

**No ITC on inward supplies for in-house hospital providing free medical facilities to employees: AAR**

**Synopsis:**

The Tamil Nadu AAR in the matter of Chennai Port Trust has ruled that the Applicant, providing medical services and medicines as part of mandated rules, is not entitled to take credit of input tax on the inward supply of medicines used in providing free medical facilities to the employees, pensioners and their dependents in the in-house hospital.

**Facts:**

Chennai Port Trust ("**the Applicant**") is engaged in supply of port services and incidental supply of goods like disposal of discarded assets. The Applicant has their own in-house hospital for use by the employees, retirees and their dependents, which is basically, a free centre where all the services and medicines are provided free to the employees. This provision of free medical care is mandatory as per the Regulations made under Major Port Trusts Act, 1963.

In the course of above, the Applicant uses following goods and services -

- Medical and diagnostic equipment;
- Medical apparatus & instruments, medical consumables & disposable items and other machinery installed in the in-house hospital;
- Spares for medical and diagnostic equipment, medical apparatus & instruments and other machinery installed in the in-house hospital;
- Repairing Services of medical and diagnostic equipment, medical apparatus & instruments and other machinery installed in the in-house hospital.

**Issue involved:**

Whether the Applicant is entitled to take input tax credit ("**ITC**") charged on the above-mentioned supply of goods and services which are used w.r.t. in-house hospital?

**Held:**

The Hon'ble Authority of Advance Ruling (AAR), Tamil Nadu, while observing Section 16(1) and Section 17(5)(g) of the CGST Act, 2017 ("**CGST Act**") & Tamil Nadu GST Act, 2017 ("**TNGST Act**") vide **Order No. 32/AAR/2019 dated July 25, 2019, denied ITC** to the Applicant on following grounds:

- The Applicant is maintaining an in-house hospital within its port premises for providing health and medical cover exclusively to its employees and pensioners. The hospital is

only a cost centre and the inward supply of medicine and related services is provided to the employees and pensioners without charging any separate consideration.

- No outsiders are treated except on recommendation by employees and the payment for that is recovered from the salary of such employees. In the case the employees are referred to empanelled hospitals, the costs are borne by the Applicant themselves.
- Evidently, the impugned goods and services are used for providing personal medical care to the individuals who are the employees and pensioners of the Applicant. They are in effect used for personal consumption of the employees, pensioners and dependents.
- Therefore, **as per Section 17(5)(g) of CGST/TNGST Act, ITC is not available for medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for these, which the Applicant is procuring for the consumption of its employees and pensioners and their dependents.**
- Argument of the Applicant to the effect that these are not “goods or services used for personal consumption” as the Applicant pays for the same, does not hold as the fact of who pays for the goods and services is irrelevant to the usage of the said goods and services.

**Our Comments:** As per Section 17(5)(g) of the CGST Act, ITC is not available in respect of goods or services used for personal consumption. Ironically, the extent of term ‘personal consumption’ for the purposes of blocked credit is not defined under the GST Law. This leaves the term open for interpretation by the taxpayers as well as tax collectors, as existent in Pre-GST as well as in GST era

The above ruling is an example of such interpretational issue that are bound to litigation in future. There are many such expenditures incurred by business houses which may fall in between the thin line of distinction between ‘personal’ or ‘business’ consumption. For example, packs of tissue papers put on cubicles of employees – whether it can be said to have used for personal consumption or business purposes?

Going by the above ruling, it may be contemplated that the same is being used for the personal consumption of employees and hence no ITC is eligible, but it is too far-fetched from reality as these expenditures are always meant in the course or furtherance of business. The other school of thought may argue to say that having tissue papers on seats is one of the basic requirements of good hygiene of employees, hence, falling under ambit of business expenses.

**The term ‘personal consumption’ is sure to have divergent interpretations till its actual scope for denying ITC is defined in clear terms.** At the same time, it needs to be appreciated that **ideally what the law mandates as obligatory on employer, the same must not be dragged into the ambit of ‘personal consumption’ to deny ITC.** It is in this respect that

Section 17(5)(b) of the CGST Act was amended w.e.f. February 1, 2019 vide the CGST Amendment Act, 2018, inserting a proviso to provide that ITC in respect of goods or services mentioned therein shall be available where the provision of such goods or services is obligatory for an employer to provide to its employees under any law for time being in force. The above list also includes medical services as one of the eligible services, which is allowable as ITC when provided to employees as a part of obligatory legal requirement.

Hence, the above advance ruling needs to be reconsidered in the light of such provisions, while appreciating the broad-based intent of legislature. **Nonetheless, this triggers the urgent need to identify such expenses which should be avoided for litigation in the guise of 'personal consumption' of employees.**

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**Relevant provisions:**

**Section 16(1) of the CGST/TNGST Act:**

*“(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.”*

**Section 17(5)(g) of CGST/TNGST Act:**

*“(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

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*(g) goods or services or both used for personal consumption;”*

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