

Taxability of Hospital Services-An Analysis



CA. Virender Chauhan

(a) In a Determination the Commissioner is against the dealer

In Determination No. 35, 59 & 62/CDVAT/2005 dated 17-Mar-2006 in the case of (i) Delhi Voluntary Hospital Forum, C/o Rajiv Gandhi Cancer Institute & Research Centre; (ii) Escort Heart Institute & Research Centre Ltd.; (iii) Indraprastha Medical Corporation Ltd., the Ld. Commissioner held in favour of revenue that the goods supplied/used during the course of treatment of a patient are taxable. This matter is pending in appeal before Hon'ble VAT Tribunal and also a writ petition is pending before Hon'ble Delhi High Court.

In this matter the applicant inter-alia sought determination of the question whether in the facts and circumstances of the case, the combination of medicines, drugs, devices, implants and consumables devised by an expert doctor specially for treating and administering to a particular patient suffering from a disease in the Hospital is a marketable commodity and hence, the 'goods' u/s 2(1)(m) of the Delhi Value Added Tax Act, 2004 and exigible to tax under the provisions thereof?

The AR to the applicant contended that all drugs and medicines are stated to be administered by the Hospitals during tests and treatment of their patients, hence, it is not a 'sale' of these items to them but is a part of medical treatments given by the Hospitals to their patients. Moreover, there is also no legal provision under which the tax authorities could vivisect the healthcare packages in two parts i.e. (a) cost of medicines and implants and (b) services of the doctors etc.

That in support of the contention the Ld. AR placed reliance on a recent judgment of the Supreme Court rendered in the case of Bharat Sanchar Nigam Ltd. v. Union of India [2006] 145 STC 91 (SC), the Court in Para 23 of the judgment observed as under: -

"The second respect in which Gannon Dunkerely has survived is with reference to the dominant nature test to be applied to a composite transaction not covered by Article 366(29A). Transactions which are mutant sales are limited to the clauses of Article 366(29A). All other transactions would have to qualify as sales within the meaning of Sales of Goods Act 1930 for the purpose of levy of sales tax. Of all the different kinds of composite transactions the drafters of the 46th Amendment chose three specific situations, a works contract, a hire purchase contract and a catering contract to bring within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been Constitutionally

permitted in Clauses (b) and (g) of clause 29A of Art. 366, there is no other service which has been permitted to be so split. For example the clauses of Art. 366(29A) do not cover hospital services."

On the other hand, the Ld. DR for the Revenue has opposed to the plea raised by the AR of the applicant and contended that the provisions contained in the contemporary law clearly cover and bring the activities of the applicant Hospital within their fold and therefore, are liable to tax under the DVAT Act, 2004.

The Ld. DR equally placed reliance on the decision of Bharat Sanchar Nigam Ltd. (supra) and placed reliance on the same Para 23 of the judgment which reads as under: -

"if there is an Instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale"

The Ld. DR further relied upon a decision of the Hon'ble Kerala High Court in the case of Malankara Orthodox Syrian Church v. Sales Tax Officer And Another, 135 STC 224, wherein it was held that the running of Hospitals and providing of Healthcare is an organized activity involving engagement of doctors and staff for treatment and supply of the medicines to their patients rather than a doctor or a medical practitioner who himself renders medical service and also dispenses the medicine to his own patients, the authorities cited on behalf of the applicants hardly apply.

In the case of an individual doctor or a medical practitioner, he is supposed to be a qualified medical man himself but in the case of Hospitals, it is not true because they are owned by companies, partnership concerns, individuals, trusts and other bodies who may not have any medical qualifications, nor do they have any direct contacts with their patients. As normally observed and seen, they run the hospital services as a 'business' rather than a 'profession' as is the case of a doctor. The volume, frequency and continuity or regularity of transaction in regard to purchase and sale of medicine by Hospital will be such that it will answer the definition of 'dealer' under the Act beyond any doubt.

That in arriving at the conclusions, the Hon'ble Kerala High Court was pleased to reply upon and follow the authority on Hon'ble Apex Court in the case of Raipur Manufacturing Co. Ltd. 19 STC 1 in the following terms: -
"Moreover, in the definition clause of "dealer", the supply of goods

in the course of rendering service is not limited to food and articles for human consumption alone. Further, it is also not possible to compare the case of supply of food as part of service in a hotel and supply of medicine in the course of treatment is not just incidental but it is the main and integral part of treatment and supply by itself or sale of medicine as such is part of business in the hospital. Hospitals independently bill and charge for the medicines supplied and going by the value of medicines involved in treatment, it is the main component of the cost to the patient and it is not an incidental transaction at all. Therefore, such of the hospitals which are supplying medicines of the value in excess of the turnover for which registration is required, i.e. Rs. 2 lakhs in year, are liable to be registered under the Act."

