

Healthcare Industry under GST Net – Withdrawal of GST Exemption (Updated)

Date of Issue: 18th July 2022

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Healthcare Industry is one of the most prominent and significant industries around the globe. Health plays a crucial role in everyone’s life and everything follows thereafter. There is a saying that ‘Health is Wealth’, which means when a person maintains good health, everything else falls into place.

Understanding its importance and significance, Government had, till date, exempted all the services in relation with the healthcare sector except for some cosmetics or beautification related services which are not considered necessity.

Vide Entry 74 of Notification 12/2017-Central tax (Rate) dated 28.06.2017, exemption has been provided on:

Services by way of-

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

Now, vide Notification No. 04/2022-CT(R) dated 13-07-2022, entry 74 of Notification 12/2017-Central tax (Rate) dated 28.06.2017 has been amended to provide as follows:

Services by way of-

- a) *health care services by a clinical establishment, an authorised medical practitioner or paramedics;*

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. 5,000 per day to a person receiving health care services.

b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

On the other hand, vide Notification 03/2022-CT(R) dated 13-07-2022, Entry No. 31A has been inserted in Notification No. 11/2017-CT(R) dated 28.06.2017 as follows:

Heading	Description of Services	Rate	Condition
Heading 9993	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)/Neonatal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5,000 per day to a person receiving health care services.	2.5%	The credit of input tax charged on goods and services used in supplying the service has not been taken

Thus, room rent (excluding ICU) exceeding INR 5,000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% without ITC. This is the first time that the Government has put the tax on the healthcare services by way of charging GST on the room rent excluding ICU.

Bringing of such transaction into GST net may result in emergence of the following issues;

- ***“Whether provision of room at the Hospital is to be considered as composite supply of Health Care Services or it is a separate service apart from Health Care Service?”***

As per Section 2(30) of CGST Act, 2017, *“composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.*

Further, as per Section 8 of CGST Act, 2017, *the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-*

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b)

Thus, as per the above-mentioned provisions, it can be inferred that when two or more taxable supplies are supplied in conjunction with each other and one of which is the principal supply, the principal supply shall be treated as supply of such goods or services.

In terms of the services provided by any hospital, the supply of services shall be considered as Health care services as it forms part of the principal supply of services. Thus, when room is provided to the patient undergoing medical treatment in the Hospital, it shall be treated as composite supply of health care services.

If the supply of room is considered as separate supply, not part of composite supply of health care services then all other supplies by hospital to in-patient would become taxable like supply of medicines, supply of implants, food etc.

Earlier, the CBIC has issued **Circular No. 32/06/2018-GST dated 12-02-2018** wherein they had clarified that health care services provided by the clinical establishments will include food supplied to the patients. 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.

The same has also been affirmed in various Judgments pronounced by High Courts and Authority for Advance Rulings some of them are provided as follows;

In Re: Ernakulam Medical Centre Pvt. Ltd. - Authority for Advance Ruling, Kerala [2018 (18) G.S.T.L. 142 (A.A.R. - GST), 2018 (10) TMI 511] held that *taxability of supply of medicines and allied items from Hospital's pharmacy shall depend upon as to whether supply is to indoor patient or outdoor patient. In case of indoor patient, since they receive medical facility as per scheduled procedure and have strict restriction to ensure quality/quantity of items for consumption, medicines or allied goods supplied to them is a composite supply under health care services and hence exempt from GST. However, as regards supply of medicines and allied items to outdoor patients is concerned same is an independent supply because such patients are not bound to procure these items from hospital pharmacy. These supplies are, therefore, taxable - Service Accounting Code (SAC) No. 9993.*

In Re: ST. Thomas Hospital (GST AAR Kerala) the AAR Karnataka held that *the supply of medicines, surgical items, implants, stents, and other consumables to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures is a composite supply where the principal supply is healthcare services falling under SAC 999311 which is exempted as per entry at Sl No. 74 of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017.*

The supply of food to inpatients admitted to the hospital for diagnosis, or medical treatment or procedures is a component of the composite supply where the principal supply is healthcare services falling under SAC 999311 which is exempted as per entry at Sl No. 74 of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017

Thus, the changes made by the notifications seems to be against the concept of composite supply and not in conformity with the settled position of law.

- ***“Whether GST is to be charged on the consideration for room rent (say Rs 7,500/-) which is in excess of Rs 5,000 /- per room per patient (i.e. Rs 2,500 /-) ? Or it is to be charged on the total consideration received for room rent, say Rs 7,500 /-?***

These is confusion which is prevalent in the industry in this regard. As per the wording of the aforementioned notifications, it looks like that GST is to be charged on the total consideration received from room rent, not on the rent which is received in excess of Rs 5,000 /- per room per patient.

Concluding Remarks

Thus, on the basis of above issues, it can be inferred that the Government needs to evaluate the impact of the amendment made in the healthcare sector as this amendment not only increase the cost of the healthcare services but also it could lead to Judicial disputes between the taxpayers and the Government. In our view, the concept of composite supply still holds good in such cases. The Government should come out with the immediate clarification on these issues.

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