

GIB/KR/SANJOSE/18-01-2019 /HC-101

High Court Category : Supply

State : Kerala

Order No.: GIB/KR/SANJOSE/18-01-2019 /HC-101

Name of Entry :
Sanjose Parish Hospital

Date : 18-01-2019

Breif Issue :

Facts & Issue of the case

Sanjose Parish Hospital had raised question before the Division bench of Kerala High court by virtue of a reference order dated 13.04.2018 that whether the medicines supplied, implants carried out, the consumables used and surgical tools exclusively used in a particular procedure, as part of treatment of patients in a hospital, the price of which is recovered by way of bills from the patients are ' sale of goods' as contemplated by the legislation levying such tax; herein the Kerala Value Added Tax Act, 2003 ["KVAT Act"].

Decision of Advance Ruling Authority :

Decision:

It was held/decided by three panels of judges that:

- The three contracts - works contract, hire purchase contract and catering contract – (along with other transactions) were deemed to be sales under Article 366(29A) by an amendment to the Constitution. That was very clear as per the law that the position even after the said amendment, with respect to transactions of a composite nature based on an indivisible contract, were not covered under the specific clauses (a) to (f). The position as to other composite contracts remained the same and there could be no separation of a composite, indivisible transaction so as to tax the transfer of goods, if at all there is such a transfer in the course of such composite contract or the service rendered - The sale element in composite, inseparable contracts which are covered by the six sub-clauses of Article 366(29A) can be separated and subject to sales tax. With respect to all other composite transactions, the State would not have such power to distinctly tax the transfer of goods forming part of a composite contract or a rendering of service.
- With respect to hospital services, it was difficult to observe that the sale of drugs, implants and other consumables are a part of the medical treatment rendered. There is no identity of the medicines or consumables or implants, as it does not lie in the mind or mouth of the patient to identify the drugs to be administered during the treatment.

Though a patient on his volition could refuse to take a drug, he cannot demand, as a matter of right, that a drug be administered to him during the medical treatment. A demand of that nature will not be complied with by either a medical practitioner or a hospital, the latter of whom dispenses medicines only in accordance with the directions of the attending Physician or Surgeon - The cost of the implants, consumables or the drugs is irrelevant insofar as deciding what is the dominant nature of the transaction or service rendered to the patient in a hospital, which, without any doubt, is the therapeutic treatment rendered. The patient has no control or say, has limited control, on the procedures taken in the course of the treatment, the drugs administered, and the consumables used.

Hence the respective High Court intends that supply of medicines, consumables, and implants provided by the hospitals to in-patients during the medical treatment is not subject to tax as same would constitute composite supply and direct the Registry to place the matters before the Division Bench for consideration of the individual cases.