

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	25.02.2020
Pronounced On	28.05.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2982 to 2987 of 2012, 3476 to 3479 of 2012,
12137 to 12140 of 2012 and 32137 to 32140 of 2012

and M.P.Nos.1 to 1 of 2012 in all W.Ps. and

M.P.Nos.2 to 2 of 2012 in W.P.Nos.32137 to 32140 of 2012

1 MIOT HOSPITALS LTD
REP BY ITS MANAGING DIRECTOR
P.V.A. MOHANDAS
NO. 4/112 MOUNT POONAMALLEE ROAD,
MANPAKKAM, CHENNAI 89.
... PETITIONER in WP No.2982 to 2987 of 2012

1 M/S.APOLLO HOSPITAL ENTERPRISES LIMITED,
III FLOOR ALI TOWERS G BLOCK,
NO.55, GREAMS ROAD, CHENNAI-6.
... PETITIONER in WP No.3476 to 3479 of 2012

1 M/S.FORTIS MALAR HOSPITALS LTD.,
REP. BY ITS FINANCIAL CONTROLLER,
NO.52 FIRST MAIN ROAD, GANDHI NAGAR,
ADYAR, CHENNAI-20.
... PETITIONER in WP No.12137 to 12140 of 2012

1 SAVEETHA MEDICAL COLLEGE AND HOSPITAL,
REP. BY ITS DEAN DR.T.GUNASEKARAN,
SAVEETHA NAGAR, THANDALAM,
CHENNAI- 602 105
... PETITIONER in WP No.32137 to 32140 of 2012

VS

1 THE STATE OF TAMILNADU
REP BY ITS SECRETARY,
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT,
FORT ST.GEORGE,
CHENNAI 9.

2 THE ASSISTANT COMMISSIONER (CT),
ALANDUR ASSESSMENT CIRCLE,
NO.12 VEDAGIRI STREET,
ALANDUR, CHENNAI 16.

... RESPONDENTS in WP No.2982 to 2987 of 2012

1 THE STATE OF TAMIL NADU,
REP. BY ITS SECRETARY,
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT,
FORT ST. GEORGE,
CHENNAI-9.

2 THE ASSISTANT COMMISSIONER (CT),
ADYAR I ASSESSMENT CIRCLE,
CHENNAI-28.

... RESPONDENTS 1 & 2 in
WP No.3476 to 3479 of 2012 and
W.P.Nos.12137 to 12140 of 2012

1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY,
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT,
FORT ST. GEORGE,
CHENNAI-9.

2 THE ASSISTANT COMMISSIONER (CT),
ADYAR I ASSESSMENT CIRCLE,
CHENNAI-28.

... RESPONDENTS in WP Nos.12137 to 12140 of 2012

1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY,
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT,
FORT ST. GEORGE,
CHENNAI-9.

2 THE COMMERCIAL TAX OFFICER,
SRIPERUMBUDUR ASSESSMENT CIRCLE,
VARADHARAJAPURAM-602 103,
KANCHEEPURAM DISTRICT.

... RESPONDENT in WP No.32137 to 32140 of 2012

Prayer in WP Nos.2982 to 2987 of 2012:

Writ Petitions filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for and quash the impugned proceedings of the 2nd respondent issued in RC/2011-B1 TIN/33210842227/2006-07 dated 20.01.2012, RC/2011-B1 TIN/33210842227/2007-08 dated 20.01.2012, RC/2011-B1 TIN/33210842227/2008-09 dated 20.01.2012, RC/2011-B1 TIN/33210842227/2009-2010 dated 20.01.2012, RC/2011-B1 TIN/33210842227/2010-2011 dated, 20.01.2012, RC/2011-B1 TIN/33210842227/2011-2012 dated 20.01.2012 and to forbear the respondent from levying VAT under the TN VAT Act, 2006 on the package rates that are charged for rendering professional services by way of surgeries.

Prayer in W.P.Nos.3476 to 3479 of 2012:

Writ Petitions filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records in the impugned proceedings of the second respondent vide TIN/ 33900860423/ 2007-08 dated 25.1.2012, TIN/ 33900860423/ 2008-09 dated 25.1.2012, TIN/ 33900860423/ 2009-10 dated 25.1.2012, and TIN/ 33900860423/ 2010-11 dated 25.1.2012, respectively quash the same and direct the second respondent to forbear from levying VAT under the TNVAT Act, 2006 on the package rates that are charged for rendering professional services by way of surgeries, in-patient treatment.

Prayer in WP Nos.12137 to 12140 of 2012:

Writ Petitions filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records in the impugned proceedings of the 2nd respondent vide TIN/33070863644/2008-2009 dated 31.01.2012, TIN/33070863644/2009-2010 dated 31.01.2012, TIN/33070863644/2010-2011 dated 31.01.2012, TIN/33070863644/2011-2012 dated 31.01.2012 respectively, quash the same and direct the second respondent to forbear from levying VAT under the TNVAT Act, 2006 on the package rates that are charged for rendering professional services by way of surgeries, in-patient treatment.

Prayer in WP Nos.32137 to 32139 of 2012:

Writ Petitions filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the Impugned Proceedings of the Second Respondent herein made in R.C. No.322/2012 (2009-10) dated 12.6.2012, R.C. No.322/2012 (2010-11) dated 12.6.2012, and R.C. No.322/2012

(2011-12) dated 12.6.2012, respectively and quash the same and consequently forbearing the 2nd respondent herein from levying and collecting the taxes on implants, medicines, used for patients and rendering Diagnostic Services on X-Ray Films, CT Films, MRI Films for inpatient treatments and other allied medical services to the patients at the petitioner Medical College Hospital.

Prayer in WP No.32140 of 2012:

Writ Petitions filed under Article 226 of Constitution of India praying to issue a Writ of declaration declaring that the Professional Services, rendered by the Doctors of Petitioner Medical College Hospital under the nature of Diagnostic Services on X-Ray Films, CT Scan Films, MRI Films with supply of medicines and implants are used during the course of treatment to patients would not amounts to transfer of property in goods or an incident of contract of services under the scope of "Works Contract" as per Article 366 (29A)(b) of the Constitution of India and under Section 2(33) of the TNVAT Act 2006.

For Petitioner :Mr.P.R.Renganathan for
M/s.R.Raghavan and N.Murali
(in WP Nos.2982 to 2987 of 2012)

Mr.K.Vaitheeswaran
in W.P.Nos.12137 to 12140 of 2012
and 3476 to 3479 of 2012

- No appearance in
W.P.Nos.32137 to 32140 of 2012

For Respondents
(in all) :Mr.Mohammed Shaffiq,
Special Government Pleader
Assisted by Mr.A.N.R.Jayaprathap,
Government Advocate

C O M M O N O R D E R

By this common order, all the above-mentioned Writ Petitions are being disposed. In these writ petitions, an interesting and an important question of law arises for consideration as to whether in the course of provision the medical service, petitioners who are private hospitals were liable to pay Value Added Tax (VAT) under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (also referred to as Act for the sake brevity in this Order) on the stents, valves, medicines, x-ray and other goods used while treating their in house patients?

2.The petitioners claim that they do not charge any amount separately towards the cost of these items and charge a consolidated amount from the patients towards cost of medical treatments and it is inclusive of all the expenditure incurred by it and therefore the respondent is not entitled to issue the impugned notices.

3.By the impugned notices, the respondent has called upon the petitioners to pay Value Added Tax (VAT) on the purported deemed sale of stents, valves, hip replacement and knee replacement etc. in the course of provision of medical services by the petitioners as "works contract" within the meaning of Section 2(43) of the Tamil Nadu Value Added Tax Act, 2006 chargeable to tax under Sections 5/6 of the said Act.

4. In all these Writ Petitions, the respective petitioners have challenged the impugned notices issued under Section 27 of the TNVAT Act, 2006 to reopen the completed assessment made under Section 22(2) of the TNVAT Act, 2006 on the ground that the petitioners have rendered "works contract" within the extended meaning of definition of "sale" under Section 2(33) of the TNVAT Act, 2006, chargeable to tax under Section 5/6 of the said Act.

5. The petitioners are corporate bodies and persons running hospitals and are providing expensive Medical/Health services to their inpatients. In the course of provision of such services, they have implanted implants such as Ortho Implants, Plates, Stents, Valves, Pace Makers, intra-aortic balloon pump etc, (collectively referred to as Prosthetics) in the body of the patients for treatment by surgery and provided such other ancillary services such as MRI Scan Films, X-Ray Films and others. This has been proposed to be taxed as "works contract" by the respondent within a meaning of Section 2(43) of the TNVAT Act, 2006 to propose tax from the petitioner.

6. The petitioner in W.P.(MD) Nos.2982 to 2987 of 2012 viz., MIOT Hospitals Ltd., represented by its Managing Director P.V.A.Mohandas has challenged the following pre assessment notices:-

Sl.No.	W.P.No.	Assessment year	Notice dated	Proposed Tax Rs.
1.	2982/2012	2006-07	20.01.2012	22,95,051
2.	2983/2012	2007-08	20.01.2012	75,63,874
3.	2984/2012	2008-09	20.01.2012	1,04,85,661
4.	2985/2012	2009-10	20.01.2012	1,19,25,188
5.	2986/2012	2010-11	20.01.2012	1,41,30,527
6.	2987/2012	2011-12	20.01.2012	19,598

7. The petitioner in W.P.(MD) Nos.3476 to 3479 of 2012 viz., M/s.Apollo Hospital Enterprises Limited has challenged the following pre assessment notices:

Sl.No.	W.P.No.	Assessment year	Notice dated	Proposed Tax Rs.
1.	3476/2012	2007-08	25.01.2012	2,330
2.	3477/2012	2008-09	25.01.2012	68,684
3.	3478/2012	2009-10	25.01.2012	2,02,140
4.	3479/2012	2010-11	25.01.2012	51,221

8. The petitioner in W.P.(MD) Nos.12137 to 12140 of 2012 viz., M/s.Fortis Malar Hospitals Limited rep. by its Financial Controller has challenged the following pre assessment notices:

Sl.No.	W.P.No.	Assessment year	Notice dated	Proposed Tax Rs.
1.	12137/2012	2008-09	31.01.2012	2,30,595
2.	12138/2012	2009-10	31.01.2012	43,79,534
3.	12139/2012	2010-11	31.01.2012	62,09,900
4.	12140/2012	2011-12	31.01.2012	30,18,257

9. The petitioner in W.P.(MD) Nos.32137 to 32140 of 2012 viz., Saveetha Medical College and Hospital represented by its Dean Dr.T.Gunasekaran has challenged the following pre assessment notices:

Sl.No.	W.P.No.	Assessment year	Notice dated	Proposed Tax in Rs.
1.	32137/2012	2009-10	12.06.2012	75,492
2.	32138/2012	2010-11	12.06.2012	1,63,914
3.	32139/2012	2011-12	12.06.2012	1,12,307

(The amount mentioned in the last columns pertains to proposal to tax on the alleged sale of medicine, prosthetics and X-ray, MRI and similar items.)

