer with other units, hence, corporate office and units are distinct persons under CGST Act - Held, yes - Whether thus, activities performed by employees at corporate office in course of or in relation to employment such as accounting, other administrative and IT system maintenance for units located in other States as well, i.e., distinct persons, as per section 25(4) of CGST Act shall be treated as supply as per Entry 2 of schedule I of CGST Act - Held, yes [Para 9]''*

Dabur India Ltd. vs. Commissioner of CGST ([2020] 113 taxmann.com 423 (Allahabad)/[2020] 34 GSTL 9 (Allahabad)/[2020] 78 GST 219)

- Classification of goods - HSN 38089191 - Mosquito repellent
- Assessee was engaged in manufacturing a product named 'odomos' - Assessee claimed that said product had to be classified as medicine under Heading No. 3004 @12% - Authority for Advance Ruling, however, classified odomos, under HSN 38089191-18% Appellate Authority upheld said ruling –
- It was noted that **assessee's product was not normally prescribed as a medicine** by Medical Practitioner as a drug
- Moreover, **product was being sold on demand at counters in shops and establishments and sales were not restricted to chemists/druggists alone**
- Whether in view of aforesaid, impugned order passed by authorities below did not require any interference
- Held, yes [Paras 31 and 38] [In favour of revenue]
- GST :**Where applicant was engaged in manufacturing a product named 'odomos' since said product was being sold as mosquito repellent on demand at counters in shops and establishments and sales were not restricted to chemists/druggists alone, same had to be classified under HSN 38089191.**

CMC Vellore Association, In re vs. ([2020] 113 taxmann.com 55 (AAR-TAMILNADU)/[2020] 32 GSTL 601 (AAR - TAMILNADU)/[2020] 78 GST 66 (AAR - TAMILNADU)

- Classification of service - Tamil Nadu Goods and Services Tax Act, 2017 - Supply of in-patient healthcare services - Heading No. 9993 [Human health and social care services]
- Section 2(30) of the Central Goods and Services Tax Act, 2017/Section 2(30) of the Tamil Nadu Goods and Services Tax Act, 2017 - Supply - Composite supply –
- Applicant is engaged in provision of health care services to both in-patients and out-patients –
- **Whether medicines, drugs, stents, consumables and implants used in course of providing health care services to in-patients admitted to hospital for diagnosis, or medical treatment or procedures is a composite supply of in-patient healthcare service ?**
- Held, yes - Whether **supply of in-patient healthcare services by applicant** as defined in para 2(zg) of Notification No. 12/2017-CT (Rate), dated **28-6-2017 is exempt from CGST and SGST as per Sl. No. 74**
- Held, yes [Para 7(1)]**GST: Medicines, drugs, stents, consumables and implants used in course of providing health care services to in-patients admitted to hospital for diagnosis, or medical treatment or procedures is a composite supply of in-patient healthcare service.**

Tathagat Health Care Centre LLP, In re ([2018] 93 taxmann.com 419 (AAR – KARNATAKA)AAR, KARNATAKA)

- Classification of services (NR) - Heading (SAC) 997212 - Rental or leasing services Whether rental or leasing services involving own or leased non-residential property is classified under heading (SAC) 997212 and is taxable under GST;
- **There is no provision available in Act which allows exemption on an input service if output service provided by taxable person is exempt Held, yes**
- **GST is leviable on rent paid/payable for premises taken on lease by applicant a cardiology specialised hospital - Held, yes [**

MIOT Hospitals Ltd. vs. State of Tamil Nadu ([2020] 117 taxmann.com 46 (Madras)) (VAT Regime)

Whether 'works contract' includes any agreement for 'fitting out' of any movable property and it is not confined to any genre of contract.

- Held, yes Whether, therefore, fitting out or implanting of prosthetics into physiology or body of patient for alleviation of pain or for improvement of life of patient in course of medical/surgical procedure can be construed as 'works contract'
- Held, yes - Whether during such fitting out or implanting , there is not only transfer of possession of prosthetics into physiology of patient but also ownership of such prosthetics to patient for consideration in course of provision of medical/health service
- Held, yes - Whether similarly, in course of taking x-ray, scan, MRI/CT Scan for such in-patient, cost of which get included into package can be termed as processing of moveable property
- Held, yes - Whether **value of prosthetics and charges incurred towards X-ray, C.T. Scan, PET Scan, etc., are liable to tax; value of medicine and other consultation charges are to be excluded while determining taxable value**
- Held, yes - Whether, however, such activity/transaction of hospital/medical services rendered appears to have been exempted under GST Regime from July 2017
- Held, yes [Paras 187 and 200] [Partly in favour of assessee]GST/EXCISE/ST/VAT: **Fitting out or implanting prosthetics such as stents, valves, etc. into body of patientsand taking x-ray, scan, MRI/CT Scan while treating in house patients, being 'works contract', private hospitals are liable tax; however, no tax can be demanded on value of medicines dispensed.**

ITC Eligibility COVID RELATED EXPENSES



Whether the expenses related to preventive measures eligible for ITC?

Preventive Measures

➤ Mask, sanitizer ,Medical insurance of workers, Disinfection of Offices etc.

