

**GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/31/2021
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/51)

Date: 19.07.2021

Name and address of the applicant	:	M/s Shalby Limited, (Shalby Hospital), Opp Karnavati Club, S.G. Highway, Ahmedabad-380015.
GSTIN of the applicant	:	24AAICS5593B1ZC
Date of application	:	02.12.2020
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised.	:	Invocation of section 104, CGST Act.
Date of Personal Hearing	:	15.06.2021
Present for the applicant	:	Shri Nilesh Suchak, CA

BRIEF FACTS:

The applicant, M/s Shalby Limited, vide Application No. Advance Ruling/SGST&CGST/2020/AR/51 sought Advance Ruling. The Authority for Advance Ruling thereafter pronounced the Ruling vide Ruling Order No. GUJ/GAAR/R/11/2021 dated 20-01-2021 in terms of Section 98(4) of CGST Act, 2017.

2. This Authority has received a letter dated 6-3-21 vide No. CST/ENFORCEMENT/SHALBY/ADVANCE RULING/20-21/O.NO.5376 issued by the Additional Commissioner of State Tax (Enforcement), Gujarat. The contents thereof are reproduced as follows:

1. Proceeding of Access to business premises under Section 71 of GGST Act was initiated on Shalby Hospital Ltd. (GSTIN-24AAICS55938B1ZC) on 4-6-19 by Gujarat State Tax and Commercial Department. That proceeding was converted into search proceedings u/s 67(2) of the Act on 5-6-19. Search proceedings was continued till 6-6-19.
2. Many discrepancies including medicines, consumables and implants administered to in-patient has considered as composite supply by the hospital and claimed exemption as health care service, were noticed during search proceedings. Considering all these discrepancies, GST DRC-01A –Part A was issued to the hospital for the period of 1-7-17 to 31-5-19 vide ref. No. 858,859 and 860 dated 11-2-20.
3. Hospital had sought advance ruling on dated 2-12-2020 before the Advance Ruling Authority and Advance Ruling Authority had pronounced the Ruling on 20.01.2021.
4. Therefore, it is bring to your kind notice that the proceeding is already pending in the given case before application is filed with Authority of Advance Ruling.

Personal Hearing:

3. Shri Nilesh Suchak, CA Appeared on 15-6-21, Virtual meeting and reiterated the contents of the applicant's submission dated 14-6-21.

4. The applicant vide letter dated 14-6-21 has submitted that according to their bonafide belief, they have not obtained the ruling by fraud or suppression of material facts or

misrepresentation of facts and hence the Advance Ruling pronounced in their case after following due procedure laid down in law. Therefore, cannot be declared to be void *ab initio* considering the following facts, grounds and submissions.

1. The Authority, in their case has pronounced the ruling which implies that their application for advance ruling has been admitted after examining the application and the records in terms of provisions of section 98(2). Hence, the question raised in the application is not reported to be pending or decided in any proceedings.
2. Section 98(2) of the CGST Act will attracted only when a show cause notice has been issued or when an order is already passed on the question on which a ruling is sought. In their case, the matter was only under inquiry and investigation and no show cause notice is served to them till date. The 'investigation' initiated by the State Tax department is not within the ambit of the term "proceedings" for the purpose of Section 98 (2) of the SGST Act/ CGST Act.
3. The mere initiation of an investigation under the Act itself would not exclude the jurisdiction of the AAR and in this regard following judgments are relying upon :
 - (i) The decision of the Hon CBE-High Court
(International Taxation) v. Authority of Advance Ruling reported at [2020] 119 Taxmann.com 80 (Delhi HC).
 - (ii) The decision of Sage Publication Ltd. Vs. Deputy Commissioner of Income-Tax (International Taxation) reported at [2016] 387 ITR 437 (Delhi), which was later affirmed by the Supreme Court in [2017] 246 Taxman 57 (SC)
4. The term "proceedings" only includes within its ambit any proceedings that may result in a "decision" i.e. in the nature of show cause notice or order etc. which can be decided by the competent authority and cannot include mere inquiry or investigation initiated by investigating agencies.
5. They are of the bonafide belief that show cause notice is the point of commencement of any proceeding and this fact is fortified by the Master Circular on Show Cause Notice, Adjudication and Recovery (Circular No. 1053/02/2017-CX dated 10.03.2017) issued by the CBIC wherein it has been clearly stated in its para 2.1 that the Show Cause Notice is the starting point of any proceedings against the party.
6. Since show cause notice has not been issued or served in the present case, therefore, no proceedings can be said to be pending before any authority in their case under any provisions of the CGST or Gujarat GST Act, 2017 and hence the declaration made by them based on their bonafide belief based on this CBEC Circular is absolutely correct and there is no suppression of material facts on their part.
7. In terms of Section 73 and 74 of the CGST Act,2017 no show cause notice has been issued till date, therefore the allegation of suppression of facts is unfounded and without substance. The Enforcement Department even though has issued the intimation request to pay tax ascertained by them vide letter dated 11-2-2020.
8. The application for advance ruling was filed by them on 2-12-20 and having not raised any issue of pending proceedings before the Hon'ble AAR by the time of pronouncement of ruling, it cannot now be alleged that they have suppressed information from the Hon'ble AAR to obtain the ruling.
9. The issue on which ruling is given in their case is no more res integra and the same has been ruled by a catena of ruling some of which are given below for ready reference :