10. Though these cases were listed and argued as a batch, there is no representation on behalf of the petitioner in W.P.Nos.3132 to 3240 of 2012 (Saveetha Medical College and Hospital).

11. There are other issues relating to sales of certain assets. These issues were not argued before this Court. The amounts tabulated above primarily pertain to medicine, prosthetics and on deemed sale of MRI/CT Scan/X-ray films.

12. Though these writ petitions are of the year 2012, the respondents have filed their counter only in W.P.Nos.2982 to 2987 of 2012 (Miot Hospital Ltd.).

13. Learned Counsel for the respondents submits that the counter filed in the above mentioned writ petition may be treated as the common counter in all the above writ petitions, since the issues are common. Therefore, all these cases are taken up together and disposed by this common order. The cases were argued over a period of time and thereafter it was reserved for passing orders on 25.02.2020.

14. At the outset, four different High Courts have already allowed cases under similar circumstances in the following cases:-

- (i) M/s. Tata Main Hospital Vs State of Jharkhand and others, 2007 (9) TMI, [2007 SCC Online Jhar.260]; (2008) 2 JCR 174. The Hon'ble Supreme Court dismissed the appeal preferred by the State of Jharkhand and others by its order dated 10.03.2008 in SLP (Civil)- No.3652 of 2008.
- (ii) M/s. International Hospital Pvt. Ltd., Vs State of UP and others, (2014) TIOL 551 (Allahabad) ; [2014 SCC Online All. 1956].
- (iii) M/s. Fortis Health Care Ltd and other Vs State of Punjab and others, (2015) TIOL 466 (P&H); 2015(2) TMI 2015; and
- (iv) Aswini Hospital Pvt. Ltd., and others Vs Intelligence Officer, Squad No.1, Thrissur and Others, [2019] 61 GSTR 492 Full Bench (Kerala); (Also titled as Sanjose Parish Hospital & other Vs. The CTO, Thrissur - 2019(3) TMI 1017.

15. The counsels for the petitioners in unison relied on these four decisions for a favourable verdict in these writ petitions. They submitted that the issue was longer res-integra as the issue was squarely covered by the ratio of the four High Courts in these four cases.

16. On behalf of the respondent, it was submitted that these decisions have not examined the issue from the perspective of the proposals contained in the respective impugned notices i.e. "works contract". It was therefore submitted that these writ petitions be dismissed by directing the petitioners to participate in the adjudication proceeding before the respondent.

17. I have perused the documents and case laws. These writ petitions ought not to have been admitted in the first place. The petitioners ought to have been relegated to participate in the adjudication proceeding at the time of the admission itself.

18. There, they could have placed their submission and raised their contentions on merits before the respondent and the aggrieved person from such a decision could have taken up the issue before the appellate authorities and eventually before this Court by way of Tax Appeal.

19. Perhaps the petitioners feared adverse orders despite favourable decisions of four High Courts and therefore faced with the prospect of a mandatory pre-deposit before the Appellate Commissioner, they have approached this Court.

20. Since considerable time has lapsed, I am not inclined to relegate the parties to the alternative remedy straight away. I am therefore taking up the cases for disposal on merits on the contentious issue alone.

21. The above four decisions of these four different High Courts are inspired from the observation of the Hon'ble Supreme Court in BSNL Vs UOI (2006)3SCC1;2006(2)STR161.

22. It is the contention of the commercial tax department that there is a "sale" within the extended meaning of the definition of "sale" under Section 2(33) read with 2(43) of the TNVAT Act, 2006 and Article 366, 29(A) clause (b) of the Constitution of India.

23. The petitioners had wrongly claimed benefit of G.O.Ms.No.976/Revenue dated 28.03.1959 read with G.O.Ms.No.343/Revenue dated 11.08.1961 which was wrongly allowed. For the sake of clarity, text of the respective G.O.Ms.No.976 Revenue dated 28.03.1959 is reproduced below:-

"G.O.Ms.No.976 Revenue dated 28.03.1959

Notn S.R.O.A-1966 of 59 dated 28.3.1959 - Gazette dated 1.4.1959, Part I, P.488.

NOTIFICATIONS UNDER SECTION 17

In exercise of the powers conferred by section 17 of the Madras General Sales Tax Act, 1959 (Madras Act I of 1959) and in supersession of all the notifications issued under section 6 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), the Governor of Madras hereby makes the exemption in respect of the tax payable, under the said Madras General Sales Tax Act, 1959 on the sale or purchase of the goods or lass

of goods or by the class of persons or institutions in regard to the whole or part of their turnover specified in column (2) of the Schedule below subject to the conditions and restrictions, if any, specified in the corresponding entry in column (3) thereof.

This Notification shall come into force on the 1st day of April 1959.

SCHEDULE

Serial Number

Description of the sale or purchase and the class of persons and institutions.

Conditions or restrictions subject to which exemption is granted

(1)

(2)

(3)

1.Sales of foods and drinks by hostels and canteens run exclusively for the benefit of students of recognized educational institutions in the State, whether run by the educational institutions themselves or by students committees.

2.Sales of medicines by hospitals, nursing homes and dispensaries run by the Government or by the Medical Practitioners themselves or paid Medical Practitioners and which are dispensing medicines to their patients only, whether consultation fee is charged or not.

24. Though the said exemption was confined only to sale of medicines dispensed by Hospitals, Nursing Homes and Dispensaries run by the Government and/or by the Medical Practitioners themselves, the exemption was wrongly allowed to by the petitioners. Further, the said Government Order was subsequently further diluted by excluding the dispensaries of corporate hospitals run by persons like the petitioner from the purview of G.O. Ms. No. 976/Revenue dated 28.03.1954 read with G.O. Ms. No. 343/Revenue dated 11.08.1961.

25. Mr.Raghavan and Mr.P.R.Ranganathan, the learned counsels appearing for MIOT Hospital submits hospital /medical service cannot amount to "works contract". They submit that "Works Contract" includes any agreement for carrying out for cash, deferred payment or other valuable consideration, building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commission, of any moveable or immovable property and that it is clear from the above definition that there was no "works

contract". Specific reference was made to Paragraphs 43 to 45 from the decision of the Hon'ble Supreme Court in Bharat Sanchar Nigam Ltd., Vs Union of India, (2006) 3 SCC 1 (BSNL Vs UOI for short).

26. In the said case, by way of illustration, an example of treatment of a patient in a hospital in Paragraph 44 was made. It is submitted that the Hon'ble Supreme Court explained the position with reference to a service of a Doctors and a lawyers and other professionals. In the illustration, it was observed that during the course of provision of medical services, when they write out and hand over prescriptions or a drafts of a document to his/her patient or client as the case may be, there is no sale though strictly speaking, with the payment of fees consideration it does pass to the patient or client from the doctor or lawyer in both cases. They submitted that the Hon'ble Supreme Court held that there was not sale of papers for the Sales Tax Authorities to tax the transaction as that of sale. They therefore submit that same logic and reason applies to medicines, MRI/CT Scan and implants and prosthetics etc. They submit that Medical/Health Service is not recognized as a sale or purchase under Art 366 (29A) of the Constitution of India and under Tamil Nadu Value Added Tax Act, 2006.

27. They therefore submit that the test therefore for composite contracts other than those mentioned in Article 366 (29-A) continues to be: Did the parties have in mind or intend separate rights arising out of the sale of goods? If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is "the substance of the contract would be the "dominant nature test" as enunciated by the Hon'ble Supreme Court. It is submitted that the dominant intention of the petitioner was Health/Medical service and not sale.

28. The learned counsel for Miot Hospital Mr. Renganathan, the Learned counsel supporting the arguments of his senior Mr.R. Raghavan learned counsel also referred to the following in addition to the four case laws cited in the beginning of this Order:-

- i. 61st Report of the Law Commission of India.
- ii. Jurisprudence or The Theory of The Law, John W.Salmond, Stevens & Haynes, London, 1902.
- iii. Winfield and Jolowicz on Tort - 17th Edititon, London, Sweet & Maxwell, 2006.

- iv. Law of Tort by P.S.Atchuthen Pillai , Eastern Book Company, Lucknow.
- v. Article by The Law of Property in Ancient Roman Law, Domingo Osle, Rafael, (Jun 12, 2017).
- vi. Ancient Indian Law by Justice M.RamaJois - relevant portions.
- vii. Constitution of India ;
- viii. Indian Penal Code - relevant sections
- ix. Transplantation of Human Organs and Tissues Act, 1994 - S.19
- x. Regina V. Bentham 2005 UKHL 18 (2005) UKHL 18
- xi. State of Tamil Nadu Vs. Arihant Plastic House (2010) 27 VST 192.

29. Mr.Renganathan learned counsel for the petitioner in W.P.Nos.2982 to 2987 of 2012 (Miot Hospitals) further submits that while interpreting the expression "property" in S.2(43) it is trite that one needs to consider the accompanying words and none of the words used therein can be said to allude to work on a human body. He further submits that especially a live human body when indeed, even "fitting out" and "improvement" are not phrases used to describe procedures carried out on a human body.

He submits that contextual exclusion of surgical procedures from the definition of "works contract" is even more compelling when one considers that the legislature which went to considerable lengths to include 11 such words in S.2(43), but did not choose to mention "implant" or "transplant" on human body, which are the words which are used to describe surgical procedures of the nature that is sought to be taxed.

30. He further submits that the intention of the legislature was not to include "surgical procedures" into the sales tax net which is amply clear from the choice of the words used in the definition. He further submits that a living human body even if infected or is challenged is not a "property" and therefore it would be absurd to even hazard a thought that there could be a "works contract" on the body of a living human being.