Relevant provision of CGST Act, 2017 relating to eligibility of ITC is as follows:-

Section 16 Eligibility and condition for taking input tax credit.:-

1. **Every registered person shall, subject to such conditions and restrictions** as may be prescribed  inner specified in section 49,

- 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** and
- the said amount shall be credited to the electronic credit ledger of such person.

Section 17:- Apportionment of credit and blocked credits.

17(5):- Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(i) **food and beverages**, outdoor catering, beauty treatment, **health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles**, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, **life insurance and health insurance:**

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii)...

(iii)...

*Provided that the **input tax credit in respect of such goods or services or both shall be available**, where it is **obligatory for an employer to provide the same to its employees under any law for the time being in force.**]*

Course or furtherance of business

Means
advancement

Advance Ruling:- [2018] 98 taxmann.com 355 (AAAR-KERALA)(APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA

Caltech Polymers (P.) Ltd., *In re*, where it is held that:-

“Section 7, read with section 2(83), of the Central Goods and Services Tax Act, 2017/Section 7, read with section 2(83), of the Kerala State Goods and Services Tax Act, 2017 - Supply - Scope of (NR) - Whether supply of food items to employees for consideration in canteen run by company would come under definition of 'outward supply' as defined in section 2(83) and hence taxable as supply of service under GST - Held, yes [Para 17]

Bombay High Court in Coca Co la India Pvt. Ltd. held that

- The expression business is not confined or restricted to mere manufacture of products and it has wide importation that would include those activities that might have direct as well indirect significance and it can cover all the activities that are related to functioning of business.

Activities related to Employees are Course or Furtherance
of Business

- The guidelines issued by the Ministry of Home Affairs (MHA) Government of India vide [order no. 40-3/2020-DM-I\(A\) dated 15.04.2020](#) under Sec. amongst other things specifies that **all industrial and commercial establishments, work places, offices, etc.** shall be required to obtain **medical insurance for the workers** mandatorily before starting their operations after the lockdown (refer para 21 read with sr. no. 5 of Annexure-II to the given order).
- Medical insurance would be part of the health insurance and **hence ITC would be permitted only if obtaining such medical insurance is mandatory.**
- However, as per MHA order dated **17.5.2020** all earlier MHA orders ceases to have effect from 18.05.2020 and there is no guideline for mandatory health insurance of workers from 18.05.2020
- Hence, the medical insurance was obligatory only from **15.4.2020 to 17.5.2020**. **Premium paid otherwise than in this period would not be eligible. Therefore, the ITC shall be available on the expense incurred due to mandatory obligation**

NOTE: ITC to the extent of any **recovery made** from the employees towards such medical insurance coverage cost **would not be admissible** as the shared cost will be considered as a pass-through not paid and borne by the registered person. Employment contracts must however be amended to reflect the said understanding. **Also ITC for the individual policy taken for the family members of the employees would not be available as obtaining such coverage of family members is not mandatory under law.**

Thus in view of above provisions, post Covid, following Expenses ITC is allowed:

Nature of Expense	ITC Eligible or not
Mask, sanitizer, Thermometers, Temperature Screening Facilities, Gloves	Eligible
Medical insurance of workers	Not eligible (Eligible if done during mandatory period whether yearly or half yearly)
Disinfection of Offices	Eligible
Arrangement for Transportation of Employees (Hiring)	Eligible
Life Insurance of employees	Not eligible
Food & Beverages	Not Eligible
Group Medical /Health Policy	Eligible(Mandatory as per Sec 38 of ESI Act)

Donation or supply of free goods due to Covid-19

In this era of pandemic various organizations are coming forward to help the society and undertake various welfare measures. The question which arises whether such expenditure may be eligible for ITC. In this regard, it is important to note in light of section 17(5). **The Tribunal in the case of Northern Coalfields Limited has held that amounts spent under Corporate Social Responsibility is a statutory obligations as per Section 135 of Companies Act, 2013 and hence is entitled to Credit.**

We give below the following scenarios for donations made by corporates and their treatment under GST

S.No.	Description of Donation	Eligibility Test as per Sec 16(1) of CGST	17(5) of CGST	ITC may be Claimed or Not?
1	Provision of Food to poor / Migrant labourers/ Shelters for underprivileged etc	Part of CSR as per Companies Act, 2013	Part of CSR , 17(5) will not apply	ITC may be claimed
2	Donation to PM CARES Fund	Part of CSR as per Companies Act, 2013 as per FAQs, on (CSR) – dated 10.04.2020. by MCA	N.A. being monetary transaction	N.A
3	Sanitization of Colonies of Employees	Business Expenditure as undertaken for Employees	Sec 17(5)(h) refers to goods and this being services thus not Applicable	ITC may be claimed
4	Donation to any NGO etc	Part of CSR as per Schedule VII to Companies Act, 2013	N.A. being monetary transaction	N.A
5	Chief Minister's Relief Fund or State Relief Fund for COVID-19	NOT included in Schedule VII of the Companies Act, 2013	N.A.	N.A
6	State Disaster Management Authority to combat COVID-19 Management Authority	Part of CSR as per Schedule VII to Companies Act, 2013 as per FAQs, on (CSR) – dated 10.04.2020. by MCA	N.A. being monetary transaction	N.A