Ernakulam Medical Centre Pvt. Ltd. Advance Ruling No. KER/16/2018 Dt. 19.09.2018 [2018 (18) GSTL 142 (AARGST)]

KIMS Healthcare Management Ltd. Advance Ruling No. KER/17/2018 Dtd. 20.10.2018 [2018 (18) GSTL 831 (AARGST)]

Columbia Asia Hospitals (P.) Ltd Advance Ruling No. KAR ADRG 26 of 2018 dated 13-11-2018 [2019 (20) GSTL 154 (AAR-GST)]

Kinder Womens Hospital & Fertility Centre (P.) Ltd Advance Ruling No. Ker/48/2019, dated 12-04-2019 [2019 (24) GSTL 809 (AAR-GST)]

Kindorama Healthcare (P.) Ltd., Advance ruling No. KER/47/2019 dated 12-04-2019 [2019 (24) GSTL 804 (AAR-GST)]

Terna Public Charitable Trust order no. GSt-ARA-135/2018-19/B-55 dated 21-05-2019 [2019 (27) GSTL 421 (AAR-GST)]

Baby Memorial Hospital Ltd Advance Ruling No. KER/57/2019 dated 05-09-2019 [2020 (32) GSTL 59 (AAR-GST)]

Shifa Hospitals advance ruling order no. 42/AAR/2019 dated 23-09-2019 [2019 (30) GSTL 378 (AAR-GST)]

Royal Care Speciality Hospital Ltd. advance ruling ORDER No. 46/ARA/2019 dated 26-09-2019 [2019 (30) GSTL 481 (AAR-GST)]

Baroda Medicare Private Limited Advance Ruling No. GUJ/GAAR/R/106/2020 dated 30-12-2020

- 10 If department is aggrieved by the ruling, it could have filed an appeal before the Appellate Authority for Advance Ruling. The department by not filing the appeal against the said Ruling, it is unfair, illegal and unwarranted on the part of the department to raise the issue under the pretext of pending proceedings before AAR despite the fact that this issue was never raised before pronouncement of ruling.
11. They prayed to hold that since there is no suppression of material facts on their part based on their bona fide belief that proceedings can be said to be pending only when a show cause notice is issued and that since there was not even whisper of pending proceedings in any of the report, if any, submitted by the concerned officers or at the time of hearing of the matter, it is not fair or legal or proper to say that there was suppression of material facts on their part.
12. They relied on decision of Hon. Allahabad High Court in case of M/s. G. K. Trading Company v. UOI & Others [2021-TIOL-31-HC-ALL-GST], wherein Hon. High Court held that “The word “inquiry” in Section 70 is not synonymous with the word “proceedings”, in Section 6(2)(b) of the U.P.G.S.T. Act/ C.G.S.T. Act and that The words “any proceeding” on the same “subject-matter” in Section 6(2)(b) of the Act, which is subject to conditions specified in the notification issued under sub-Section (1); means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties etc., proceedings for demands and recovery under Section 73 and 74 etc.”
13. They draw kind attention to provisions of section 73(8) and Section 74(8) of the CGST Act, 2017 as also of Gujarat GST Act, 2017 wherein it states that all the proceedings in respect of the said notice shall be deemed to be concluded on payment of sums specified therein. This also supports our contentions as clarified by CBIC that “the Show Cause Notice is the starting point of any proceedings against the party.”