31. He further submits that substantive civil law is divided into:-

- i. the law of property,

- ii. law of obligations; and
- iii. the law of status.

32. He therefore submits that there is a clear distinction between the legal treatment of "property" and of "persons". Indeed, the very arrangement of chapters in Salmond on Jurisprudence bears out a testimony to the fact that "persons" (in chapter 10) are treated separately from "property". The law thus does not treat persons as "property".

33. It is submitted that while in its widest sense "property" includes all a person's legal rights, this usage however is obsolete in law. Besides, the law has always treated persons and property separately which is also borne out from a sequencing of the provision in the IPC by treating offences relating to persons and those related to property separately. He further submits that even under the Law of Torts, torts relating to the person are treated separately from torts relating to property.

34. He further submits that to treat a live human body as a property is shockingly retrograde and harks back to the pre-colonial era when humans were treated as object and were kept in captivity as slave.

35. He therefore submits that if human body were to be treated as a property, it is an issue which involves sociological, medical, ethical, moral, philosophical, religious, economic issues and it is for the parliament to legislate. Therefore, so until then there cannot be any tax. It is submitted that a human body cannot be subject to "works contract" by going beyond language used.

36. It is further submitted that if human body were property, it would amount to validating suicide, foeticide, prostitution and a host of other immoral activities. Besides S.19 of the Transplantation of Human Organs and Tissues Act, 1994 makes the commercial dealing in human organ an offence punishable. He therefore submits that there is a legislative drift to not to tax. The right to deal is the substratum of any property/proprietary right. When such right has been taken away by another legislation, the arguments that human body/organs is "property" also falls and fails miserably at its very core.

37. He further submits that it would be disingenuous for the State to contend that the human organs are not property for any of the above purposes of S.19 of the Transplantation of Human Organs and Tissues Act, 1994, but property for the purpose of Section 2(43) of the TNVAT Act. To treat a surgical procedure as a "works contract", the State would necessarily have to contend that a living human body, or for that matter even a particular organ, is property and such a contention is

intrinsically abhorrent and would be an absurdity wrapped in an anomaly inside the aforesaid contradiction. If at all body parts are to be "property", it could only be such parts which are detachable and regenerative.

38. It is also submitted that the present enquiry is a positive enquiry rather than a normative enquiry and for the reasons stated above it is submitted that a live human body/part thereof, is not a "property" under the law of the land and in any event for Tamil Nadu Value Added Tax Act, 2006. Therefore, "property" in S.2(43) of the TNVAT Act cannot be said to cover human being or their live/un-detached parts and organs. Thus, no tax may be levied in the score that surgical procedures are works contract.

39. Mr.K.Vaitheeswaran, the learned counsel for the petitioners in W.P.(MD) Nos.3476 to 3479 of 2012 (Appollo Hospitals) and 12137 to 12140 of 2012 (Fortis Malar Hospitals Ltd.) submitted that the impugned notices propose to impose VAT on an erroneous assumption that after the 46th amendment to the Constitution, the Commercial Tax Department is empowered to treat the hospital/medical service as "works contract" even if dominant intention of the contract was to render service. He submits such services are a class apart from those enumerated in Art 366(29A) of the Constitution of India.

40. He submits that Section 2(43) of the TNVAT Act, 2006 which defines the expression "works contract" cannot be made applicable for the services provided by corporate hospitals to its patients since the activities referred to in the said provision pertain to building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property is not applicable to it. He further submits that human being as neither moveable nor immovable properties for the purpose of the aforesaid provisions.

41. He further submits that health care of medical treatment provided to human beings cannot fall within the ambit of movable or immovable property. He submits that a medical procedure or treatment could arise out of an emergency or on preventive advisory. In case a person suffers symptoms, which indicate a heart attack, the patient is rushed to the hospital and immediate treatment is given to provide relief. Subsequently, the cause of the attack is determined by the health care professionals using of non-invasive modern technology. The objective behind a patient seeking an implant or a stent is to have a better and healthier life and be cured from the injury or ailment suffered by the patient.

42. He submits that the hospital's objective is to provide medical treatment and to ensure that the patient is

duly treated and discharged. He submits that there is no profit motive. The Hospitals merely get the amounts reimbursed for the amounts borne by them in procuring the prosthetics.

43. The learned counsel for the Petitioners for Appollo Hospitals and Fourtismallar Hospitals Mr. K.Vaiteeswaran reiterated the submissions based on the four decisions of the High Courts. He also explained the decision of the Hon'ble Supreme Court in BSNL Vs UOI. He submitted that it was an open and shut case and therefore the writ petitions were to be allowed as the issue is no longer res-integra. He referred to the stand of the respondent in Vasan Dental Hospitals Pvt. Ltd., Vs The Assistant Commissioner (CT), Trichy in W.P(MD) Nos. 16234 & 16235 of 2013 dated 29.08.2019 before the Madurai Bench of this Court. He submits that the Respondent had conceded the case on an identical issue.

44. He submits that human beings are Homo Sapiens and thus the form of species. They do not represent movable or immovable property. Section 2(43) of the TNVAT Act defines 'works contract' and the activities referred to therein pertain to movable or immovable property. Human beings are not property and can never be considered as property. In a healthcare service, when a surgery is undertaken or a treatment is provided, which may incidentally involve administration of medicines and drugs or which may involve medical treatment through implants, limbs, stents, hip etc. there is no contract or undertaking for bringing into existence some 'works'.

45. He submits that is not open for the respondent to argue to the contrary in these cases. He submits that as per the decision of the Hon'ble Supreme Court in CCE Vs. Sanju Silk Mills P. Ltd. (2011) 268 ELT 435 SC, the Revenue having conceded a case before Tribunal based on the earlier decision of Tribunal cannot agitate the same issue before the Hon'ble Supreme Court as decision which was unsuccessfully challenged before the Supreme Court and was dismissed. He drew attention to para 3 of the said order, which reads as under:

"3. Accordingly, we are of the opinion that the Adjudicating authority has passed a proper, legal and correct order and that the appellants have not made out a case requiring any interference with the impugned order."

46. The learned counsel further submits that the treatment that is provided to a patient which may involve not only administration of medicines or treatment in the form of fixing implants/ prosthetics cannot be considered as repair or fitment of a movable.

47. The learned counsel for the Appollo/Fortis and Malar Hospital referred to the following cases:

- i. Larsen & Toubro Lt. V. State of Tamil Nadu (2013) 65 VST 1
- ii. Union of India Vs. Kaumudini Narayanan Dalal (2001) 10 SCC 231 (SC).
- iii. Builders' Association Vs. Union of India (1989) 73 STC 370 (SC)
- iv. 4.All Gujarat Federation of Tax Consultants and Others Vs. CBDT (1995) 214 ITR 276 (Gujarat)
- v. 5. M/s.Madras Granite Private Limited Vs. CTO. 2006 146 STC 642 Mad
- vi. 6.Judgment of this Court in the case of Madras Bar Association and others V. Central Board of Direct Taxes and Others - (1995) 216 TLR 240 (Mad).
- vii. Shanti Bhushan Vs. Commissioner of Income-Tax - (2011) 336 ITR 26 (Del).
- viii. State of Andhra Pradesh Vs. Larsen & Toubro Ltd., - (2008) 17 VST 1 (SC).
- ix. Commissioner of Central Excise, Mumbai Vs. Johnson & Johnson Ltd., - 2005(188) E.L.T.467(S.C.).
- x. General Health Care Group Ltd. and Commissioners for Her Majesties Revenue & Customs (2016) UKUT 0315 (TCC) (Indivisible).
- xi. State of Madras Vs. Gannon Dunkerely & Co (Madras) Ltd. (1958) 9 STC 353.

48. Learned counsel also referred to the policy of the Government. He drew my attention to the provisions of the Finance Act, 1994. He submits "Health Care" though was brought within the purview of service tax net, yet levy was restricted. He submits after 01.07.2012, health care service was exempted. He further submits that after 01.07.2017 under GST Regime, Health Care is under zero rating and therefore even if tax was charged on the hospitals, such taxes are refundable.

49. The learned counsel appearing for the respondents Mr.Mohammed Shaffiq, Special Government Pleader assisted by Mr.Jayaprathap, Government Advocate referred to the Counter affidavit filed in W.P.No.2982 to 2987 of 2012. He submits that the petitioners are registered dealers. They had filed annual return from 01.01.2007 to 31.03.2011 and had claimed exemption on the entire turnover reported by them. During inspection by the Enforcement Wing Officers, it was noticed that the

petitioners had wrongly claimed exemption under G.O.No.976 dated 28.03.1959.

50. The Government had issued orders that the notifications granting exemption already issued under the Tamilnadu General Sales Tax Act, 1959 shall continue, if they are not inconsistent with the provisions of the Act. The said notification granted exemption on the sale of medicines by hospitals, nursing homes and dispensaries run by the Government or by the Medical practitioners themselves which dispense medicines to their patients only. He submits that the said notification was modified and subsequently it was clarified vide Government Letter No.976/F2/2004 dated 09.11.2005 that the petitioners were not eligible to claim exemption on the sale of medicines while collecting charges for services rendered with transfer of property in goods involved.

51. He submits that the term "sale" defined under Section 2(33) of the Act, with all its grammatical variations and cognate expressions means every transfer of the property in goods other than by way of a mortgage, hypothecation, charge of pledge by one person to another in the course of business.

52. He submits that the petitioners had received consideration under a package and the package included the charges from the stage of registration of the patient till their discharge inclusive of the cost of medicines and surgical disposals and prosthetics used in connection with the recovery of patient and allied services rendered to the patient with State of Government medical equipments apparatus.

53. He submits that the petitioner purchased medicines, surgical disposals, x ray films, chemicals for test report and the cost of medicines prescribed. The value of consumables used are included in deciding the package rate and thus the petitioner had indirectly collected consideration for the sale of medicines and other surgical disposals.

54. The medicines and other surgical disposals are falling under 1 schedule to the Act and taxable at every stage and the claim of the petitioner is not in accordance with the provisions of the Act. Therefore, the impugned notices were issued inviting objections from the petitioners and instead of filing the objections, they had straightaway filed writ petitions without availing the opportunity afforded to them.

55. He further submits that the impugned notice is against the purchases (inputs) of medicines which were utilized while treating the patients as the cost of the treatment was inclusive of the medicines and other items such as X-ray, MRI, CT Scan and Prosthetics which were collected from the patients.