Donation or supply of free goods due to Covid-19

S.No.	Description of Donation	Eligibility Test as per Sec 16(1) of CGST	17(5) of CGST	ITC may be Claimed or Not?
7	Spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure and also various activities related to COVID-19 under <u>items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. (Eradicating Hunger, Environmental Sustainability, Disaster Management including Relief rehabilitation & reconstruction activities)</u>	Qualify as CSR as per FAQs, on (CSR) – dated 10.04.2020. by MCA	Not applicable	ALLOWED
8	Payment of salary/wages to employees and workers during the lockdown period	Not part of CSR	N.A.	N.A
9	Payment of wages to temporary or casual or daily wage workers during the lockdown period is purely contractual obligations	Not part of CSR	N.A.	N.A
10	Any ex-gratia payment is made to temporary/casual workers/daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19	CSR expenditure as a onetime	N.A.	N.A



Question : Whether formulations cleared have to be assessed to GST under transfer price mechanism or on the basis of MRP printed on them?

Answer: The assessment of drugs and formulations under GST would be on the basis of transaction value at each level of supply with end to end ITC chain for neutralizing the GST paid at the procurement level.

**Rate of GST on Mask, Sanitizer,
Covid- 19 Kit etc.**



Rate of GST on health care services

HSN Code	Description	Rate
3006	Pharmaceutical goods specified in Note 4 to this Chapter [<i>i.e.</i> Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]	12%
30	Drugs or medicines including their salts and esters and diagnostic test kits, specified in List 1 appended to this Schedule	5%
9804	Drugs or medicines including their salts and esters and diagnostic test kits specified at S. No.180 above and Formulations specified at S. No.181 above , intended for personal use.	5%
9804	Other Drugs and medicines intended for personal use	12%
30	Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United States of America or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia]	5%
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products 1[[other than bio-pesticides mentioned against S. No. 78A of Schedule II]] including Hand sanitizer and Other disinfectant preparations.	18%
Sr. 83 of list 1 to schedule 1	Blower/mister kit for beating heart surgery;	5%
999722	Cosmetic Plastic Surgery	18%

Rate of GST on health care services

HSN Code	Description	Rate
3822	All <u>diagnostic kits</u> and reagents including <u>COVID-19 Test kits</u> (Diagnostic reagents based on polymerase chain reaction (PCR) nucleic acid test.)	12%
3002	<u>Animal blood prepared for therapeutic, prophylactic or diagnostic uses</u> ; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; toxins, cultures of micro-organisms (excluding yeasts) and similar products <u>COVID-19 Test kits</u> (Diagnostic reagents based on immunological reactions)	12%
9027	<u>Instruments and apparatus for physical or chemical analysis</u> (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes including COVID-19 Diagnostic Test instruments and apparatus	18%
3821	<u>Prepared culture media for the development or maintenance of micro-organisms</u> (including viruses and the like) or of plant, human or animal cells	18%
9020	Other <u>breathing appliances and gas masks</u> , excluding protective masks having neither mechanical parts nor replaceable filters masks incorporating <u>eye protection or facial shields</u> .	12%
9004	<u>Spectacles</u> [other than corrective]; <u>goggles</u> (including those for correcting vision) including Protective spectacles and goggles	18%
3926	<u>PVC Belt Conveyor, Plastic Tarpaulin, Medical grade sterile disposable gloves, Plastic raincoats</u> including Plastic face shields, Plastic gloves, Protective garments made from plastic sheeting	18%
4015	<u>Surgical rubber gloves</u> or <u>medical examination rubber gloves</u>	12%
6307	<u>Protective Masks coverig N-95</u>	
6210	<u>PPE kits(Protective Garments for Surgical & Medical Use)(5% if below Rs. 1000, 12% if above Rs. 1000)</u>	5%/12%
4818	<u>Paper Bed Sheet</u>	18%

Rate of GST on health care services

HSN Code	Description	Rate
4818	Toilet paper and similar paper , cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, table cloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, or paper pulp, paper, cellulose wadding or webs of cellulose fibres	18%
2207	Ethyl alcohol and other spirits, denatured, of any strength [other than ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol) inserted on 27/07/2018]	18%
2847	Medicinal grade hydrogen peroxide	12%
3004	Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses , put up in measured dosesr in forms or packings for retail sale, including Ayurvedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale	12%
2905	Following goods namely:- a. Menthol and menthol crystals , b. Peppermint (Mentha Oil), c. Fractionated / de-terpenated mentha oil (DTMO), d. De-mentholised oil (DMO), e. Spearmint oil , f. Mentha piperita oil	12%
8543	Electrical machines and apparatus , having individual functions, not specified or included elsewhere in this Chapter	18%
9019	Mechano-therapy appliances; massage apparatus ; psychological aptitude testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus including Medical ventilators, Other oxygen therapy apparatus including oxygen tents	12%
9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032	18%

THANK YOU

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