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Analysing developments impacting business

INTER-BRANCH SERVICES | EMPLOYEE COST

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Introduction

The Authority of Advance Ruling (AAR) in the state of Karnataka, in its order in Columbia Asia Hospitals Private Limited (the Applicant) dated 27 July 2018, made critical observations concerning the taxability of employee cost at a corporate office under Goods and Services Tax (GST).

Background

The Applicant runs a chain of modern hospitals across India. Accounting, administration and maintenance of IT system are centralised and managed by the corporate office. While the corporate office was recharging the cost of sourced inward supplies like rent on immovable property, consultancy services, communication services, etc. to each hospital on the basis their turnover, the employee cost was not recovered.

The issue before the AAR was whether the cost incurred towards employees working at the corporate office was to be recharged and subjected to GST?

Observations of the AAR

- The employer-employee relationship exists only between corporate office and the employees. The other registered offices are distinct persons and therefore the employees working at the corporate office would not have employer-employee relationship with such other offices. Hence, the provision of Entry 1 of Schedule III of the Central GST Act, 2017 would not apply to service from employee to corporate office.
- Distinct persons are also related persons and therefore supply of goods and services, even if made without consideration would be subject to GST under Entry 2 of Schedule I of the Central GST Act, 2017.
- The value of such services would include all costs, viz. employee cost, etc. at the time of valuation of services provided by corporate office to the other units (distinct entities).

Comment

The views of the AAR that employer-employee relation must exist at distinct person level overturns the contemporary view that such employer-employee relation is relevant only at entity level.

While the ratio by an AAR is binding only on the Applicant, this ruling, if applied by the tax authorities in other cases will result in an upheaval as entire cost including employee cost incurred at the corporate / head office could become susceptible to GST. It may also impact entities with multi-locational presence, whether engaged in making taxable supplies or not.

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