

GIB/KL/ABBOTT HEALTHCARE/07.01.2020/HC-206

High Court Category : Classification of Supply

State : Kerala

Order No.: GIB/KL/ABBOTT HEALTHCARE/07.01.2020/HC-206

Name of Entry :
ABBOTT HEALTHCARE PRIVATE LIMITED

Date : 07-01-2020

Breif Issue :

FACTS OF THE CASE:

In this case petitioner is engaged in the sale of pharmaceutical products, diagnostic kits etc. and it is registered under the Goods and Services Tax Act in the State of Kerala. It places its diagnostic instruments at the premises of unrelated hospitals, laboratories etc. for their use for a specified period without any consideration. The petitioner also enters into Reagent Supply and Instrument Use Agreements with various hospitals, laboratories etc, where under, the arrangement between the parties is for the supply of medical instruments to the hospital/laboratory concerned, for their use, without any consideration for a specified period and for the supply of specified quantities of reagents, calibrators, disposables etc. at the prices specified in the agreement, through its distributors on payment of applicable GST.

It is stated that, as per the agreement, while the supply of instruments is by the petitioner, the supply of reagents, calibrators and disposables are effected by its distributor, who purchases the said products from the petitioner on principal to principal basis. When the distributor supplies the reagents, calibrators and disposables to the hospitals/laboratories concerned, the distributor discharges the applicable GST on the price charged for supply of the said products. It is also stated that the value of instruments placed at the premises of the hospitals/laboratories compared to the total turnover of supply of reagents, calibrators and disposables by the distributor over the contract period, is small and would only be around 20% of the turnover of supply of reagents, calibrators etc. 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.

It would appear that when a consignment of instruments was being transported to a laboratory without any consideration, pursuant to the agreement entered into between the parties, the same was seized by the Assistant State Tax Officer, Kozhikode, on the ground that the goods were not accompanied with a tax invoice but were being transported under a

delivery challan.

ISSUE OF THE CASE:

Whether in the facts of the present case, the provision of specified medical instruments by the Applicant to unrelated parties like hospital(s), Lab (s), for use without any consideration, constitutes a “supply” or whether it constitutes “movement of goods otherwise than by way of supply” as per provisions of the CGST/SGST Act, 2017?

Decision of Advance Ruling Authority :**DECISION:**

There was no occasion for the AAR to go into the issue of whether the supply affected was a composite supply or not. The concept of enhancement of utility of the instrument through the supply of reagents/calibrators/disposables, while relevant for the purposes of valuation of the supply of instruments cannot be imported into the concept of composite supply under the GST Act. A distinction has to be drawn between the nature of a supply and the valuation thereof. While clubbing of two independent supplies may be resorted to for the purposes of valuation of each of those supplies, there is no scope of clubbing of two independent supplies so as to notionally alter the very nature of each of those supplies as they existed in fact, at the relevant point in time.

The two supplies do not answer to the description of being “naturally bundled and supplied in conjunction with each other in the ordinary course of business”. While they were not bundled together as a matter of fact, in the instant case, there is also no material to suggest that they are so bundled and supplied in conjunction with each other in “the ordinary course of business”. In fact, the business model followed by the petitioner appears to have held the field for a considerable period of time and would show that in the ordinary course of business, the supplies are not bundled.

As regards composite supply must take into account supplies as effected at a given point in time on “as is where is” basis. In particular instances where the same taxable person effects a continuous supply of services coupled with periodic supplies of goods/services to be used in conjunction therewith, one could possibly view the periodic supply of goods/services as composite supplies along with the service that is continuously supplied over a period of time. These, however, are matters that will have to be decided based on the facts in a given case and not in the abstract as was done by the AAR.

Matter remanded back to the AAR for a fresh decision on the query raised before it by the petitioner company - petition allowed by way of remand.