

**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/2022/01
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/42)

Date: 07.01.2023

Name and address of the applicant	:	M/s Divyajivan Healthcare Pvt. Ltd., Plot No. 3A/3B, 401-402, Jay Complex, Purvi Society 120, Hirabaug Circle, Varachha, Surat -395006.
GSTIN of the applicant	:	24AAICD9632J1ZE
Date of application	:	29-08-2022
Clause(s) of Section 97(2) of CGST/IGST Act, 2017, under which the question(s) raised.	:	(b)
Date of Personal Hearing	:	21-10-2022
Present for the applicant	:	Shri Anish Hanuman Goyal, CA

BRIEF FACTS:

M/s. Divyajivan Healthcare Private Ltd., the applicant has proposed the activity to establish a multi-super speciality hospital and to provide health care services to patients. The applicant has devised a plan, namely “*Health Care Service (Diamond Plan)*” in which the applicant shall provide the health care services for next 20 years for which a lump-sum amount, say, Rs. 10 Lakhs will be charged. Under the plan the services will be provided to the family i.e., Member, Spouse & up to 2 children (age below 21 years). The applicant will also tie-up with other hospitals pan India from where the members can avail health care services.

2. The “*Health Care Service (Diamond Plan)*” of the applicant shall include the following health care services:

- i. Hospitalization Benefits i.e., in-patient Service up to INR 10 Lakhs in a year
- ii. Compulsory Annual Preventive Health Check-up with 100+ test/investigation/ consultations covered; which are tabulated as under:

Blood Investigation:	Cardiac Investigation:	Other Investigation:	Specialist Consultants:
Complete Hemograms (28)	ECG	PFT	General Physician
Lipid Profile (8)	2D echo & colour Doppler	Audiometry	Dental Surgeon
Liver Function Test (11)	TMT	Fundoscopy - EYE	General Surgeon
Harmane & Vitamins (4)	Chest X-ray	Refractive Errors	Gynaecologist
Renal Function Test (8)	Sonography Abdomen & Pelvic		
Urine & Stool Examination (18)	BMD		



- iii. Advance Health Check-up services; which are Coronary Angiography, Cancer Markers, Endoscopy, MRI – Any one part, Mammography & PAP Smear, Sleep Study, Foot Scan and Naturopathy.
 - iv. Special health care treatments; which are Dental Treatment (Basic Dental Care or one implants per year if need arises), Skin care treatment (No cosmetic/beautification treatment cover), Adult Vaccination (with basic Vaccine Cost).
 - v. Privilege Cards benefits; which are Home Care Services, Priority OPD appointments in tie-up hospital, tele-medical guidance through application.
3. The applicant submit that they will digitalize the health records based on the above tests and treatments of the beneficiary members for their easy access and shall also provide regular reminders, updates and health education tips.
4. The above-mentioned health care services which are provided by a clinical establishment or authorized medical practitioners are exempted from GST vide Sr. No. 74 of the of Notification No. 12/2017- Central Tax (Rate) dt. 28.06.2017. The relevant extract of the same is reproduced as under:

“G.S.R. 691(E) .- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
74	Heading 9993	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/ clinical care unit (CCU)/ Intensive Cardiac Care Unit (ICCU)/Neonatal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services. (b) Service provided by way of transportation of patient in an ambulance, other than those specified in (a) above.	Nil	Nil



5. Section 11(1) of the CGST empowers Central Government to grant exemption from payment of GST. In pursuance of this power, Central Government has issued the notification No. 12/2017 – CT (Rate) dt. 28.6.2017 which enlists various services on which GST is exempted. On careful study of this notification, it is observed that services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are being exempted.

6. The expressions, “authorised medical practitioner”, “clinical establishment”, “health Care Services”, has been defined in respective clause of definitions provided in Sr. No. 2 of the Notification No. 12/2017 – CT (Rate) dt.28.6.2017, the same reads as follows:

*(k) “**authorised medical practitioner**” means a medical practitioner registered with any of the councils of the recognised 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;*

*(s) “**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 recognised 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;*

*(zg) “**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;*

6.1 The applicant has proposed to establish a hospital i.e., clinical establishment from where the applicant will offer the services mentioned in the forth going paras that requires diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy.