56. Prosthetics such as pace maker stents, valves, artificial knee, shoulder parts, hips pins, rods etc

which were implanted into the patients body resulted in a to "a sale" as there was transfer of property. The "medical implant" such as pacemakers, valves, pins, rods etc. and other implants cost of which are recovered from the patients amounts to sale.

57. Therefore, when the patients are discharged, there is a transfer of property in goods in some form or the other which amounts to a sale under Section 2(33) of the Tamilnadu Value Added Tax Act, 2007. As the prosthetics (implants) are property are bought and sold and are tax under Entry 81 of Part-B of the I schedule taxable at the rate of 5% under Tamilnadu Value Added Tax Act, 2006, the petitioner may be liable to tax.

58. He further submits that by virtue of Sub Clause (b) of clause 29(A) of Article 366 of the Constitution of India, a deemed transfer of property can be presumed when the implants used in the patient are billed for whether in package or separately.

59. He submits that the term "sale" as defined on Section 2(33) of the Act includes goods in 'any form'.

60. It is submitted that the petitioners have the facility of X-rays, C.T., MRI films for testing purpose. It is submitted that consumables are utilized for such services and therefore there is a transfer of property when these services are provided to the patient. He submits that these transaction are liable to be taxed under entry 51 of Part C of First Schedule of Tamilnadu Value Added Tax Act, 2006.

61. It is submitted that the sale of these Medical implants/ prosthetics such as Ortho Plates, Surgical Plates, Screws, Knee replacement, Hip Replacements, Cardiac Implants, Stents, Valves, Pace Maker, Intra Aortic Balloon Pump, Pulmonary Ortho Catheter, Prosthetic Valves, Tissue Valves and other implants have not been reported and corresponding sales for which consideration was received from the patients by way of final bill. It is submitted that discharge receipts were also not disclosed and were fully suppressed while filing their respective monthly returns. Since the scheme VAT enables to officer to accept the monthly returns, upon inspection, it was found that there is whole scale suppression and failure to report these supply of medical implants/prosthetics for which consideration was received from the patients which would amount to transfer of ownership for the purpose of assessment.

62. He further submits that the assessment was proposed only on the sale of medicines and surgical disposals and films as the scheme of package includes cost of medicines and other items and the petitioner had purchased but had not declared the taxable turnover correctly and paid the tax.

63. Though the package rate varies while giving treatment, the dosage of medicine and surgical disposals for the recovery of the patients are essential and the notice proposed tax only on the sale of medicines and surgical disposals & films. It is submitted that the scheme of package included the cost of medicines and others and therefore VAT was due to the State Exchequer and the petitioner's have purposely avoided only on the ground the treatment was given under package scheme.

64. According to the definition of sale, the disposal of asset by the petitioner for any valuable consideration is incidental or ancillary to the business activity of the petitioner and it is liable to tax. The respondent issued notice of assessment only on the sale value of medicine and others and disposal of assets as declared in the balance sheet.

65. It is further submitted that the petitioners have not specifically maintained and declared the cost of medicines and others in the bill and in the absence of details, the respondent has no other way except to arrive at the sale value of medicines after taking into account the purchase value and profit. There is a transfer of property in medicine from the petitioner to the patient for a valuable consideration. Under Section 22 of the Act, assessment order has to be passed accepting the returns filed by the dealers which is provisional and the officers are empowered to reopen the assessment under Section 27 of the Act where there is an escapement of assessment and the notice is within the scope of the provisions of the Act.

The petitioner has not rendered purely services only and they had acted as a dealer by selling the medicines to the patients under the scheme of package and the decision relied on by them was not relevant to the case since in that case, the dealers are rendering only services without any transfer of property in goods. Therefore, he prayed for dismissal of these writ petitions.

66. Learned counsel appearing for the respondents has placed the following decisions:

- i. State of Madras Vs. Gannon Dunkerley & Co. (Madras) Ltd. - (1958) 9 STC 353 (SC)
- ii. The Assistant Sales Tax Officer and others V. B.C. Kame, Proprietor Kame Photo Studios - (1977) 1 SCC 634 (SC)
- iii. Rainbow Colour Lab and another V. State of M.P. and Others - (2000) 2 SCC 385 (SC).
- iv. Associated Cement Companies Ltd. V. Commissioner of Customs - (2001) 4 SCC 593;
- v. Municipal Corporation of Delhi V. Gurnam Kaur - (1989) 1 SCC 101.

- vi. Catholic Syrian Bank Ltd. V. Commissioner of Income Tax, Thrissur (2012) 3 SCC 784;
- vii. M/s.GannonDunkerley and Co. and Others V. State of Rajasthan and Others - (1993) 1 SCC 364.;
- viii. Regional Director, Employees' State Insurance Corporation Vs. High Land Coffee Works of P.F.X.Saldanha and sons and another - (1991) 3 SCC 617.
- ix. Commissioner of Income Tax, Madras Vs. G.R.Karthikeyan, Coimbatore - 1993 Supp (3) SCC 222.
- x. C & E Comrs. V. Wellington Hospital (1995) BVC 245.
- xi. Commissioner, Central Excise and Customs, Kerala V. Larsen Toubro Limited - (2016) 1 SCC 170.
- xii. State of Madras V. Richardson and Cruddas Ltd. (1968) 21 STC 245.

67. I have considered the arguments advanced on behalf of the respective petitioners and the respondent. I have also perused the provision of the Tamil Nadu Value Added Tax Act, 2006 and the provisions of the Constitution. I have also perused and considered the case laws cited on behalf of the petitioners and the respondent. I have also perused the respective provisions under the respective statutes under which the issue arose in four High Courts which were strongly relied for and on behalf of the Petitioners for a favorable verdict.

68. As observed earlier, the core issue in these cases is whether there is a provision of "works contract" by the Petitioners within the meaning of Section 2(43) of the Tamil Nadu Value Added Tax Act, 2006 and therefore a "deemed sale" for the purpose of Section 2(33) of the Act to attract levy/tax under Section 5/6 of the said Act in the course of the provision of medical/health services to patients admitted in the hospital as in-patients?

69. There are other issues which have been raised in the impugned notices. They are not discussed in this order and the issue is left open to be decided by the respondent. The present order is confined only to medicines, MRI/X-Ray and implants and prosthetics by the petitioner while treating in-patients on their hospitals.

70. The definition of "sale" in Section 2(33), "works contract" in Section 2(43) and the two charging provisions for

levy of tax on "works contract" namely Section 5 and Section 6 from the Act are reproduced below for an easy reference:-

Section 2 (33): "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes ,-

- i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
- ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- iii) a delivery of goods on hire-purchase or any system of payment by instalments;
- iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- v) a supply of goods by any un-incorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

Explanation I.- The transfer of property involved in the supply or distribution of goods by a society (including a co-operative society), club, firm or any association to its members, for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

Explanation II.- Every transfer of property in goods by the Central Government or any State Government for cash or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

Explanation III.- Every transfer of property in goods including goods as unclaimed or confiscated or unserviceable or scrap surplus, old, obsolete or discarded materials or waste products, by the persons or bodies referred to in Explanation III in clause (15) of section 2 for cash or for deferred payment or for any other valuable consideration whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

Explanation IV.- The transfer of property involved in the purchase, sale, supply or distribution of goods through a factor, broker, commission agent or arhati, del credere agent or an auctioneer or any other mercantile agent, by whatever name called, whether for cash or for deferred payment or other valuable consideration, shall be deemed to be a purchase or sale, as the case may be, by such factor, broker, commission agent, arhati, del credere agent, auctioneer or any other mercantile agent, by whatever name called, for the purposes of this Act.

Explanation V.-

(a) The sale or purchase of goods shall be deemed for the purposes of this Act, to have taken place in the State, wherever the contract of sale or purchase might have been made, if the goods are within the State-

(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation.

(b) Where there is a single contract of sale or purchase of goods, situated at more places than one,

the provisions of clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places.

Explanation VI.- Notwithstanding anything to the contrary contained in this Act, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place -

(a) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser, or

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid-

(i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal at another rate, or

(ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate, or

(iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him on behalf of his principal.

Section 2(43): "works contract" includes any agreement for carrying out for cash, deferred payment or other valuable consideration, building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning, of any movable or immovable property;

Section 5: Levy of tax on transfer of goods involved in works contract.-

(1) Notwithstanding anything contained in this Act, but subject to the provisions of this Act, every dealer, shall pay, for each year, a tax on his taxable turnover, relating to his business of transfer of property in goods involved in the execution of works contract, either in the same form or some other form, which may be arrived at in such manner as may be prescribed, at such rates as specified in the First Schedule.

Explanation. - Where any works contract involves more than one item of work, the rate of tax should be determined separately for each such item of work.

(2) The dealer, who pays tax under this section, shall be entitled to input tax credit on goods specified in the First Schedule purchased by him in this State.

Section 6: Payment of tax at compounded rate by works contractor.-

(1) Notwithstanding anything contained in this Act, every dealer, 1[other than the dealer who purchases* [or receives] goods from outside the State or imports goods from the outside the Country] may, at his option, instead of paying tax in accordance with section 5, pay, on the total value of the works contract executed by him in a year, tax calculated at the following rate, namely:-

(i) Civil works two per cent of the total contract contract: value of the civil works executed;

(ii) Civil maintenance two per cent of the total contract works contract : value of the maintenance works executed;

(iii) All other works 2[Five] per cent of the total contract contracts: value of the works executed.

(2) Any dealer, who executes works contract, may apply to the assessing authority along with the first monthly return for the financial year or in the first monthly return after the commencement of the works contract, his option to pay the tax under sub-section (1) and shall pay the tax during the year in the monthly instalments and for this purpose, he shall furnish such return within such period and in such manner as may be prescribed.

(3) The option exercised under sub-section (1) shall be final for that financial year.

(4) A dealer, exercising option under sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the rules made thereunder except the records in original of the works contract, extent of their execution and payments received or receivable in relation to such works contract, executed or under execution.

(5) The dealer, who pays tax under this section, shall not 1[collect any amount by way of tax or purporting to be by way of tax and shall not] be entitled to input tax credit on the goods purchased by him.

