



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Commissioner of State Tax (Member)
2. Sri. RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No. 10/AP/GST/2022 dated: 30.05.2022

1	Name and address of the applicant	M/s. Andhra Pradesh Medical Services and Infrastructure Development Corporation Plot no 9, Phycare Building, 2nd floor, IT park, Mangalagiri, Guntur- 522503
2	GSTIN	37AAGAA0076M1ZM
3	Date of filing of Form GST ARA-01	09.06.2021
4	Personal Hearing	21.10.2021
5	Represented by	CA. Siva Prasad
6	Jurisdictional Authority - Centre	Superintendent of Central Tax (ST) Amaravathi Capital City Range, Amaravathi division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; e) Determination of the liability to pay tax on any goods or services or both. g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Andhra Pradesh Medical Services and Infrastructure Development Corporation (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

3.1 The Andhra Pradesh Health & Medical Housing & Infrastructure Development Corporation (APMHIDC), which was renamed as Andhra Pradesh Medical Services & Infrastructure Development Corporation is registered under Public Society Act 1350 in the year 1987 and established vide G.O.Ms.No.309, HM&FW (F1) Dt.22.05.1987 under the administrative control of Health Medical and Family Welfare Department.

3.2 The Government vide G.O.Rt.No.672, HM & FW (M1) Dept., Dt.20.05.1998 has notified the APMHIDC as a nodal agency for procurement of medicines and subsequently the Government vide G.O.Ms.No.78, HM & FW (M2) Dept., Dt.24.02.2001 has entrusted the job of procurement of equipment to the Corporation. Further, the Government vide G.O.Ms.No.99, HM&FW (M2) Dept., 05.05.2010 have entrusted the sanitation services to APMSIDC with a request to select the implementing agencies for each District adopting an open and transparent tender process.

3.3 Thus, APMSIDC has been working with three wings:

- a. Civil Wing for constructions of Medical Institutions.
- b. Drugs wing for procurement and distribution of Drugs and Surgical consumables.
- c. Equipment wing for procurement of biomedical equipment.

3.4 After bifurcation of the State, APMSIDC registered with Registrar of Societies at Vijayawada. The Corporation is completely administered and managed under the aegis of the State Government of Andhra Pradesh. The key managerial positions consist of the Chairman, who is nominated by the Government of Andhra Pradesh and the Vice-Chairman and Managing Director, who is appointed by the Government of Andhra Pradesh.

3.5 The total administration of the Corporation has been organised as follows:

1. Head Office..... 1.
2. Circle Offices5.
3. QC&S Divisions 5.
4. Divisions 13.

And basing on the requirements with the prior permission of the Government, special units have been established to meet the special project works like construction of Medical Colleges and Hostels etc.

Apart from the above, each district is having a Central Drugs Stores for stock and distribution of procured drugs and surgical consumables for distribution to end users like PHCs, CHCs and Teaching Hospitals etc.

3.6 Objectives of the Organisation:

The aims and objectives for which the Society is established are:

- To formulate, organize, undertake, implement, execute or carry out schemes for the provision of housing for the needs of the Medical, Non-Medical and Para Medical staff, and construction of Public Health Centres, Hospitals, Dispensaries, Clinics, welfare buildings and infrastructural facilities like office building, residential quarters of any other Government Departments.

- To undertake construction, execution of Central Government, State government buildings and undertake other infrastructure projects. To supply Medical and Non-Medical equipment to various Government/Semi Government organizations.
- To procure Drugs and Medicines, Surgical and other related products.
- All the functions of construction, procurement and execution of all infrastructure projects shall be under the overall supervision and control of the Vice Chairman and Managing Director of the Corporation.

3.7 The operational structure of the organization:

- The organisation functions as a nodal agency to the Government of Andhra Pradesh and it has no budgetary support.
- As per G.O.Rt 672 dated 20-5-1998 and G.O.Rt 1357 dated 19-10-2009, the acquisition and distribution of drugs was undertaken by the organisation and the Government had agreed to pay 2% on such works undertaken as establishment charges.
- As per G.O.Rt 672 dated 20-5-1998 and other procurement procedures issued by the government on 13-01-2016, the organization started procurement of equipment and distribution of the same to Hospitals and PHCs on which government had agreed to pay 2% on such executed works.
- All the receipts received from the Government were only to meet establishment expenses of the organization and the surplus left over after meeting the said expenses were not distributed to any person and they were used to meet future expenses.
- The Government of Andhra Pradesh had stipulated to pay some margin on works undertaken by the organization to meet its employee cost and other establishment expenses. On these works, the organization receives 7% from the government as establishment charges.