FINDINGS :

5. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST 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 GGST Act.

6. The issue before us is whether said Advance Ruling dated 20-1-21 may be declared Void Abinitio under Section 104, CGST Act or otherwise. The State Revenue contests that said Advance Ruling was obtained by the applicant by not declaring the questions raised in the application dated 2-12-20 is already pending in a proceeding initiated by the Revenue.

7. We have carefully considered all the submissions made by the applicant.

8. We first refer to Sr. No 17 of subject Application FORM GST ARA-01 filed on 2.12.2020 for obtaining the Advance Ruling, reproduced as follows:

“I hereby declare that the question raised in the application is not (tick)”

1. Already pending in any proceedings in applicant case under any of the provision of the Act

2. Already decided in any proceedings in applicant case under any of the provision of the Act

8.1 On examination of said declaration, We find that the applicant has declared that it has no proceedings pending or decided with respect to subject questions raised in the application.

8.2 We find that the Revenue initiated the following against the applicant prior to the said Application filed by the applicant :

- i. Initiated access to business premises, under Section 71 of GGST Act, on 4-6-19 and this proceeding (as termed by Revenue) was converted into search proceedings u/s 67(2) of the Act on 5-6-19. Search proceedings continued till 6-6-19.
- ii Revenue issued three Form GST DRC-01A –Part A all dated 11-2-20 for the period July-17 to March-18, April-18 to March-19 and April-19 to May-19 under Rule 142 (1A) of SGST Act, 2017. Rule 142(1A) of SGST Rules, 2017.

The said rule 142 is reproduced as follows :

142. Notice and order for demand of amounts payable under the Act

*[(1A) The[proper officer may]³²⁷, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, [communicate]³²⁸ the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A.**]*

9. We notice that the three GST Form DRC-01A Part-A was issued on 11-2-20 (all three) and the Advance Ruling application was filed on 2-12-20.

10. We find that proceedings (as termed by Revenue) under section 70(1) of SGST Act, 2017 was initiated against the applicant for issues raised by applicant in the advance ruling application.

11. We hold that Section 70(2) of CGST Act, 2017 has deeming provision that, every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code. Thereby we hold that

subject inquiry initiated under Section 70(1) of the SGST Act 2017 is a judicial proceeding.

12. In GST Act, 'Proceedings' is not defined. As per the Google, in taxation the meaning of "Proceedings" is *"any audit, examination, investigation, claim, contest, dispute, litigation or other proceeding with respect to Taxes or by or against any Taxing Authority"*. In view of the above, meaning of the term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which a judicial action is invoked. The process of investigation in tax administration culminates in issuance of a show cause notice which is then adjudicated. Investigation is activated when there is enough predication to show that there is an alleged tax evasion. The essence of investigation is to carry out an in-depth review of the taxpayer's records and activities to ensure that the tax due to the Government is not lost in evasion. Therefore, commencement of investigation in terms of Section 71 of the CGST Act, 2017 can be said to be the start of a proceeding to safeguard the Government revenue. We are therefore of the view that the usage of the words "any proceeding" in the proviso to Section 98(2) of the CGST Act will encompass within its fold the following- i. investigation proceedings launched by the State Revenue vide Section 71 of SGST Act, 2017 ii. proceedings initiated vide three GST DRC-01A –Part A all dated 11-2-20.

13. The applicant submitted that Show Cause Notice is the point of commencement of any proceeding and relied upon Master Circular on Show Cause Notice, Adjudication and Recovery (Circular No. 1053/02/2017-CX dated 10.03.2017) issued by the CBIC. We refer to Para 2.1 of said circular wherein it is stated that SCN is the *starting point of any "legal" proceedings*, conveying the picture that by issuing a Show Cause Notice marks the starting point for legal proceedings such as adjudication, appeal and recovery proceedings. Further, it is clarified in para 2.1 that the Show Cause Notice is the basic documents for settlement of any tax or initiation of any punitive action for recovery of tax evaded by contravention of provisions of Central Excise Act and rules made there under. We find that there was no concept of issuance of DRC-01A during the Central excise/service tax regime. This concept of GST DRC 01-A has been initiated vide GST regime.