Explanation.- For the purpose of this section "civil works contract" includes civil works of construction of new building, bridge, road, runway, dam or canal including any lining, tiling, painting or decorating which is an inherent part of the new construction and any repair, maintenance, improvement or up gradation of such civil works by means of fixing and laying of all kinds of floor tiles, mosaic tiles, slabs, stones, marbles, glazed tiles, painting, polishing, partition, wall panelling, interior decoration, false ceiling, carpeting and extra fittings, or any manner of improvement on an existing structure.

71. In *Cape Brandy Syndicate v Inland Revenue Comrs* [1921] 1 KB 403, Rowlett J of the KING'S BENCH DIVISION held that "There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." This proposition of law has been followed by the Hon'ble Supreme Court on a number of occasions while interpreting tax statutes.

72. I am therefore inclined to apply the above definitions to the facts of the case. There is no scope for inferring any ambiguity in the definition of "sale" and "works contract" in the Tamil Nadu Value Added Tax Act, 2006.

73. The expression "works contract" has an Indian flavour. Etymology/ origin/ historical adoption and use of the expression "works contract" indicates that it was perhaps coined by an ingenious assessee or his/her or their advocate/consultant to fend-off a sales tax demand in transaction involving provision of service coupled with supply of goods or use of goods. Its origin is traceable to some time prior to the 46th amendment to the Constitution.

74. It appears prior to the 46th amendment of the Constitution of India, sales tax assessee's contended that "works contract" were not liable to sales tax. This view was also accepted by the Courts. This nomenclature was accepted by the Courts and eventually found its way into various Local Sales Tax enactments and finally into the 46th amendment to the Constitution with amendment for Art 366 of the Constitution of India.

75. The definition of "sale" as it prevailed prior to the amendment in Art 366 of the Constitution of India did not justify the proposals to tax goods used for the provision of such services. Thus, prior to 1947, the Courts

frowned upon an attempt to tax these transactions under the Madras General Sales Tax Act, 1939 and other Local Tax enactments in the Country, and held the demand to be without the authority of law and in violation of Government of India Act, 1935.

76. The State and Provincial Governments in the country, at that point of time felt that the contracts involving "works contract" led to revenue leakage. Therefore, to plug in the revenue leakage in the Madras Presidency, the Madras General Sales Tax Act, 1939 was amended vide Madras General Sales Tax Amendment Act No. 25 of 1947. It incorporated a provision to tax "works contract".

Not only the definition of "sale" was expanded but also a new definition of "works contract" was inserted to the Madras General Sales Tax Act, 1939.

77. Definition of "goods" was thus amended in section 2(c) of the 1939 Act to include all "materials, commodities and articles used in the construction, fitting out, improvement or repair of immovable property or in the fitting out, improvement or repair of immovable property".

78. A reading of the case laws prior to the decision of the Hon'ble Supreme Court in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., (1958) 9 STC 353 indicates that "works contract" to begin with was intended to tax only building and allied contracts where a contractor provided a composite contract for both supply of service and goods or used goods of considerable value in the course of provision of such services with or without breakup of the cost of such goods in the execution of the contract.

79. The amendment to the Madras General Sales Tax Act, 1939 vide Madras General Sales Tax Amendment Act No. 25 of 1947 fell for consideration in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., (1958) 9 STC 353 [1st Gannon Dunkerley's case] before the Hon'ble Supreme Court.

80. The definition of "Works Contract" under the Madras General Sales Tax Act, (Mad. 9 of 1939) which fell for consideration of the Hon'ble Supreme Court in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., (1958) 9 STC 353 reads as under:-

Section 2(i) : "works contract" as means any agreement for carrying out for cash or for deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building road, bridge or other immovable property or the fitting out, improvement or repair of any immovable property.

81. Thus, the definition of the expression "works contract" was confined to any agreement for carrying out for cash or for deferred payment or other valuable consideration:-

i. the construction, fitting out, improvement or repair of any building road, bridge or other immovable property.

Or

ii. the fitting out, improvement or repair of any immovable property.

82. The definition of "sale" in Section 2(h) was enlarged so as to include "a transfer of property" in goods involved in the execution of a works contract". The definition of the expression "works contract" in the definition of "turnover" in Section 2(i), the following Explanation (1)(i) was added:-

"Subject to such conditions and restrictions, if any, as may be prescribed in this behalf- the amount for which goods are sold shall, in relation to a works contract, be deemed to be the amount payable to the dealer for carrying out such contract, less such portion as may be prescribed of such amount, representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract."

83. Pursuant to the Explanation to Section 2(1)(i), a new rule, Rule 4(3), was also enacted in the Rules to the effect that "the amount for which goods are sold by a dealer shall, in relation to a works contract, be deemed to be the amount payable to the dealer for carrying out such contract less a sum not exceeding such percentage of the Amount payable as may be fixed by the Board of Revenue, from time to time for different areas, representing the usual proportion in such areas of the cost of labour to the cost of materials used in carrying out such contract, subject to the following maximum percentages..." (The above definition have been extracted from the above definition).

84. The above statutory amendment to the Madras General Sales Tax Act, 1935 by Madras Sales Tax Amendment Act, 1947 was considered by a Division Bench of this Court in Gannon Dunkerley's case. The Sales Tax

Appellate Tribunal had earlier rejected the contentions of the assessee and held that the amounts in question were liable to be included in the taxable turnover of assessee Gannon Dunkerley.

85. The Division Bench of this Court held that the expression "sale of goods" had the same meaning in Entry 48 which it has in the Indian Sale of Goods Act, (3 of 1930), that the construction contracts of the respondents were agreements to execute works to be paid for according to measurements at the rates specified in the schedule thereto, and did not contract for the sale of the materials used therein, and that further, they were entire and indivisible and could not be broken up into a contract for the sale of materials and a contract for payment for work done.

86. In the result, the Division Bench of this Court held that the provisions introduced by the Amendment Act No. 25 of 1947, were ultra vires the powers of the Provincial Legislature and that the claim based on those provisions to include Rs 29,51,528-7-4 into the taxable turnover of the assessee could not be maintained. As regards the item of Rs 1,98,929-0-3 they held that the sale of food grains to the workmen was not in the course of any business of buying or selling those goods, that there was no profit motive behind it, that the assesseees were not dealers as defined in Section 2(d) of the Act, and that, therefore, the amount in question was not liable to be taxed under the Act. In the result, both the amounts were directed to be excluded from the taxable turnover.

87. On a certificate under Article 133(1) of the Constitution of India, the Honourable Supreme Court in State of Madras versus Gannon Dunkerley & Co (Madras) Ltd (1958) 9 STC 553, while disposing of a batch of cases, ultimately held that "sale of goods" in Entry 48 is the nomen juris, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is, as in the case, one, entire and indivisible-and that is its norm, there is no sale of goods, and it is not within the competence of the Provincial Legislature under Entry 48 to impose a tax on supply of materials used in such a contract treating it as a sale. Similar provisions in the other state and provincial local sale tax enactments were also struck down as ultra vires by the Hon'ble Supreme Court.

88. In State of Madras Vs Richardson (1968) 21 STC 245, the Hon'ble Supreme Court observed as follows:-

Under the terms of contract, respondents undertook to

install a bottle cooling equipment, that is to fabricate different parts of the unit according to the special requirement of the customer. Each bottle cooling equipment required special fabrication and had to be installed at the place selected by the customer and found suitable for installation of the unit. The contract being one for supplying for an inclusive price a specially designed fabricated unit to be assembled and installed by specifically trained technicians in the premises of the customer, it was not a contract for sale of the unit or 4 different parts of the unit as specific goods, but it works contract.

89. In B.C. Kame, Proprietor Kame Photo Studio, (1977) 1 SCC 634, the Hon'ble Supreme Court held that " When a photographer undertakes to take a photograph, develops the negative, or does other photographic work and thereafter supplies the prints to his client, he cannot be said to enter into a contract for the sale of goods. The contract, on the contrary, is for use of skill and labour by the photographer to bring about the desired result. The occupation of a photographer, except insofar as he sells the goods purchased by him, in our opinion, is essentially one of skill and labour".

90. In both the above cited cases, the Hon'ble Supreme Court followed its decision in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., (1958) 9 STC 353, I shall refer to it later in course of this Order.

91. In Dy. Commr. of Sales Tax Versus Dr Paran's Dental Laboratories (1987) 2 KLT 241 : (1987) 67 STC 249, the Appellate Tribunal had concurred with the decision of the Appellate Assistant Commissioner and held that the amount realised towards teeth setting charges is not a transaction of sale of goods exigible to sales tax.

92. The Kerala High Court upheld the decision and held that that on the analogy of a photographer, dealt with in the decision in The Assistant Sales Tax Officer v. B.C. Kame (30 STC. 237), it was essentially a contract to do skilled labour. Moreover, if the teeth prepared by the dentist for a particular customer, was not taken delivery of by him, it would be a waste. In other words, it was held that what was manufactured was not a marketable goods. It was held that that is a very vital factor to decide whether there is a sale of goods. In the light of the above reasons, the Court held that 'teeth setting charges' was not a transaction of sale of goods exigible to levy of sales tax under the Act.

93. In a slightly different context under Industrial Disputes Act, 1947, the Hon'ble Supreme Court in *Safdarjung Hospital v. Kuldip Singh Sethi*, (1970) 1 SCC 735 at page 743 while explaining the meaning of the expression "material services" observed that Material services are not services which depend wholly or largely upon the contribution of professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services. Even an establishment where many such operate cannot be said to convert their professional services into material services. Material services involve an activity carried on through Cooperation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable.

94. The above observation of the Hon'ble Supreme Court is not a ratio. The above observation has to be understood from the perspective of the prevailing socio-economic set up of the society immediately after independence. There were no corporate hospitals at that point of time.

95. It should be remembered, laws are meant to last and it takes note of situation which may not be present when they were enacted. During the case of last 30 year of last millennium, there has been tremendous growth and advancement in medical technology and procedure. It was hardly possible for an individual medical professionals to surmount the risk of expenses to run private hospitals with expensive hi-tech machineries and state of art facilities with trained para medical staffs to cater to the demand for a quality medical and health service.

96. Corporate hospitals thus emerged and mushroomed in the forefront to provide quality professional medical and health services to patients to fill in the vacuum left by the Government public health services. They operated like any other commercial body with a profit motive and commercialised health services.