6.2 The applicant submits that the health care services provided by the applicant are in recognized systems of medicines in India which are exempted. In terms of the clause (h) of section 2 of the Clinical Establishments Act,2010, the following systems of medicines are recognized systems of medicines, viz. Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Siddha, Unani and any other medicine recognized by Central Government. The applicant is providing health care under the medicine system of Allopathy, that is the recognized systems of medicine in India.

6.3 Further, the applicant’s services are covered under ‘health care services’ as the applicant would conduct preventive health check for the members. The designated partner of the applicant is Dr. Purshottam Govindbhai Karodia, who is an authorized medical practitioner. The copy of the certificate is enclosed as Annexure-D of the application. The applicant submits



that it may be seen from the nature of services proposed to be provided by the applicant, the main component of service to be provided is by way of “diagnosis” inasmuch as Compulsory Annual Preventive Health Check-up of the person availing “Health Care Service (Diamond Plan)”, his / her spouse and two children would be carried out. Such Annual Preventive Health Check – up is not only helpful, but nowadays essential, for early diagnosis of illness. As already mentioned, such Annual Preventive Health Check – up will be carried out mainly in the Hospital of the Applicant or sometimes in other Hospitals, which qualifies as “Clinical Establishments”. Furthermore, such Annual Preventive Health Check – up will be carried out by the qualified allopathic medical practitioner / authorized medical practitioner. It is, therefore submitted that the service of Annual Preventive Health Check – up, proposed to be provided by the applicant is covered under “health care services by a clinical establishment, an authorized medical practitioner or para-medics” as provided under Sr. No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2021, as amended.

6.4 It is to further submit that in spite of regular Preventive Health Check up, if the person availing “Health Care Service (Diamond Plan)”, or his / her spouse or any of his children out of two children falls ill, treatment or care for such illness would be provided by the qualified allopathic medical practitioner at Hospital of the Applicant or other Hospitals suggested by the Applicant. However, the person availing “Health Care Service (Diamond Plan)” cannot get treatment or care for illness at any Hospital of his / her choice. Obviously, the person availing “Health Care Service (Diamond Plan)” cannot claim any reimbursement from the Applicant for getting treatment or care for illness at any Hospital, other than the Hospital of the Applicant or the Hospital suggested by the Applicant, as granting of reimbursement to the person availing “Health Care Service (Diamond Plan)” is not at all envisaged. Thus, this component of service to be provided by the Applicant is also covered under the “health care services by a clinical establishment, an authorized medical practitioner or para-medics” as provided under Sr. No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2021, as amended.

6.5 The applicant have submitted that in light of the above provisions and reasoning their services are exempted. Further, in light of the above interpretation of law, the applicant requests the Honorable Authority to take into consideration, facts of the application and relevant provisions of law and give an advance ruling that the applicant’s services fall under Sr. No. 74 of Not. No. 12/2017 – Central Tax (Rate) dt. 28.06.2017 and are exempted for Goods and Services Tax.

6.6 The applicant has submitted that an application for Advance Ruling was filed by sister concern of the applicant M/s Divyajnan Healthcare LLP questioning the applicability of GST liability for the “Health Care Service (Diamond plan)” provided by them to its clients. An



Advance Ruling judgment vide No. GUJ/GAAR/R/54/2021 dated 18-10-2021 was passed concluding that, 'M/s Divyajivan supplies Health Care Services under Diamond Plan which merits exemption from GST vide Sr. NO. 74 of said Notification No. 12/2017-CT (R).'

6.7 The applicant submits that it has now changed its constitution of business from M/s Divyajivan Healthcare LLP to M/s Divjivan Healthcare Pvt. Ltd. However, the services included in the "Health Care Service (Diamond Plan)" remains the same. Thus, the applicant is before the Hon'ble Authority to seek Advance Ruling with regard to eligibility of exemption Notification on the above supplies of services provided by them.

7. Question on which Advance Ruling sought

1. Whether lump-sum amount received for Health care Services to be provided for 20 years by the applicant as "Diamond Plan" is exempted from Goods and Services Tax as per Sr. No. 74 of Notification No. 12/2017- Central Tax.