3.8 The applicant approached the Authority for Advance Ruling to seek clarification on the activities of procurement and supply of Drugs, Medicines, Surgical and other equipment. The applicant makes the following claims that,

- APMSIDC procures the drugs, medicines and surgical equipment on behalf of the Health, Medical and Family Welfare Department, Government of Andhra Pradesh, and it will deliver the drugs, etc., to the respective Primary Health Centres, Government Hospital and other establishments.
- APMSIDC will make the supplies at cost and do not earn any profit or loss and had no commercial interest in delivering those drugs and equipment. The Government will reimburse the actual amounts incurred by APMSIDC on procurement. There is no value addition in the hands of APMSIDC nor is there any intent to undertake the business in the supplies made by it.

The applicant had filed an application in form GST ARA-01 dated 09.06.2021 by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below:

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:

1. Whether the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do business in the same amounts to Supply under Section 7 of CGST/SGST Act.
2. Whether the establishment charges received from the State Government as per G.O.Rt 672 dated 20-5-1998 and G.O.Rt 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or 3A of Notification 12/2017 Central Tax (Rate)?

On Verification of basic information of the applicant, it is observed that the applicant is under Central jurisdiction, i.e. Superintendent of Central Tax (ST) Amaravati Capital City Range, Amaravati Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the State Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the State jurisdictional officer concerned stating that no proceedings lying pending with the issue, for which the Advance Ruling sought by the applicant.

5 Applicant's Interpretation of Law:

- 5.1 APMSIDC is a Society, which was established in pursuance to a G.O issued by the State Government of Andhra Pradesh to discharge one of the functions entrusted to panchayat i.e., public health. 100% of the equity and control are held by the Government of Andhra Pradesh alone. The total management is overseen by the Board of Directors who are all nominated by the Government of Andhra Pradesh. Thus, Corporation qualifies for the definition of "Government Entity/Government authority' as provided in Notification 12/2017 Central tax (rate).
- 5.2 The applicant submits that all the services provided by the corporation are in relation to public health. Public health is one of the items enumerated under entry No: 26 of the Eleventh Schedule of the Constitution of India falling under the Article 243G, which is as under.

The following activities are covered under Eleventh Schedule

1. *Agriculture including agricultural expansion*
2. *Land improvement, implementation of land reforms, land consolidation and soil conservation*
3. *Animal Husbandry, Dairying and poultry*
4. *Fisheries*
5. *Minor irrigation, water management and watershed development*
6. *Social forestry and farm forestry*
7. *Small scale industries in which food processing industry is involved*
8. *Minor forest produce*
9. *Safe water for drinking*
10. *Khadi, village and cottage industries*

11. Rural housing
12. Fuel and fodder
13. Rural electrification, including distribution of electricity
14. Road, culverts, bridges, ferries, waterways and other means of communication
15. Education including primary and secondary schools
16. Non-conventional sources of energy
17. Technical training and vocational education
18. Adult and non-formal education
19. Public distribution system
20. Maintenance of community assets
21. The welfare of the weaker sections of the in particular of the scheduled caste and scheduled tribes
22. Social welfare, including the welfare of the handicapped and mentally retarded
23. Family welfare
24. Women and child development
25. Markets and Fairs
- 26. Health and sanitation including hospitals, primary health centres and dispensaries**
27. Cultural activities
28. Libraries
29. Poverty Alleviation Programs

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

5.4 As per entry No: 3 of Notification NO: 12/2017 Central tax (Rate) Pure services (excluding works contract service or other composite supplies involving the supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Government 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" is exempt from GST.

5.5 Finally, the applicant submits that on account of the following reasons, the establishment charges received by the Corporation are eligible for exemption under entry 3 or 3A of Notification no: 12/2017 Central tax (Rate)

- a. Corporation is a government entity
- b. Services rendered are only 'pure services'
- c. Services are rendered to the State Government.
- d. The activity is coordinating and monitoring the distribution of Drugs, surgical equipment etc., which is an activity in relation to a function entrusted under article 243G of Constitution of India.

In order to get a clarification on the stand being taken by APMSIDC on the taxability of incomes received, they approached the Authority for Advance Ruling.

6. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 21.10.2021, for which the authorized representative, CA. Sri Sivaprasad A attended and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the issues raised in the application in light of the facts and arguments submitted by the applicant. As seen from the documentation submitted by the applicant, it is clear that APMSIDC procures the drugs, medicines and surgical equipment on behalf of the Health, Medical and Family Welfare Department, Government of Andhra Pradesh, and delivers the drugs, etc., to the respective Primary Health Centres, Government Hospitals and other establishments. The issue at hand is to determine whether the procurement and distribution activity of the APMSIDC would amount to 'supply' under Sec.7 of CGST/APGST Act.