97. This was partly because of Government's reluctance to expand quality services to the needy and partly because the Government ceded a part of the demand

for quality medical and health services to such private entrepreneurs and corporate bodies like petitioners. That apart, the private bodies took the risk to invest in such services with leading to corporatisation and commercialisation of health services.

98. Meanwhile, the Law Commission of India was given the task for suggesting an amendment to the definition of "sale and purchase" for levy of sales tax as there was a huge leakage of revenue. After conducting an in-depth study, the Law Commission, in 1974 in its 61st Report gave the following three options to the Parliament:-

- (a) amending the State List, Entry 54, or
- (b) adding a fresh entry in the State List, or
- (c) inserting in Article 366 a wide definition of "sale" so as to include works contracts.

99. In its 61st Law Commission's Report, the Law Commission stated that "By a series of subsequent decisions, the Supreme Court has, on the basis of the decision in Gannon Dunkerley's case, held various other transactions which resemble, in substance, transactions by way of sales, to be not liable to sales tax. As a result of these decisions, a transaction, in order to be subject to levy of sales tax under Entry 92 A of the Union List or Entry 54 of the State List, should have the following ingredients, namely parties competent to contract, mutual assent and transfer of property in goods from one of the parties to the contract to the other party thereto for a price".

100. The Parliament preferred the last alternative and acting on the recommendation (c) of the Law Commission, decided to amend Article 366 by expanding the definition of "tax on the sale or purchase of goods" to include the transactions which were negative by the courts. Thus, the Constitution (Forty-sixth Amendment) Bill, 1981 was introduced in the Parliament which was subsequently passed and enacted as the Constitution (Forty-sixth Amendment) Act, 1982. Thus, we have Art.366(29A) as it stands now.

101. Clause (29A) to Article 366 as introduced by the 46th Amendment to the Constitution is reproduced below:-

"366. (29-A) 'tax on the sale or purchase of goods' includes

—

- (a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"

102. Mirroring the 46th Amendment to the Constitution, corresponding amendments were made to various local sales tax laws by various State Legislature. In Tamil Nadu, the Tamil Nadu General Sales Tax Act, 1959 was also amended. It amended the definition of "sale" in Section 2 (n) and incorporated a new definition for the expression "works contract" in Section 2(u). The definitions which were incorporated in the Tamil Nadu General Sales Tax Act, 1959 were retained in Section 2(33) & 2(43) of the Tamil Nadu Value Added Tax Act,, 2006 . Similar amendments were made by various State Legislatures.

103. These amendments including the amendments to various local sales tax laws were challenged in various High Courts. The Hon'ble Supreme Court in Builders Association of India & Others Vs Union of India (1989)2 SCC645 ultimately upheld the validity of the amendments.

104. In the context of "works contract", the Court there held that , "The object of the new definition introduced in clause (29-A) of Article 366 of the Constitution is, therefore, to enlarge the scope of 'tax on sale or purchase of goods' wherever it occurs in the Constitution so that it may include within its scope the transfer, delivery or supply of goods that may take place under any of the transactions referred

to in sub-clauses (a) to (f) thereof wherever such transfer, delivery or supply becomes subject to levy of sales tax. "

105. So construed the expression 'tax on the sale or purchase of goods' in Entry 54 of the State List, therefore, includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a "works contract" also. The Court further held as under:-

41. We, therefore, declare that sales tax laws passed by the legislatures of States levying taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution. We, however, make it clear that the cases argued before and considered by us relate to one specie of the generic concept of "works contracts". The case-book is full of the illustrations of the infinite variety of the manifestation of "works contracts". Whatever might be the situational differences of individual cases, the constitutional limitations on the taxing power of the State as are applicable to "works contracts" represented by "building contracts" in the context of the expanded concept of "tax on the sale or purchase of goods" as constitutionally defined under Article 366(29-A), would equally apply to other species of "works contracts" with the requisite situational modifications.

106. Thus, "works contract" is of infinite variety and it is not possible to conclude hospital service are outside the purview of Art.366 (29A) of the Constitution even though the Hon'ble Supreme Court in BSNL Vs UOI [2006] 3SCC 1 has made a passing remark to the contrary in para 44.

107. Prior to the 46th amendment to the Constitution of India, no sales tax was payable on composite/indivisible contracts involving the provision of both service and supply of goods involving "works contract", transfer of right to use, catering service etc.

108. Upholding the contention of the assessee, the Hon'ble Supreme Court held that here the main object of the work undertaken by the person to whom the price is paid is not the transfer of a chattel as a chattel, the contract is one of work and labour. The main object of the work undertaken by the operator of the photocopier or xerox machine was held not the transfer of the paper upon which the copy is produced; it is to

duplicate or make a xerox copy of the document which the payer of the price wants duplicated. The paper upon which the duplication takes place is only incidental to this transaction. The object of the payment of the price is to get the document duplicated, not to receive the paper. The payer of the price has no interest in the bare paper upon which his document is duplicated. He is interested in it only if it bears such duplication. It was the contention of the assessee that the it was engaged in "works contract." This ratio is no longer valid after the 46th amendment to the Constitution.

109. Invariably, universal defence of the dealers/assessee's was that such transactions amounted to "work contract" and other forms of transactions were outside the purview of definition of "sale" in the Act and therefore not taxable. However, this defence is no longer available with passing of the 46th Amendment to the Constitution.

110. The decision of the Hon'ble Supreme Court in Everest Copiers versus State of Tamil Nadu (1996)5SCC390 though rendered after the 46th amendment to the Constitution pertains to a dispute for the period before the 46th amendment to the Constitution came into force. There the assessee reported a total turnover of Rs. 77,659 for the assessment year 1979-80 and claimed exemption from tax on the entire turnover thereby reporting the taxable turnover to be "nil" in the form A1 return filed by them. Before the assessing authority, the assessee claimed deduction of the entire turnover as labour charges received. On the other hand, the assessing authority was of the view that the assessee sold copies of documents taken in "xerox" photostat copies and consequently, the transaction should be considered to be a sale of copies of the documents produced by them and subject to tax at 4 per cent.

111. Reverting to the issue in question, one has to be bear in mind, "Works contract" essentially involves two fundamental elements namely (i)transfer of material and (ii) rendering of service. The supplier transfers the ownership and possession of the material used to the recipient in the course of execution of the work contract. Sometime such work may result in new identity altogether different from the material supplied while sometimes such materials become part of the existing structure or goods.

112. It can be both divisible and indivisible contract. Divisible contract i.e. where the value of the sale of goods and labour can be clearly segregated. Indivisible contracts, where the parties agree for lump-sum consideration

for the entire contract without any break-up. The sale consideration of the materials used in the contract and remuneration for labour is not separately identifiable.

113. Works contract is one of the kinds of "sale" in Section 2(33) of the Tamil Nadu Value Added Tax Act, 2006. The definition of "works contract" in section 2(43) of the Tamil Nadu Value Added Tax, 2006 is an expansive definition. It is not restricted to a specific genre of work and is liable to tax under Section 5 and 6 of the Act Tamil Nadu Value Added Tax Act, 2006.

114. The States have been conferred with the power to tax indivisible contracts of works. This has been done by enlarging the scope of "tax on sale or purchase of goods. Insofar as works contract is concerned, dominant intention to transfer the property in goods is not at all relevant [see Para 50 of BSNL versus Union of India (2006) 3 SCC 1 and the whole of Builders Association of India versus Union of India [1989] 73 STC 370].

Recent case laws under VAT Laws on Works Contract.

115. In the context of VAT laws, a Full Bench of the Honourable Supreme Court consisting of 3 judges of the Honourable Supreme Court in Larsen and Toubro Ltd and another versus State of Karnataka and another [2013] 65 VST 1 (SC) had an occasion to deal with the scope of the expression "works contract" under the Karnataka Sales Tax Act, 1957 and Maharashtra Value Added Tax Act, 2002.

116. The Honourable Supreme Court summarised the position as follows:-

i. For sustaining the levy of tax on the goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled: (i) there must be a works contract, (ii) the goods should have been involved in the execution of a works contract, and (iii) the property in those goods must be transferred to a third party either as goods or in some other form.

ii. For the purposes of Article 366(29-A) (b), in a building contract or any contract to do construction, if the developer has received or is entitled to receive valuable consideration, the above three things are fully met. It is so because in the performance of a

contract for construction of building, the goods (chattels) like cement, concrete, steel, bricks, etc. are intended to be incorporated in the structure and even though they lost their identity as goods but this factor does not prevent them from being goods.

iii. Where a contract comprises of both a works contract and a transfer of immovable property, such contract does not denude it of its character as works contract. The term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Nothing in Article 366(29-A)(b) limits the term "works contract".

iv. Building contracts are a species of the works contract.

v. A contract may involve both a contract of work and labour and a contract for sale. In such composite contract, the distinction between contract for sale of goods and contract for work (or service) is virtually diminished.

vi. The dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are of the nature contemplated in Article 366(29-A). Even if the dominant intention of the contract is not to transfer the property in goods and rather it is rendering of service or the ultimate transaction is transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if such contract otherwise has elements of works contract. The enforceability test is also not determinative.

vii. A transfer of property in goods under clause (29-A)(b) of Article 366 is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made.

viii. Even in a single and indivisible works contract, by virtue of the legal fiction introduced by Article 366(29-A)(b), there is a deemed sale of goods which are involved in the execution of the works contract. Such a deemed sale has all the incidents of the sale of goods

involved in the execution of a works contract where the contract is divisible into one for the sale of goods and the other for supply of labour and services. In other words, the single and indivisible contract, now by the Forty-sixth Amendment has been brought on a par with a contract containing two separate agreements and the States now have power to levy sales tax on the value of the material in the execution of works contract.

ix. The expression "tax on the sale or purchase of goods" in Schedule VII List II Entry 54 when read with the definition clause (29-A) of Article 366 includes a tax on the transfer of property in goods whether as goods or in the form other than goods involved in the execution of works contract.

x. Article 366(29-A)(b) serves to bring transactions where essential ingredients of "sale" defined in the Sale of Goods Act, 1930 are absent within the ambit of sale or purchase for the purposes of levy of sales tax. In other words, transfer of movable property in a works contract is deemed to be sale even though it may not be sale within the meaning of the Sale of Goods Act.

xi. Taxing the sale of goods element in a works contract under Article 366(29-A)(b) read with Entry 54 List II is permissible even after incorporation of goods provided tax is directed to the value of goods and does not purport to tax the transfer of immovable property. The value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in works even though property passes as between the developer and the flat purchaser after incorporation of goods.