14. The issuance of three GST DRC-01A Part-A all dated 11-2-20 has not been mentioned by the applicant neither in the Advance Ruling Application nor in the submission dated 14-6-21. We reproduce the contents of all the three GST DRC-01A all dated 11-2-20 issued to the applicant:

FORM GST DRC-01A
Intimation of tax ascertained as being payable under section 73(5)/74(5)
[See Rule 142 (1A)]
Part A

No.: Add. SGST/ DC-Enf/67/Shalby /SCN/2019-200. No. 258 Date: 2/2/20
To
GSTIN-24AAICS5593B1ZC
Shalby Ltd
976 PAIKI 6, Shalby Hospital
OPP KARNAVATI CLUB, S. G. HIGHWAY
Ahmedabad, Gujarat-380015

Sub.: Case Proceeding Reference No. - Intimation of liability under section 73(5)/section 74(5) – reg. F.Y.2017-18

Please refer to the above proceedings. In this regard, the amount tax/interest/ penalty payable by you under section 73(5) / 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

The Grounds and quantification are attached/ given below:

YEAR	PARTICULAR	TAX		INTEREST*		PENALTY		TOTAL
		CGST ACT	SGST ACT	CGST ACT	SGST ACT	CGST ACT	SGST ACT	
July-17 to March-18	Income of Liquidated Damages	818114	818114	355638	355638	818114	818114	3983732
	Miscellaneous Charges income	431397	431397	221263	221263	431397	431397	2168114
	Preventive Health Check-up income	655411	655411	351520	351520	655411	655411	3324684
	Income from Nursing Centre	1099392	1099392	576132	576132	1099392	1099392	5549832
	Net Pharmacy income-Within Package	2579655	2579655	3227823	3227823	2579655	2579655	16774266
	Net Pharmacy income-Outside Package	371290	371290	449366	449366	371290	371290	2383892
	Net Implant Income-Within Package	974719	974719	2336441	2336441	974719	974719	8571758
		6929978	6929978	7518183	7518183	6929978	6929978	42756278

*Interest is calculated @24% till 10/02/2020. Hospital has to calculate it till date of payment.

(a) Grounds

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Following non compliances of various provisions of GGST Act, 2017, CGST Act, 2017 and rules made thereunder are identified during the inspection:

- **Income of Liquidated Damages:** Shalby Ltd. (herein after referred as Hospital) has not levied and paid GST on amount of liquidated damages which it had recovered from the contractor due to not adhering the time limit agreed in the agreement executed between the Hospital and contractor. Amount is booked as revenue and same is in the nature of penalty as stated in the agreement itself. Penalty is levied due to breach of agreement condition related to completion of construction within certain time limit. It is covered in scope of supply u/s 7 r.w. definition of consideration u/s 2(31) hence subject to GST. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Miscellaneous Charges Income:** Hospital has not levied and paid GST on Miscellaneous charges. Miscellaneous charges are in the nature of income like facilitation service provided for medial claim submitted to the Insurance Companies at the behest of patient, registration charges etc. These charges are either in the nature of facilitating mode of payment i.e. through medical claim or just administrative charges. Same is covered in scope of supply u/s 7 and subject to GST. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Preventive Health Check-up income:** Hospital is providing service of screening the prospective employees for job suitability as per corporates' instruction, regular health check-up and various other services to corporates. It recovers amount from corporates for the service it renders to them. Such services provided to the corporates are taxable service and within the scope of supply as per Sec. 7 hence it is liable to tax. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Income from Nursing Centre:** Hospital had booked income from nursing centre as income receivable on 30/09/2017 and 31/12/2017 respectively on which it appears that GST is not paid. Same is essentially income from training centre. Same is taxable service hence it is subject to GST. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Net Pharmacy income-Within Package:** Hospital is providing various surgery related procedure to the indoor patients and for it, it has developed package too. But, it is optional. In package model, Hospital is giving specified service (room rent/doctor fees etc.) + certain pharmacies+ equipment (stent/implant) to the

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patients. If extra pharmacy/equipment is administered by the Hospital as per the need of the patients then it is charged extra in the bill. Bill is generated for package and whatever extra is charged which is shown separately from package amount. Hospital is not paying GST on pharmacy included in package and whatever extra amount of pharmacy it has charged. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients so it is separately identifiable independent supply. Hospital is charging pharmacy at MRP price to the patients. MRP includes tax component too. Pharmacy is taxable item and as tax is not charged on the value of that component, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.

