



RECENT JUDGMENT BY HON'BLE GUJARAT HIGH COURT FOR LEVY OF VAT ON SILENT SALE BY HEALTHCARE ESTABLISHMENTS- ITS IMPACT UNDER GST REGIME

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Dear clients/readers,

Recently, the Hon'ble Gujarat High Court in the case of BANKERS CARDIOGY PVT LTD & Ors. vide its judgment dated 25.07.2025, inter alia, held that medicines/consumables/prosthetics/ implants etc. consumed by the patients, even if indoor patients admitted in the hospital, are liable to VAT as sale of goods by hospital to them.

The primary issue in the batch of petitions before Hon'ble Gujarat High Court, was whether supply of medicines, implants, stents, consumables, etc. during treatment of indoor patients in a hospital amounts to a "sale" liable to VAT under the Gujarat Value Added Tax Act, 2003 (GVAT Act), and whether clause 2(23)(g) of the Act is ultra vires the Constitution.

In the context of Section 2(23) of the GVAT Act, which defines 'sale' broadly and includes clause (g) to the effect that sale includes:

"Supply of goods by way of or as part of any service or in any other manner whatsoever..."

The State used this clause to argue that healthcare services combined with delivery of goods fall within the definition of a works contract — invoking Article 366(29A) of the Constitution of India (concept of "deemed sale") and taxing only the goods component to VAT, which was approved by Hon'ble Gujarat High Court.

The Court held that post the 46th Constitutional Amendment, the scope of 'works contract' was expanded to cover all composite contracts including hospital services involving transfer of goods.



By applying a broad interpretation, it concluded that rendering medical service along with supply of goods constitutes a works contract. Article 366(29A)(b) permits taxation of the goods part irrespective of whether the contract is indivisible. The reasoning to tax medicines, implants, stents, prosthetics, consumables, etc. is at Para 100 to 107 of the said judgment, as to why the same should attract VAT levy even when rendered as part of healthcare service.

The present article is limited to examining whether this judgment, as it stands today, can affect similar transactions under GST regime, including any service activity where goods are consumed and conveyed to service availer directly or indirectly, too will be subject to GST separately as sale of goods and separately as service provision activity.

When it comes to GST regime, there is a specific concept enunciated vide statutory provisions, that of “composite supply”. Composite supplies (Sec 8) are taxed as per principal supply. Healthcare services to in-patients are fully exempt under Entry 74 of Notification No. 12/2017-CT(R). CBIC Circular 32/06/2018 clarifies that medicines, food, implants etc. supplied to inpatients form part of the exempt composite supply.

There was no such concept of “composite supply” under VAT regime. Instead, Article 366(29A) of the Constitution of India specifically permitted to tax the sale component under composite works contract, which involved both labour and goods being sold directly or indirectly.

The author is consciously not going into the issue whether medical treatment or procedures as was the subject matter of the dispute before Hon’ble Gujarat High Court constitutes works contract within the meaning of Article 366(29A) or not, in deference to the judicial authority vested in the judicature of Hon’ble High Court, however, when it comes to GST regime, the very structure of the GST legislation, including the Constitutional amendments made for this purpose, enable the Legislature to treat a supply as either supply of goods or supply of



service, and there is no such concept of “silent sale” or “deemed sale” unlike the erstwhile Service Tax and/or VAT regime anymore.

In fact, the Learned Advocate General representing the State of Gujarat in the above matter himself submitted, as observed at Para 63 of the said judgment that:

“...under the GST Act, there is a concept of "composite supply" and further, the GST Act has marked a significant advancement in cooperative federalism by enabling the Centre and States to levy taxes on goods and services concurrently, by merging various taxes including Service Tax Act and Sales Tax Act. Therefore, the said GST Act cannot be compared with VAT Act 2003, more particularly for the aspect of "deemed sale". It was therefore submitted that this is more particularly in view of the fact that as per the provisions of Sections 2(30), 2(74), 2(90) and 8 of the GST Act read with entry 6 of Schedule II to the GST Act, for ascertaining the tax liability on the composite supply, the tax is to be considered on the principal supply involved in the said composite supply. It was submitted that after the enactment of the GST Act, with respect to the “composite supply” of goods and services, the dominant intention involved therein in the manner of principal supply has been incorporated, and hence, virtually, the era of pre-46th Constitutional Amendment has been brought back with respect to “composite supply”. Therefore, the above-referred Notifications, Circulars and Advance Rulings cannot be relied upon for evaluating the issues raised in these petitions, which are admittedly with respect to post-46th Constitutional Amendment period, where the aspect of "deemed sale" is provided and for that, "dominant intention" test was given a go-by.”

Not only this, the contents of Para 110 to 112, it is tacitly held by Hon’ble High Court that “works contract” under GST regime is much restrictive and limited to immovable property construction/erection and commissioning etc. alone, unlike the position under erstwhile VAT regime. In fact, Para 112 categorically specifies that no GST would be charged on such activity after 1.7.2017:



“112. It is for this reason that health services have been specifically exempted under the Finance Act, 1994 as well as under the GST Act but at the same time, it cannot be said that the health services involving the implanting of prosthetics or other artificial parts inside the body of patient were either outside the purview of the tax levy under VAT Act or were exempted under any notification.”

In the considered view and opinion of the author, the above judgment should not result in any GST liability on supply of goods separately, as if healthcare service supply includes sale of various goods such as medicines, implants, stents, prosthetics, consumables, etc. since GST law has the specific concept of “composite supply”, which was not so in case of VAT legislation. It is in the normal course of business and a generally accepted practice, for a healthcare establishment, to provide medicines, implants, stents, prosthetics, consumables, etc. alongwith healthcare service per se. Even if they specify the price for medicine, implants, stents, prosthetics, consumables, etc. separately, the principal supply remains of healthcare supply. It is not a case of mixed supply as well. There is a fine distinction between healthcare service and cosmetic treatments, which too may involve medicine, implants, consumables, etc. and which is generally taxed to GST as being different from healthcare service.

Surely, the concept of composite supply is not restricted to only healthcare service, which may include medicine, implants, stents, prosthetics, consumables, etc. consumed/provided to patients in the course of providing healthcare services. It includes almost all types of transactions wherein it is common to provide goods in the course of providing services, as part of a single composite activity. This will include construction service/ restaurant or banquet services / Comprehensive machine / equipment maintenance contract / beauty parlour service (which consumes cosmetics while rendering services) etc. to name a few. The above judgment surely will not enable revenue to lift the veil and start taxing consumables / cosmetics at higher or different rate, as if it is sale of goods, compared to rate applicable to service charges per se.



This would also be in line with the judgment of Hon'ble Apex Court in the case of Mohit Minerals P. Ltd. 2022 (61) G. S. T. L. 257 (SC) wherein it was held that while importing the goods, ocean freight forms part of composite supply of goods and even if it is a separate service to be taxed under reverse charge basis, it cannot be taxed separately as a service in the course of importation of goods, which per se is a composite supply of goods.

Rest assured, in terms of the specific provisions contained in GST laws as well as in line with the clarification issued by the CBIC Circular No. 32/06/2018, healthcare service continues to be exempt under GST even if some medicines, implants, stents, prosthetics, consumables, etc. are consumed during the process and its ownership/possession if passed on to the in-house patients.

The views expressed in this article are strictly personal and aimed solely at sharing knowledge.

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