117. The court there are held that the expression "works contract" was of wide amplitude and cannot be confined to a particular understanding of the term or a particular form. It further held that the term "works contract" in Article 366 (29-A) (b) of the Constitution of India takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and service alone. Nothing in Article 366 (29-A) (b) limits the term "works contract. It held that the object of insertion of clause (29A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase

of goods" to overcome the ratio of the Honourable Supreme Court in the 1st Gannon Dunkerley's Case [1958] 9 STC 353. Thus, even if in a contract, besides the obligation of supply of goods and material and performance of labour and services, some additional obligations were imposed, such contract did not cease to be a "works contract". It further held that the additional obligation in the contract would not alter the nature of the contract so long as the contract provides for work and satisfies the primary description of "works contract". Once the characteristics or elements of a "works contract" are satisfied in a contract, then irrespective of additional obligation, such contract would be covered by the term "works contract". The court also held that the term "works contract" needs to be understood in a manner that the Parliament had in its view at the time of 46th Amendment and which is more appropriate to Article 366 (29-A)(b) of the Constitution of India. Thus, to argue that the medical service involving trapping of all the elements of the work contract and is yet not "works contract" is an argument and a point of view which is too far fetched. Like building contracts, a transaction in medical service can also amount to "works contract" as the definition of "works contract" is not confined to a particular genre of contracts.

118. The above observation of the Hon'ble Supreme Court in Larsen and Toubro Ltd and another versus State of Karnataka and another [2013] 65 VST 1 (SC) dilutes the observation / illustration in paragraph 44 of the decision of the Hon'ble Supreme Court in BSNL Vs UOI [2006] 3 SCC 1. Further, the illustration in paragraph 44 even if construed as a ratio cannot be stretched to kind of "hospital service" provided by the petitioners. A simple treatment with medicine cannot be equated with complicated medical procedures under taken by the petitioners' involving skill and use of expensive prosthetics and use of laboratory testing equipments. Even if the dominant intention of the contract was not to transfer the property in goods and rather rendering of service or the ultimate transaction was a transfer of movable property, it is open to the States to levy sales tax on the materials used in such contract if such contract otherwise has elements of "works contract". In constitutional terms, it is a transfer either in goods or some other form.

119. Further, in State of Andhra Pradesh versus Kone Elevators [2005] 3 SCC 389, the Honourable Supreme Court had also earlier held that "it can be treated as well settled that there is no standard formula by which one can distinguish a "contract for sale" from a "works contract" and that it is largely dependent on the terms of the contract including the nature of the obligation to be discharged thereunder and the

surrounding circumstances". Though Constitutional Bench of the Honourable Supreme Court in Kone Elevator India (P) Ltd. v. the State of T.N., (2014) 7 SCC 1 overruled the above decision in State of Andhra Pradesh versus Kone Elevators [2005] 3 SCC 389 on other aspect, the above observation has not been diluted.

The Court held that it may be noted here that in all the cases that have been brought before it, there is a composite contract for the purchase and installation of the lift. The price quoted was a composite one for both. There has to be a safety device. In certain states, it is controlled by the legislative enactment and the rules. In certain States, it is not, but the fact remains that a lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. What was taken note of in Kone Elevators [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] was that the company had brochures for various types of lifts and one is required to place an order, regard being had to the building, and also make certain preparatory work. But it was not in dispute that the preparatory work had to be done taking into consideration as to how the lift is going to be attached to the building. It was held that "the nature of the contracts clearly exposit that they are contracts for supply and installation of the lift where labour and service element is involved. Individually manufactured goods such as lift car, motors, ropes, rails, etc. are the components of the lift which are eventually installed at the site for the lift to operate in the building". In constitutional terms, it is transfer either in goods or some other form. In fact, after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Involvement of the skill was elaborately dealt with by the High Court of Bombay in Otis Elevator [Otis Elevator Co. (India) Ltd. v. State of Maharashtra, (1969) 24 STC 525 (Bom)] and the factual position was undisputable and irrespective of whether the installation was regulated by statutory law or not, the result would be the same. It was held to be a composite contract which requires the contractor to install a lift in a building. It was observed that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly if a separate contract was entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. The Court observed that "therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site i.e. building, and prepared for delivery. The conclusion,

as has been reached in Kone Elevators [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] , is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of an obligation to supply goods and materials as well as installation of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied". Thus this Court concluded and held that the decision rendered in Kone Elevators [State of A.P. v. Kone Elevators (India) Ltd., (2005) 3 SCC 389] did not correctly lay down the law and it was, accordingly, overruled.

120. At the same time, it has be kept in mind that the policy of the Government was to keep the "health service" from the bounds of tax net. It is perhaps for this reason exemption in G.O.Ms.No.976 Revenue dated 28.03.1959 referred to supra was issued. However, no other notifications were issued though the law had permanently changed with the 46th Amendment to the Constitution and the corresponding changes to the provisions of the Tamil Nadue General Sales Act, 1959,

121. The above exemption was diluted later as mentioned earlier at the beginning of this order in the year 1961. However, the petitioner continued to avail the benefit of the exemption wrongly. Further, when the above notification was issued and later diluted, the hospital services had not organised and expanded as it had expanded in the last five decades. The Government had allowed the health/medical services by corporate hospitals to mushroom and had perhaps not taxed them but at the same time did not issue a corresponding notification exempting them.

"WORK CONTRACT " UNDER THE FINANCE ACT, 1994 FOR THE PURPOSE OF LEVY OF SERVICE"

122. In 2007, Chapter V of the Finance Act, 1994 was amended. Section 65 (105) (zzzza) was inserted to it. It not only defined taxable service in relation to the execution of a "works contract" but also defined the expression "works contract". The aforesaid definition of taxable services specifically excluded "works contract" in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams only. Service portion of "works contract" was made taxable. The expression "works contract" was defined in the Explanation to Section 65(105) (zzza) as follows:-

Explanation.-For the purpose of this sub-clause, "works contract" means a contract wherein-

- i. transfer of property in goods involved in the execution of such

contract is liable to tax as sale of goods, and
ii. such contract is for the purpose of carrying out-

(1) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air conditioning including related pipework, duct work and sheet metal work, thermal insulation, sound insulation, fireproofing or waterproofing, lift an escalator, fire escape staircase or elevator; or

(2) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purpose of commerce or industry; or

(3) construction of a new residential complex or part thereof; or

(4) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(5) turnkey projects including engineering, procurement and construction and commissioning (EPC) projects".

123. The Honourable Supreme Court in Commissioner of Central Excise versus Larsen and Toubro Ltd and another (2016)1SCC 170 while dealing with the above provision in the Finance Act, 1994 held that works contract is a separate species of contract distinct from contract for services simpliciter recognised by the world of commerce and law as such, and has to be taxed separately as such. This decision though was rendered in the context of levy of service tax on "works contract", make it clear on supply portion sales tax was payable. Thus, the Hon'ble Supreme Court has time and again recognized that "works contract" is a separate specie of contract distinct from contract for service.

124. With effect from 1.7.2012, the expression "works contract" was re-cast and re-defined in Section 65B (54) of the Finance Act, 1994 and was treated as a "Declared Service" in Section 65E(h) of the Act. The definition read as under:-

Section 65B(54): "works contract" means a contract wherein transfer of property in goods

involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

125. As per Section 65E(h) service portion in the execution of a works contract was a "Declared Service."

WORKS CONTRACT UNDER GST

126. Work Contracts has been defined in Section 2 (119) of the CGST Act, 2017 as follows:-

"works contract" means a contract for building construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract".

127. The most significant change with regard to Work Contract in GST is with regard to the meaning of expression "Works Contract". It has been restricted to any work undertaken for an "Immovable Property" unlike the under the VAT Regime and Service Tax law under the Finance Act, 1994 where "works contracts" was applicable to moveable properties.

HEALTH SERVICE UNDER THE FINANCE ACT, 1994.

128. A slightly different treatment was accorded to "Health Services" under the Finance Act, 1994. With effect from 1.7.2010, service tax on "Health Service" was introduced for the first time under Section 65(105) (zzzz) of the Finance Act 1994 by an amendment through Finance Act, 2010. The taxable service in relation to "health service" read as under:-

Section:65.(105): "taxable service" means any service provided or to be provided (zzzz).by any hospital, nursing home or multi-speciality clinic, -

(i) to an employee of any business entity, in relation to health check up

or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-speciality clinic; or

(ii) to a person covered by the health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospitals, nursing home or multi-speciality clinic.

129. Initially, a restricted exposure to tax liability was made under the Finance Act, 1994. This definition was later modified in 2011 with effect from 8.4.2011. The amended definition reads as under:

Section 65(105):- "taxable service" means any service provided or to be provided, -

(zzzzz)to any person, -

(i)by a clinical establishment; or

(ii)by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine;

130. The expression "clinical establishment" was defined as follows:

Section 65(25 a): "clinical establishment" means-

(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premises and having more than twenty-five beds for in-patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or

(ii)an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-clause (i), which carries out diagnosis of

diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigate services with the aid of laboratory or other medical equipment,

but does not include an establishment, owned or controlled by -

(a) the Government, or

(b) a local authority;

131. Thus, certain categories of "health service" (medical service) were include taxable and were brought within the purview of the tax levy in Finance Act, 1994 from 2010.

132. However, with the advent of the negative list in the Finance Act, 1994 vide Finance Act, 2012 and in view of the specific definition of "service" being incorporated in Section 65B(44) of the Finance Act, 1994, for the first time in the said Act, "Health Care Service" by a clinical establishment, an authorised medical practitioner or paramedic were fully exempt vide Mega Exemption Notification No.25/2012- ST dated 20.06.2012 with effect from 01.07.2012. It was not placed in the negative list in Section 65 D.

133. Initially exemption was broad based. The expression "Health care service" was defined as follows in the said notification:-

"(t) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India an includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken no restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma".

134. It also defined the expression "clinical establishments" as follows:-

"clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or

pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

135. Later vide amendment notification No.6/2015-ST dated 01.03.2015, the exemption was restricted to:-

"(i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

(ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (I) above."