Section 7:

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

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

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

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

In the instant case, the applicant procures drugs through tender system and distributes the same to the hospitals and PHCs. The excerpt of a sample tender notice is presented hereunder for examination:

**"TENDER NO: 129 (2021/22) PROCUREMENT OF SURGICAL CONSUMABLES
APMSIDC :: DRUGS WING**

- **Purchaser/Tender Inviting Authority** – Managing Director, APMSIDC, Mangalagiri 522503, Guntur District, Andhra Pradesh (hereinafter referred to as Tender Inviting Authority unless the context otherwise requires). (page 5)

- **All bills/Invoices should be raised in duplicate and the bills should be drawn as per GST Rules in the name of MD, APMSIDC, Mangalagiri, Andhra Pradesh. (page 18) "**

It clearly shows that the purchase/procurement of the medicines is done under the purview of the GST Act, abiding by the provisions of the Act.

Moreover, the applicant in his submission assigns certain attributes/features to the transaction in question, which are listed as under:

- The procurement is done by the organization on 'no profit/ no loss basis'.
- There are also no commercial interest involved in delivery of the drugs and equipment
- The Government will reimburse the actual amounts incurred by APMSIDC on procurement.
- There is no value addition in the hands of APMSIDC
- There is no intent to undertake the business in the supplies made by it.

The above attributes/features alone cannot pull the transaction out of the purview of the concept of 'business.'

Business is defined as under:

*Section 2 (17) — **business** includes -- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, **whether or not it is for a pecuniary benefit;***

By the above definition it is evident that for a transaction/activity to be qualified under 'business', it need not be for a pecuniary/ monetary benefit. Similarly, the absence of profit motive will not shield any transaction from being included under "business".

Furthermore, the transaction involved 'consideration', which is defined in the Act as under,

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

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

As mentioned supra in the excerpt from the 'Tender Notice', payment is made and the invoices are raised **in the name of MD, APMSIDC**, Mangalagiri, Andhra Pradesh, for the supply of goods, which is an established fact as submitted by the applicant himself. Therefore, the procurement and distribution of drugs, Medicines and other surgical equipment by APMSIDC, is essentially a 'supply', as per the provisions of the Act.

Now, we examine the second query, whether the establishment charges received from the State Government as per G.O.Rt 672 dated 20-5-1998 and G.O.Rt 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or 3A of Notification 12/2017 Central Tax (Rate).

"Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 exempts Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority 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".

The CBIC vide **Notification No. 16/2021-Central Tax (Rate) dated November 18, 2021**, has further amended the Services Exemption Notification w.e.f. January 1, 2022 :

"In Serial No. 3 (i.e., pure services) and 3A (i.e., Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply), the words "or a Governmental authority or a Government Entity" have been omitted in order to exclude such services supplied to a Governmental Authority or Government Entity. Thus, services mentioned in Serial No. 3 and 3A provided to Governmental authority and Government Entity shall no longer be exempt from January 1, 2022 and shall attract GST as applicable under Services Rate Notification."

Before going into the nitty-gritty of the different aspects of the transaction such as, whether it is provided to governmental authority/entity/ or State Government itself, or whether the activity falls under *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, etc.*, we examine the nature of the activity, primarily, whether as per entry 3, the services shall essentially be 'Pure Services', or not to be claimed under exemption. The applicant claims that corporation does not incur any profit or loss on any of the commodities and hence the remuneration earned by Corporation is for the pure services alone. But, as a matter of fact, the applicant undertakes the procurement of drugs, surgical equipment, etc, and raises an invoice in the name of MD, APMSIDC. In addition to the above, the charges are received from the State Government as 'establishment charges' for handling and monitoring the activity. By all means, the principal activity is the procurement of goods and the ancillary activity is the service component of handling and monitoring of the supply, for which establishment charges are received as 2% as mentioned by the applicant. In view of the observations made above, we conclude that there is a clear cut involvement of both goods and services in the instant transaction and it is not in any way, a pure service, thus not eligible for exemption.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

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

Answer: Affirmative

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

Answer: Negative

Sd/-D. Ramesh
Member

Sd/RV Pradhamesh Bhanu
Member

//t.c.f.b.o//



Deputy Commissioner (ST)

DEPUTY COMMISSIONER (ST)

O. Chief Commissioner of State Tax,
Government of A.P., Vijayawada



To

1. M/s. Andhra Pradesh Medical Services and Infrastructure Development Corporation
Plot no 9, Phycare Building, 2nd floor, IT park, Mangalagiri, Guntur- 522503, Andhra Pradesh **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Mangalagiri Circle, Guntur Division.
(By Registered Post)
2. The Superintendent, Central Tax, CGST Amaravathi Capital Range, Amaravathi Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.