

WEST BENGAL AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
14 Beliaghata Road, Kolkata – 700015  
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX  
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act, and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	OPTM Health Care Private Limited
Address (correspondence)	145, Spencer's Building, 2 <sup>nd</sup> Floor, Rashbehari Avenue, Kolkata-700029
GSTIN	19AABCO4630Q1ZZ
Case Number	52 of 2019
ARN	AD 191219001025G
Date of application	December 23, 2019
Order number and date	46/WBAAR/2019-20 dated 20/03/2020
Applicant's representative heard	Sambit Das, ACA

1. Admissibility of the Application

1.1 The Applicant, stated to be providing a form of treatment called "Phytotherapy" to cure osteoarthritis and disorders of similar nature, seeks a ruling on whether the above service is exempted under serial no 74 of the Notification No 12/2017 Central Tax (Rate) dated 28/06/2017 (State Notification No. 1136-FT dated 28/06/2017), as amended (hereinafter collectively called "Exemption Notification"). It also wants to know whether it needs to stay registered under the GST Act.

1.2 These questions are admissible under section 97 (2) (b) & (f) of the GST Act. The concerned officer from the Revenue submits that questions raised in the Application are not pending or decided in any proceedings under the GST Act. As such, he does not object to the admissibility of the Application.

1.3 The application is, therefore, admitted.

---

## 2. Submissions of the Applicant

2.1 The Applicant submits that the protocol of treatment which they follow is called "Phytotherapy". The word "Phyto" means derived from plants. The Applicant claims that food from rice, wheat have certain chemical compounds to produce the shell of the human body. These chemicals are known as phytochemicals. OPTM stands for "Organic Phyto Therapeutic Method". The phytochemicals are oil-based, produced from plants when they mature to give fruits and flowers. Trees preserve these organic chemicals in their seeds too. The applicant has invented these medicines that have been approved by the Drug Control Department under the category of Ayurvedic Medicine. Supplemented by physiotherapy, the medication is used for the treatment of osteoarthritis and disorders of similar nature.

2.2 Before this ruling is pronounced the Applicant makes a further written submission where it claims that it is making a composite supply with health care service as the principal supply. Supply of medicine is ancillary to the principal supply. In its clinics the patients suffering from osteoarthritis and disorders of similar nature are being treated by qualified doctors applying the unique phytotherapeutic methods. It is registered as a clinical establishment under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (hereinafter the CE Act). Its composite supply of health care service from a clinical establishment should, therefore, be exempt under Entry No. 74 of the Exemption Notification.

2.3 Under Entry No. 74 (a) of the Exemption Notification, health care services by a clinical establishment, an authorised medical practitioner or paramedics have been exempted from payment of GST. In para 2 (s) of the said notification clinical establishment is defined as 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. Apart from Allopathy, the recognised systems of medicines in India consist of Ayurveda, Siddha, Unani and Homeopathy and therapies such as Yoga and Naturopathy.

2.4 Although the Applicant is licensed as a physiotherapy centre, use of ayurvedic medicines in the protocol of treatment shows, according to the Applicant, that it actually provides ayurvedic treatment and should, therefore, be eligible for exemption under the above entry of the Exemption Notification.

## 3. Submission of the Revenue

3.1 The concerned officer from the Revenue has refrained from making comments in this regard.

## 4. Observations & Findings of the Authority

4.1 Entry No. 74 (a) of the Exemption Notification exempts inter alia health care services by a clinical establishment from payment of GST. Para No. 2 (zg) of the said notification defines health care services. It 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 the body affected due to congenital defects, developmental abnormalities, injury or trauma. 'Clinical establishment', within the meaning under Para No. 2(s) of the Exemption Notification, is 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.

4.2 It, therefore, needs to be examined whether the Applicant is a 'clinical establishment' that provides health care services by way of diagnosis, treatment or care for illness in any recognised system of medicines in India.

4.3 The term 'recognised system of medicine' is not defined in the GST Act or notifications issued thereunder. It is defined under section 2 (o) of the CE Act. It means Allopathy, Yoga, Naturopathy, Ayurveda, Homoeopathy, Siddha and Unani Systems of medicines or any other system of medicine recognised by the State Government.

4.4 The Applicant claims that it administers certain plant-based medications for the treatment of osteoarthritis and disorders of similar nature. The medicaments are not supplied standalone, but ancillary to the supply of health care service. It is a composite supply of health care service called 'phytotherapy'. Applicant further submits that 'phytotherapy' is a treatment based on the ayurvedic system of medicine.

4.5 Bundled supplies of two or more taxable goods or services, one of which is identifiable as principal supply within the meaning of section 2 (90) of the GST Act, is defined as 'composite supply' under section 2 (30) of the said Act if they are naturally bundled and supplied in conjunction with one another in the ordinary course of business. All other bundled supplies are clubbed under the term 'mixed supply.'

4.6 It appears from the submissions of the Applicant that its 'phytotherapy' combines application of plant-based preparations with services having some therapeutic value. If the preparations applied are manufactured exclusively in accordance with the formulae described in any authoritative book of Ayurveda specified in the First Schedule of the Drugs and Cosmetics Act, 1940, for use in the diagnose, treatment, mitigation or prevention of specific disease or disorder, they can be called ayurvedic medicine [refer to section 3 (9) of Drugs and Cosmetics Act, 1940] and the treatment provided may be considered a recognised system of medicine in India.

4.7 The Applicant's submissions, however, do not clarify or claim that its plant-based preparations are manufactured exclusively in accordance with the formulae described in any authoritative book of Ayurveda specified in the First Schedule of the Drugs and Cosmetics Act, 1940. It does not claim that the persons administering the plant-based preparations are 'authorised medical practitioners' in Ayurveda within the meaning of Para No. 2 (k) of the Exemption Notification. The Applicant has not clarified whether these persons possess the medical qualification included in the Second Schedule of the Indian Medicine Central Council Act, 1970 and registered under the said Act as medical practitioners.

4.8 Under the circumstances, this Authority cannot accept the Applicant's claim that it is a clinical establishment offering treatment in the recognised ayurvedic system of medicine. Its supplies are not, therefore, health care service by a clinical establishment, as defined under Para No. 2(s) of the Exemption Notification. Applicant's supply is, therefore, not exempt

---

under Entry No. 74 of the Exemption Notification. It needs to remain registered, as its liability to pay GST does not cease.

Based on the discussion above, we rule as under


#### RULING

The Applicant's supply is not exempt under Entry No. 74 of the Exemption Notification. It, therefore, needs to remain registered, as its liability to pay GST does not cease.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

  
(SUSMITA BHATTACHARYA)  
Member

West Bengal Authority for Advance Ruling

  
(PARTHASARATHI DEY)  
Member

West Bengal Authority for Advance Ruling

---