- **Net Pharmacy Income-Outside Package:** In other cases where patients have not opted for package, hospital recovers charges of doctor fees, room rent, pharmacy and equipment it uses while providing Indoor Patient service. All charges are separately shown in the bill. Hospital is not paying GST on it. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients so it is separately identifiable independent supply. Hospital is charging at MRP for pharmacy it administers to patients. MRP includes tax component too. Pharmacy is taxable item and as tax is not charged on the value of that component, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.
- **Net Implant Income-Within Package/outside package:** Hospital has not charged GST on implant it has administered to the indoor patient for both within package and when patient has not opted for package and charged separately. It is similar to pharmacy case only. As is the case of pharmacy, implant is also taxable item but its price is regulated by National Pharmaceutical Pricing Authority order. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply.

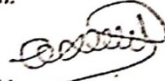
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Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients. In implant case, separate sticker wise tracking is possible for warranty and such purpose so it is separately identifiable independent supply. Hospital is buying implant with tax charged on it. Implant is taxable item and as tax is not charged on the value of that component whether included within package or separately charged, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.

~~You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest in full by, failing which Show Cause Notice will be issued under section 73(1).~~

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest and penalty under section 74(5) by 25/02/2020, failing which Show Cause Notice will be issued under section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by 25/02/2020 in Part B of this Form.


(Jagruti R. Gohil)

o/c
Assistant Commissioner Of State Tax(2)
Enforcement & Co-ordination
Gujarat State, Ahmedabad

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Annexure - A

FORM GST DRC-01A
Intimation of tax ascertained as being payable under section 73(5)/74(5)
[See Rule 142 (1A)]
Part A

No.:Add.SGST/ DC-Enf/67/Shalby /SCN/2019-200. No 859 Date: 21/2/22
To

GSTIN-24AAICS5593B1ZC
Shalby Ltd
976 PAIKI 6, Shalby Hospital
OPP KARNAVATI CLUB, S. G. HIGHWAY
Ahmedabad, Gujarat-380015

Sub.: Case Proceeding Reference No. - Intimation of liability under section 73(5)/section 74(5) – reg.F.Y.2018-19

Please refer to the above proceedings. In this regard, the amount tax/interest/ penalty payable by you under section 73(5) / 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

The Grounds and quantification are attached/ given below:

YEAR	PARTICULAR	TAX		INTEREST*		PENALTY		TOTAL
		CGST ACT	SGST ACT	CGST ACT	SGST ACT	CGST ACT	SGST ACT	
April-18 to March-19	Income of Liquidated Damages	23381	23381	7998	7998	23381	23381	109520
	Miscellaneous Charges income	905972	905972	260681	260681	905972	905972	4145250
	Preventive Health Check-up income	821435	821435	251444	251444	821435	821435	3788628
	Net Pharmacy income- Within Package	4232394	4232394	2981555	2981555	4232394	4232394	22892686
	Net Pharmacy income- Outside Package	1336370	1336370	958869	958869	1336370	1336370	7263218

Net Implant Income- Within Package			198547 1	198547 1			397094 2
Net Implant Income- Outside package			32253	32253			64506
	731955 2	7319552	64782 71	647827 1	7319552	7319552	4223475 0

*Interest is calculated @24% till 10/02/2020. Hospital has to calculate it till date of payment. Interest is calculated on gross turnover.

