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Treading the GST Path XLVIII GST virus infests Columbia Hospitals.

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Every other decision of the Authority for Advance Ruling comes as a bombshell and the recent one in Columbia Asia Hospitals Pvt Ltd – 2018-TIOL-113-AAR-GST is no exception. The tremors caused by this bomb would be felt severely for a long time to come.

Just to recapitulate, different units of a same entity functioning in different States are treated as "distinct persons" under the GST law and supply of goods or services or both between such "distinct persons", even if made without consideration are treated as supply, as per Schedule I of the CGST Act.

It is quite common that multi locational units would have a Corporate office in some State. The Corporate office is common for all the units and caters to the requirements of all units situated in different States. If each unit is treated as a separate cost centre, to evaluate their performance, the corporate office expenses are apportioned to all units, to ascertain the correct profit of each unit. This is only for internal control purposes and since the entity remains as one, final accounts are prepared commonly for the entity.

The first issue is whether when such cost sharing is done between the different units of the same entity, does it amount to supply of any service by the Corporate office to every unit. For example, can it be said that the premises of the corporate office is allowed to be utilised for the purposes of all units and hence the corporate has provided the building for use by all the units, which is deemed as a supply as per Schedule I?

In Columbia Hospital case, the applicant has accepted it to be a supply and paying GST.

But let us examine whether the same is correct.

It may be noted that the legal fiction of treating different units of an entity situated in different States as distinct persons is only for the purpose of GST law and the fact remains that all such units form part of the same entity. Such a deeming fiction was necessitated, so that the Input tax Credit (ITC) chain is maintained. Otherwise, stock transfers between different units would not be liable to GST (as it would not amount to supply normally, in the absence of any consideration) and the ITC chain would be broken.

It may be noted that the concept of "Input Service Distributor" under the erstwhile Cenvat Credit Rules, 2004 are contained in the GST law also and the term is defined in Section 2 (51) of the Act, as "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office.

If the corporate office is situated in a rented premises and the owner of the building is charging GST on the corporate office, the said corporate office can obtain registration as an "Input Service Distributor" and distribute such credit to all its units. Same is the case with all common services received by the Corporate office, the GST paid on which can thus be distributed. If the deeming fiction of "distinct person" is applied here and if a view is taken that in turn the Corporate office is supplying such services to its units, then the very concept of Input Service Distributor would become redundant. The corporate office would avail ITC of the GST charged by various service providers and in turn raise GST invoices on all its units and there is no requirement of distributing such credit through Input Service Distributor. Harmonious construction of a statute, without rendering any part of it as redundant and by resolving the conflict between different provisions in the statute is one of the basic principle of interpretation of statutes.

Further, it may be noted that if a manufacturing unit in Tamil Nadu is stock transferring its goods to its Bangalore Depot, there is a supply of such goods by Tamil Nadu unit to Karnataka Unit, albeit without consideration and by virtue of schedule I, it would become a supply. But when corporate incurs various expenses and apportions them to various units being different cost centres, there is no supply of any service by the corporate office to the units. When corporate office rent is apportioned to all units, it cannot be presumed that the corporate has sub let its premises to the units. Similarly when auditing and legal expenses incurred by corporate office are apportioned to different units, it cannot be presumed that the corporate office has provided such legal and auditing services to all its units. These services are received by the corporate office, for the benefit of the entire entity. The deeming fiction in GST law is only to the extent of treading different units of an entity in different States as distinct persons and there is no deeming fiction to presume existence of supply of any services among the units or between the Corporate office and its units, when cost sharing is done. Hence, it is sincerely felt that treating the cost sharing as a supply is not intended in GST law.

Even when no such cost sharing is done and the accounts are maintained for the entity as a whole, if the view taken by the AAR is applied, it can be said that the corporate office is providing various services to its various units and valuation of such supplies and payment of GST thereon would become a cumbersome compliance.

The issue before the Authority for Advance Ruling was when the employees working in the Corporate office are working for the benefit of units of an entity, can it be said that the corporate office is supplying various services through its employees to its different units, attracting the vice of schedule I?

It is also relevant to note that as per Schedule III of the CGST Act, services provided by employees to employers are not treated as supply. But, the AAR has observed that since the employees of Corporate Office are not employees of other units, which are distinct persons, when Corporate office employees works for the Units, there is supply of service by Corporate office to its units, attracting GST.

It may again be recalled that the legal fiction if "distinct person" is only for GST law and otherwise, the Corporate office and its different units are part of the same entity. It is the duty of the employees working in Corporate office to work for the entire entity. They work only for the Corporate office and the nature of work in Corporate office is of common importance for the entity as a whole. When the employee cost is thus apportioned between all units to determine their profitability, it remains only as a cost sharing and there is no discernible supply of any service by Corporate office to its units. Even otherwise, while deciding whether the employees are employees of Corporate office are also employees of its units, such a question should not be influenced by the deeming fiction of "distinct person" under GST law. Thus even it is held that the employees of Corporate office are working for its units, the employer employee relationship is present between the units and the Corporate office employees also and hence as per Schedule III there is no supply of service by such employees to the different units.

The above ruling of the AAR is sure to create ripples throughout the country. The next question is about the valuation of such supplies. If the receiving unit is entitled for full ITC, there may not be any problem of valuation, as per second proviso under Rule 28 of the CGST Rules. But if the receiving unit is not entitled for any ITC (Being not engaged in any taxable supply) or engaged in both taxable supply and exempt supply the valuation of services supplied by Corporate Office to the units would also become a complex exercise.

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