The Ld. DR further contended that the observations made by the Hon'ble Apex Court in Para 23 of the judgment in the case of Bharat Sanchar Nigam Ltd. (supra) is not the conclusion but merely an obiter-dicta, hence is of least significance in the present matter.

Determination

Therefore, in view of the detailed discussion made above, the legal position prevailed and the provisions of law as they stand on date, this Court is of the considered opinion that the applicant Hospitals are 'dealers' within the term used in section 2(j) of the DVAT Act, 2004 and the 'costs' recovered by them from the patients in respect of medicines, drugs, implants and medical devices supplied/administered or fitted to the bodies of the patients respectively during tests and the treatments which invariable are goods, are liable to tax @ 4% under Entries Nos. 16 and 92 reading as "Drugs and medicines including vaccines, syringes and dressings, medicated ointments produced under a drug licence, light liquid paraffin of IP grade" and "Medical equipments/ devices and implants" respectively of the Third Schedule of the Act. Likewise, the 'costs' of supplies of diets, food and beverages made by the Hospitals to their indoor patients against payments and also the 'proceeds' recovered by the Hospitals by way of sale of unusables and unserviceable goods and the stores too are exigible to tax at the applicable rates under the DVAT Act, 2004. It is, therefore, so held and the applications stand disposed of in these terms.

(b) Medicines etc. supplied while imparting Hospital Services not taxable-Jharkhand High Court/ SLP rejected by the Supreme Court

That in the case of Tata Main Hospital v. The State of Jharkhand & Ors., 2008 (2) JCR 174 Jhr dated 7-Sep-2007, the Hon'ble Jharkhand High Court dealt with a writ petition wherein the petitioner prayed for the declaration that the supply of medicines, surgical items, vaccines, X-ray items etc. which are supplied by the petitioner to its indoor patients during the course of their

treatment is not a transaction which comes within the meaning of "Sale" as defined under Section 2(t) of the Bihar Finance Act, 1981 and, therefore, is not taxable under the said Act.

The Hon'ble Court, considering the facts of the present case, the argument advanced on behalf of the respective parties and the law in the subject noticed above it is to be held that in the present case, the medicines, which are supplied to the indoor patients are administered in course of treatment to those patients in the TMH. Therefore, it appears that the dominant nature test of contract is to provide medical services and in providing such medical services the medicines are administered, surgical items, X-ray plates and films are used, which are incidental to and a part of the medical services rendered by the TMH to the patients and for that the TMH is realizing charges against the head Pharmacy without giving particulars and break-up as to what is the charge being realized for medicines, what is the charge being realized for surgical items and for X-ray films and plates etc, used in course of treatment to those indoor patients and, therefore, it cannot be said that the medicines, surgical items, X-ray films and plates etc. were sold by the TMH to the indoor patients. In fact the supply of those articles were made by the TMH as a part of service rendered by the TMH during the treatment of the indoor patients and, therefore the transaction cannot be said to 'sale' within the meaning of Section 2(t) of the Bihar Finance Act. SLP Rejected by the Supreme Court: In this matter the SLP preferred by the State of Jharkhand & Ors. in Petitions for Special Leave to Appeal (Civil/ 2008 CC 3652/2008) before the Hon'ble Supreme Court of India were summarily dismissed.

(c) Kerala High Court held against the dealer

In the case of Aswini Hospital (P) Ltd. v. Intelligence Officer [2012] 271 KLR 41 (Kerala), W. P. (C) Nos. 7129/08, 32637/10, of 2012, dated 14-Sep-2012, the Hon'ble High Court held in favour of revenue that the goods supplied by the Hospital are taxable.

(d) Allahabad High Court held in favour of the dealer

In the International Hospital (P) Ltd. v. State of U.P. and Others [2014] 71 VST 139 (All), the Hon'ble Allahabad High Court held that use of stents and Valves as intrinsic and integral element in performance of heart procedure on in-patients at Hospital, therefore, it is not a sale of goods.

Conclusion:

That after making perusal of the law and the authorities cited above, the authors are of the view, that since most of the Hospitals are raising bills separately for consultancy and medicines etc., therefore, the medicines etc. supplied during the course of imparting Hospital services may be exigible to tax under the DVAT Act.

The views expressed herein are personal views of the authors and do not necessarily represent the views of the NIRC.

HELMS OF AFFAIRS

NIRC of ICAI Congratulate CA. Dalip K. Kaul (M.No-083065) who has been appointed as Independent Director on the Board of J & K Bank Limited for the period of 3 Years.



HELMS OF AFFAIRS

NIRC of ICAI Congratulate CA. Rakesh Kumar Gupta (M.No-085074) who has been appointed as Rotation Director on the Board of J & K Bank limited for the period of 3 Years.