(b) Grounds

Following non compliances of various provisions of GGST Act, 2017, CGST Act, 2017 and rules made thereunder are identified during the inspection:

- **Income of Liquidated Damages:** Shalby Ltd. (herein after referred as Hospital) has not levied and paid GST on amount of liquidated damages which it had recovered from the contractor due to not adhering the time limit agreed in the agreement executed between the Hospital and contractor. Amount is booked as revenue and same is in the nature of penalty as stated in the agreement itself. Penalty is levied due to breach of agreement condition related to completion of construction within certain time limit. It is covered in scope of supply u/s 7 r.w. definition of consideration u/s 2(31) hence subject to GST. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Miscellaneous Charges Income:** Hospital has not levied and paid GST on Miscellaneous charges. Miscellaneous charges are in the nature of Income like facilitation service provided for medial claim submitted to the Insurance Companies at the behest of patient, registration charges etc. These charges are either in the nature of facilitating mode of payment i.e. through medical claim or just administrative charges. Same is covered in scope of supply u/s 7 and subject to GST. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Preventive Health Check-up Income:** Hospital is providing service of screening the prospective employees for job suitability as per corporates' instruction, regular health check-up and various other services to corporates. It recovers amount from corporates for the service it renders to them. Such services provided to the corporates are taxable service and within the scope of supply as per Sec. 7 hence

it is liable to tax. As hospital has not paid GST on it, tax dues are ascertained as per above table.

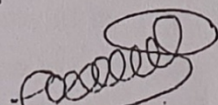
- **Not Pharmacy income-Within Package:** Hospital is providing various surgery related procedure to the Indoor patients and for it, it has developed package too. But, it is optional. In package model, Hospital is giving specified service (room rent/doctor fees etc.) + certain pharmacies+ equipment (stent/implant) to the patients. If extra pharmacy/equipment is administered by the Hospital as per the need of the patients then it is charged extra in the bill. Bill is generated for package and whatever extra is charged which is shown separately from package amount. Hospital is not paying GST on pharmacy included in package and whatever extra amount of pharmacy it has charged. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients so it is separately identifiable independent supply. Hospital is charging pharmacy at MRP price to the patients. MRP includes tax component too. Pharmacy is taxable item and as tax is not charged on the value of that component, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.
- **Net Pharmacy income-Outside Package :** In other cases where patients have not opted for package, hospital recovers charges of doctor fees, room rent, pharmacy and equipment it uses while providing Indoor Patient service. All charges are separately shown in the bill. Hospital is not paying GST on it. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients so it is separately identifiable independent supply. Hospital is charging at MRP for pharmacy it administers to patients. MRP includes tax component too. Pharmacy is taxable item and as tax is not charged on the value of that component, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.

- **Net Implant Income-Within Package/outside package:** Hospital has not charged GST on implant it has administered to the indoor patient for both within package and when patient has not opted for package and charged separately. It is similar to pharmacy case only. As is the case of pharmacy, implant is also taxable item but its price is regulated by National Pharmaceutical Pricing Authority order. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients. In implant case, separate sticker wise tracking is possible for warranty and such purpose so it is separately identifiable independent supply. Hospital is buying implant with tax charged on it. Implant is taxable item and as tax is not charged on the value of that component whether included within package or separately charged, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.

~~You are hereby advised to pay the amount of tax as ascertained above along with amount of applicable interest in full by, failing which Show Cause Notice will be issued under section 73(1).~~

You are hereby advised to pay the amount of tax as ascertained above along with amount of applicable interest and penalty under section 74(5) by 25/02/2020, failing which Show Cause Notice will be issued under section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by 25/02/2020 in Part B of this Form.


(Jagruti R. Gohil)

Assistant Commissioner Of State Tax (2)

FORM GST DRC-01A
Intimation of tax ascertained as being payable under section 73(5)/74(5)
[See Rule 142 (1A)]

Part A

No.: Add. SGST/ DC-Enf/67/Shalby /SCN/2019-200. No. 8260 Date: 11/12/2020
To
GSTIN-24AAICS5593B1ZC
Shalby Ltd
976 PAIKI 6, Shalby Hospital
OPP KARNAVATI CLUB, S. G. HIGHWAY
Ahmedabad, Gujarat-380015

Sub.: Case Proceeding Reference No. - Intimation of liability under section 73(5)/section 74(5) – reg. F.Y.2019-20

Please refer to the above proceedings. In this regard, the amount tax/interest/ penalty payable by you under section 73(5) / 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

The Grounds and quantification are attached/ given below:

YEAR	PARTICULAR	TAX		INTEREST*		PENALTY		TOTAL
		CGST ACT	SGST ACT	CGST ACT	SGST ACT	CGST ACT	SGST ACT	
April-19 to May-19	Miscellaneous Charges income	211551	211551	34438	34438	211551	211551	915080
	Preventive Health Check-up income	143814	143814	26253	26253	143814	143814	627762
	Net Pharmacy income- Within Package	938580	938580	370381	370381	938580	938580	4495082
	Net Pharmacy income- Outside Package	96489	96489	36831	36831	96489	96489	459618
	Net Implant Income- Within Package	2803423	2803423	219870	219870	2803423	2803423	11653432
	Net Implant	12415	124153	23447	23447	124153	124153	543506

	Income-Outside package	3						
		4318010	4318010	711220	711220	4318010	4318010	18694480

*Interest is calculated @24% till 10/02/2020. Hospital has to calculate it till date of payment.

(c) Grounds

Following non compliances of various provisions of GGST Act, 2017, CGST Act, 2017 and rules made thereunder are identified during the inspection:

- **Miscellaneous Charges Income:** Hospital has not levied and paid GST on Miscellaneous charges. Miscellaneous charges are in the nature of income like facilitation service provided for medial claim submitted to the Insurance Companies at the behest of patient, registration charges etc. These charges are either in the nature of facilitating mode of payment i.e. through medical claim or just administrative charges. Same is covered in scope of supply u/s 7 and subject to GST. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Preventive Health Check-up income:** Hospital is providing service of screening the prospective employees for job suitability as per corporates' instruction, regular health check-up and various other services to corporates. It recovers amount from corporates for the service it renders to them. Such services provided to the corporates are taxable service and within the scope of supply as per Sec. 7 hence it is liable to tax. As hospital has not paid GST on it, tax dues are ascertained as per above table.
- **Net Pharmacy Income-Within Package:** Hospital is providing various surgery related procedure to the indoor patients and for it, it has developed package too. But, it is optional. In package model, Hospital is giving specified service (room rent/doctor fees etc.) + certain pharmacies+ equipment (stent/implant) to the patients. If extra pharmacy/equipment is administered by the Hospital as per the need of the patients then it is charged extra in the bill. Bill is generated for package and whatever extra is charged which is shown separately from package amount. Hospital is not paying GST on pharmacy included in package and whatever extra amount of pharmacy it has charged. Whatever pharmacy/equipment is

administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients so it is separately identifiable independent supply. Hospital is charging pharmacy at MRP price to the patients. MRP includes tax component too. Pharmacy is taxable item and as tax is not charged on the value of that component, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.

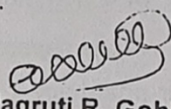
- **Net Pharmacy income-Outside Package :** In other cases where patients have not opted for package, hospital recovers charges of doctor fees, room rent, pharmacy and equipment it uses while providing Indoor Patient service. All charges are separately shown in the bill. Hospital is not paying GST on it. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients so it is separately identifiable independent supply. Hospital is charging at MRP for pharmacy it administers to patients. MRP includes tax component too. Pharmacy is taxable item and as tax is not charged on the value of that component, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.
- **Net Implant Income-Within Package/outside package:** Hospital has not charged GST on implant it has administered to the indoor patient for both within package and when patient has not opted for package and charged separately. It is similar to pharmacy case only. As is the case of pharmacy, implant is also taxable item but its price is regulated by National Pharmaceutical Pricing Authority order. Whatever pharmacy/equipment is administered to the patients is as per the need of the patients so it is contingent in nature and can be considered as mixed supply. Section 65 of The Drugs and Cosmetics Rules, 1945 makes it mandatory to Hospital to separately maintain records of drugs/pharmacy it administers to patients. In implant case, separate sticker wise tracking is possible for warranty and such purpose so it is separately identifiable independent supply. Hospital is buying implant with tax charged on it. Implant is taxable item and as tax is not

charged on the value of that component whether included within package or separately charged, GST liability arise to that extent. Calculation shown in above table (both for within package and outside package) has given due credit of tax involved in purchase.

~~You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest in full by, failing which Show Cause Notice will be issued under section 73(1).~~

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest and penalty under section 74(5) by 25/02/2020, failing which Show Cause Notice will be issued under section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by 25/02/2020 in Part B of this Form.