Revenue Submission :

8 The Assistant Commissioner of CGST & Central Excise Commissionerate, Surat vide their letter dated 19-12-2022 has submitted as follows :

8.1 The relevant provision mentioned at serial no 74 of Notification No.12/2017-Central Tax dated 28.06.2017 is as under:

S. No.	Chapter, Section, Heading, service code	Description of services	Rate %	Condition, if any
74	Heading 9993	Service 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	Nil	Nil

8.2 Further, Notification No. 04/2022-C.Tax (Rate) dated 13.07.2022 for amendment in respect of Sr. No. 74 of Notification No.12/2017-Central Tax dated 28.06.2017 may also be taken into consideration while processing of application for Advance Ruling by the applicant, which is as under;

(s) against serial number 74, in column (3), in clause (a), the following proviso shall be inserted, namely:—

"Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit



(CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care Services”.

8.3 In view of above, it appears that Notification No.12/2017-Central Tax dated 28.06.2017 has not specified any such activity wherein Health care Services shall be provided for a specific time period under a health benefit scheme/plan and furthermore Notification No. 04/2022-C.Tax (Rate) dated 13.07.2022 as discussed above itself restricts the exemption of GST having room charges exceeding Rs. 5000/- per day to a person receiving health care services, as discussed in said notification.

Personal Hearing:

9. Shri Anish Goyal, CA appeared for the hearing (through virtual mode) and reiterated the contents of the application.

FINDINGS:

10. We have carefully considered all the submissions made by the applicant. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

11. We find that the applicant desire to establish a multi-super speciality hospital to provide health care services to patients. They have devised a Medical plan, namely “*Health Care Service (Diamond Plan)*” which cover four member of the family for next 20 years for which a lump-sum amount of Rs. 10 Lakhs will be charged. This Diamond Plan cover the various benefits i.e. in-patient Service, compulsory Annual preventive health check-up with 100+ test/investigation/consultation, Advance health check up which include Coronary Angiography, Cancer Markers, Endoscopy, MRI – Any one part, Mammography & PAP Smear, **Sleep Study, Foot Scan and Naturopathy, Special health care treatments like Dental and skin care treatment, Privilege card treatment which are Home Care Services, Priority OPD appointments in tie-up hospital, tele-medical guidance through application.** This plan covers the family i.e., Member, Spouse & up to 2 children (age below 21 years). The applicant has also tie-up with other hospitals pan India from where the members can avail the medical facilities in built in this plan.

12. The applicant has argued that the Diamond Plan which provide the Medical cover of four family members up to 20 years falls within the definition of Health care services and exempted vide Sr. No. 74 of Not. No. 12/2017-CT (Rate) dated 28-6-2017.

13. The issue is examined in detail. Health care services provided by a clinical establishment, an authorized medical practitioner or para medics are exempted vide Sl. No. 74 of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017. We find that the term ‘clinical establishment’ is defined under clause 2 of the Notification No. 12/2017-CT (Rate)



dt.28.6.2017 means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring **diagnostics 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 as a part of an establishment to carry out diagnostic or investigative services of diseases.

14. We find that Diamond Plan of the applicant covered more than 100 types of test, Sleep Study, Foot Scan and Naturopathy, Special health care treatments like Dental & skin care treatment, Privilege card treatment, Priority OPD appointments in tie-up hospital, tele-medical guidance through application. All types of such service provided to the customer under Diamond Plan are required to be examined in detail to decide the nature and characteristic of the service to decide the taxability under GST. The applicant has not submitted any type of documents with regard to Diamond Plan which contained in detail nature and characteristics of services provided under Diamond Plan.

15. We find that the applicant have also tie up with other hospital in pan India to provide the service mentioned under 'Diamond Plan' but have not submitted any documents in this regard so that we are not in position to know the Scope of Service, types of services to be provided by such Hospital and terms and conditions of the payment. Also the applicant have failed to submit the documents which contains the details of services to be provided under the 'Diamond Plan' to the potential customer. The applicant has not disclosed the correct fact/information in respect of this application therefore, in absence of such documents it is not possible to figure out the services which have mentioned in the application are covered under the Health Care Service or otherwise.

16. In light of the foregoing, we hold that the application filed by the applicant is not maintainable.

RULING

The application of the applicant is not maintainable.

(MILIND KAVATKAR)
MEMBER (S)



(AMIT KUMAR MISHRA)
MEMBER (C)

Place: Ahmedabad

Date: 07.01.2023