(Jagruti R. Gohil)

Assistant Commissioner Of State Tax (2)
Enforcement & Co-ordination
Gujarat State, Ahmedabad

15. We find that State Revenue has issued three FORM DRC-01 Part-A all dated 11-2-20 under Rule 142(1A) of SGST Rules, 2017 "Intimation of tax ascertained as being payable under section 74 (5)". The Form DRC-01A Part A prescribed under the said Rule is mandatory before service of Show Cause Notice because under Section 74 (5) of the Act if taxpayer paid the said ascertained tax amount along with interest and applicable penalty then proper officer shall not serve any Show cause Notice to the taxpayer. Therefore, we are of the opinion that issuance of FORM DRC-01A Part A under Rule 142 (1A) is a proceeding in terms of Section 98(2) of CGST Act, 2017

16. The applicant submitted that inquiry or investigation cannot be considered as pending proceedings and relied on the decision of M/s. G.K. Trading Company V.UOI &

Others [2021-TIOL-31-HC—ALL-GST] of Hon'ble Allahabad High Court, where in Hon'ble High Court has held that,

"The word "inquiry" in Section 70 is not synonymous with the word "proceedings", in Section 6(2)(b) of the U.P.G.S.T. Act/ C.G.S.T. Act and that The words "any proceeding" on the same "subject-matter" used in Section 6(2)(b) of the Act, which is subject to conditions specified in the notification issued under sub-Section (1); means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties etc., proceedings for demands and recovery under Section 73 and 74 etc."

16.1 The said judgement of Hon'ble High Court of Allahabad has been passed with respect to inquiry in section 70 not synonymous with the word proceeding in section 6(2)(b) of CGST Act/ UP GST ACT. The facts of the subject matter are different from the said referred case law, as present issue is centred around the word 'proceedings' in section 98(2) of CGST Act and not proceeding under Section 6(2)(b) of CGST Act.

17. We hold that investigation initiated against the applicant is a proceeding within the ambit of Section 98 (2) of CGST Act. We further hold that proceeding initiated vide three GST DRC 01A Part A all dated 11-2-20 is a proceeding within the ambit of Section 98(2) of CGST Act.

18. The Questions raised in Advance Ruling Application dated 2-12-20 and the issue pending vide Investigation initiated vide Section 70(1) and three GST DRC-01A Part A all dated 11-2-20 are the same.

19. The applicant was aware of the investigation initiated and the proceedings initiated vide three GST DRC-01A Part A all dated 11-2-20. Yet it chose not to declare the same in the Advance Ruling Application dated 2-12-20 and mis-declared at said Sr. No. 17 Form GST ARA-01 dated 2-12-2020 of the said application. We notice that even the Revenue did not bring this misdeclaration by the applicant before the Authority prior to issuance of Ruling dated 20-1-21. However this does not shirk away the responsibility cast on the applicant.

20. The applicant submitted that the Advance Ruling was not appealed by the State Revenue. The matter at present is not appeal issue as prescribed at section 100 of CGST Act, but the matter at hand to decide whether the Ruling may be declared void abinitio as prescribed at section 104 of the CGST Act. We hold that the Authority has been empowered vide Section 104 of CGST Act to declare a Ruling void abinitio. We hold that the Advance Ruling cannot be used as a mechanism to nullify and frustrate the inquiry proceedings already initiated vide section 70(1) of CGST Act. Further, we hold that Advance Ruling cannot be misused when GST DRC-01A has already been issued, even prior to filing of Advance Ruling application.

21. The applicant should bear in mind that the CGST Act has deemed this Authority to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code. The applicant has obtained said Advance Ruling dated 20-1-21 by suppressing the material facts.

22. We find that the applicant has submitted case laws in favour of merits of Advance Ruling dated 20-1-21. We are not deciding on the merits of the Ruling but whether Section 104 of CGST Act is to come into play in subject matter or otherwise.

23. In conspectus of aforementioned findings, We declare Advance Ruling No. GUJ/GAAR/R/11/202 dated 20-01-21 *void ab-initio* in terms of Section 104 of CGST Act.

(SANJAY SAXENA)
MEMBER(S)

(ARUN RICHARD)
MEMBER (C)