136. A possible conflict which would have arisen as to whether a "health service" having trappings of "works contract" as we understand now in the said notification could also have been classified as a "works contract" also. Scope for such any confusion was averted by clever drafting by the draftsman in the Act. The definitions were defined separately. Section 65(F)(2) which dealt with "Principles of interpretation of specified descriptions of services" or bundled services left no scope for ambiguity.

137. As per Section 65F(2), where a service was capable of differential treatment for any purpose based on its description, the most specific description was to be preferred over a more general description.

138. For the purpose of service tax, "health service" could be treated as "works contract" because of a different treatment to it in the Finance Act, 1994. However, for the purpose of the Tamil Nadu Value Added Tax Act, 2006, no such distinction was made.

139. Under Goods and Supply Tax Act 2017, it appears "Health Care Service" is not liable to tax under Notification No.12/2017 - CT (Rate) dated 28.06.2016 vide Sl.No.74 and vide Sl.No.77 of Notification No.9/2017. I.T. (Rate) dated 28.06.2017. Similarly, "Health care service" is exempt in Tamilnadu under the Tamil Nadu Goods and Supply Tax Act, 2017.

140. Thus, the drift of the legislatures both ie. the union parliament both under the Finance Act, 1994 and Central GST Act, 2017, Integrated GST Act, 2017 and the State Legislature under the Tamil Nadu GST Act, 2017 has been to exempt the provision/supply of medical service albeit "health care services" from tax. That appears to be the current policy of the Government as well.

141. However, it cannot be said "health services" involving the implanting of prosthetics and other artificial parts inside the body of a patient were either outside the purview of tax levy under Tamil Nadu Value Added Tax Act, 2006 or earlier under the Tamil Nadu General Sales Tax, 1958 or were exempted by notifications under the respective enactments in absence of a specific notification.

142. Learned counsel for the petitioner for Apollo Hospital/Fortis Maller Hospital referred to a decision rendered by the Upper Tribunal Tax and Chancery Chamber in the case between General Healthcare Group Ltd Versus the Commissioner for Her Majesty's Revenue and Customs [2016] UKUT 315 (TCC). The court there held that every supply must be regarded as distinct and independent, although supply which comprises a single transaction from an economic point of view should not be artificially split.

143. There the transaction between the hospital and patient was to be regarded from an economic point of view because the evidence showed that whether the payment was by the patient or an insurer, the hospital charged for all the supply in relation to the supply of the prosthetics and associated hospital care together in one invoice or series of invoice. The consultants which included self-employed anaesthetists made separate charges and had issued separate bills. The supply of prosthetics was held not "a means of better enjoying the principal service supplied".

144. The question that was posed before it was whether the supply of prosthetics and other services and the goods supplied to the hospital to a typical patient are so closely linked that form objectively a single economic supply which it would be artificial split. The answer was in the affirmative.

145. The court that held that supply must be regarded as single economic supply which it would be artificial to split if, from the point of view of a typical patient, the supply of prosthetics and medical care services are equally inseparable and indispensable because each is necessary for the other and meaningless without the other.

146. There the court observed that a typical patient who requires an artificial hip does not merely wish to purchase a prosthesis but wants a new hip. The ability of the patient to choose whether or not to be supplied with an element of the transaction is an important factor in determining whether there is a single supply or several independent supplies, although it is not decisive. In the case of the prosthetics, the court observed that we consider that the ability of the patient to choose was limited by the circumstances. In reality, the patient would not choose to be supplied with medical care but not his or

her prosthesis or vice versa. The prosthetic was chosen by the consultant and the patient's choice was limited to deciding whether or not to have it implanted and possibly the hospital in which to have the necessary surgery. Once the choice has been made, the patient could not choose to have the prosthetics without the hospital and medical care, nor could the patient choose to receive the care without having prosthesis. Thus in the above case, it was held to be a single transaction.

147. The learned counsel for the revenue, on the other hand, submitted a copy of the decision of the Court of Appeal, Civil Division in *Customs and Excise Commissioners Versus (1) Wellington Private Limited, (2) Martin Hospital Ltd, (3). United Provident Association Ltd (4) British United Provident Association Ltd* [1997] STC 445.

148. There, the court by majority held that the supply of surgical services necessary for the fitting of the prosthesis was a separately identified supply, usually from a different source from that from which the actual prosthetics was obtained.

149. These decisions are of little significance to resolve the issue under consideration. These decisions may be relevant if and when the supply of such services along with prosthetics comes up for consideration as to whether they qualify as zero-rated services under the GST regime.

150. In these cases, the statutes had exempted health care services from payment of tax under the relevant tax laws. The attempt of the Hospitals was to treat the supply of prosthetics independent of hospitals services so as to bring it within the purview of zero ratings which not only exempted such supplies from tax but also entitled a refund of the input tax as a zero-rated transaction.

151. In *Tata Main Hospital's (TMH)* case referred to supra which is the lead case on the subject, the Jharkhand High Court invoked "dominant test" to conclude that it cannot be said that the medicines, surgical items, x-ray films and plates etc, were sold by the said hospital. It observed that "dominant nature test of contract" was to provide medical services to the in-patients and while providing such medical services, medicines were administered, surgical items, x-ray plates and films were used, which were incidental to and a part of the medical services rendered to such patients and for that purpose the TMH was 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.

152. There, the authorities had access to the documents and based on the same, the High Court gave its verdict. Whereas, in the present case, the writ petitioners have approached this Court at the very threshold. The supply of those articles was held part of service rendered by the TMH and during the treatment of the in-patients and, therefore the transaction was held not to be of 'sale' within the meaning of Section 2 (t) of the Bihar Finance Act, 1981".

153. The Court observed that the hospital was not selling any medicines or surgical items to any outdoor persons or patients, who are not admitted in the hospital for treatment.

It, however, concluded that medicines, surgical items, x-ray films and plates etc., were supplied to those indoor patients, which were essentially required for the treatment of those indoor patients."

154. In my view, "dominant test" after the 46th amendment does not survive for the reasons stated in this order. Even if such a test was to be applied, the Court has to first answer as to whether in the course of the provision of "medical /health service", any of the clauses in the definition of "sale" in Section 2(t) of the Bihar Finance Act 1981 were attracted or not. It is only after ruling out the applicability of Section 2(t) and the definition of "works contract" in the said Act, the Court could have thereafter proceeded to determine the taxability or non-taxability of the transaction.

155. The Allahabad High Court's decision in M/s. International Hospital Pvt. Ltd Vs. State of UP and Others 2014 - TIOL - 551-HC-ALL-CT considered the above decision of the Jharkhand High Court in Tata Main Hospital's Case and the decision of a single judge of the Kerala High Court in P.R.S.Hospital Vs. State of Kerala (2003) 1 KLT 633.

156. The said decision of the Kerala High Court in P.R.S.Hospitals Vs. State of Kerala was later overruled by the Full Bench of the Kerala High Court in Aswini Hospital Pvt. Ltd. & Others Vs. Intelligence Officer which was also cited on behalf of the Petitioners. The Kerala High Court's full bench decision is the last of the four decision cited. It follows the three decisions of the Jharkhand, Allahabad and Punjab and Haryana High Courts and few other decisions of the Hon'ble Supreme Court.

157. The Division Bench of the Allahabad High Court in M/s.International Hospital Pvt. Ltd, while allowing the writ petition filed by the said hospital observed as follows:

"22.In the present case, the limited issue is as

to whether an element of sale is involved when a stent or valve is implanted in the course of a surgical procedure which is performed in a patient as an indoor patient in a hospital. We clarify that this is not a case where the petitioner is contending that the sale of medicines at the pharmacy in the hospital is not assessable to tax. The only issue is as to whether the definition of the expression 'sale' in Section 2 (ac) of the Uttar Pradesh Value Added Act is attracted where a stent or valve is implanted in a patient in the course of a surgical procedure. Plainly, in our opinion, there is no element of sale. The fact that in the bill which is raised on the patient, the hospital recovers, apart from the cost of the surgery, charges towards drugs and other consumables would not render the transaction of the implantation of a stent or valve a 'sale' within the meaning of Section 2 (ac) of the Act. We clarify that we have dealt with only the aforesaid factual situation and our judgment as aforesaid does not deal with any other factual situation which is not before the Court."

158. Though the above ruling is emphatic, yet, there is no discussion as to how the above conclusion was arrived, when indeed the very purpose expanding the scope of the expression "tax on the sale or purchase of goods" in Art.366(29A) by the 46th Amendment to the Constitution and the corresponding statutory amendments to the definitions in the respective tax enactments of the States were to include transaction which involve not only sale but also deemed sale which were traditionally not considered as "sale". The 46th amendment to the constitution was intended to obliterate the line of rulings in 1st Gannon Dunkerley case (1958) 9 STC 353.

159. In M/S Fortis Healthcare Limited And vs The State Of Punjab And Others referred to supra, the Punjab and Haryana Court followed the Jharkhand and Allahabad High Court. After referring to paragraphs 43 to 45 in the BSNL Vs UOI case, the Punjab and Haryana High Court answered the issue as follows:-

"A perusal of the above extract reveals that the 46th amendment does not introduce a new category of "deemed sales", nor does it alter the meaning of the word "goods" or "sale of goods" but merely allows certain transactions to be brought forth for taxation. This apart Article 366(29-A) of the Constitution of India does not raise a presumption

that every transaction is a sale and, thereafter allows the State to search for what could be the element of sale, in a transaction. The dominant nature test continues to apply to all transactions that are not covered by Article 366(29-A) of the Constitution of India as the ingredients of a sale remain unchanged. The Supreme Court specifically observed though as an illustration, that the sub-clauses of Article 366(29-A) of the Constitution of India do not cover hospital services and also held that unless the transaction in truth represents two distinct and separate contracts, the State would not have the power to separate the agreement of sale from the agreement to render services, and impose tax on the so called element of sale, thereby affirming the dominant nature test with respect to contracts, which do not fall within the sub-clauses of Article 366(29-A) of the Constitution. Thus, a medical procedure that as an integral part requires administering of drugs, stents, implants, etc. may only be brought forth for payment of VAT if it fulfills the ingredients of sale, as defined under the Punjab and Haryana VAT Acts and Article 366(29-A) of the Constitution of India. As a result the test whether a medical procedure involves a "sale of goods" continues to be the same i.e., the intention of parties, the nature of goods, their delivery etc. being determinative factors."

160. .In para25 the Punjab and Haryana Court held as follows:

"25..... A perusal of the statutory definition of "sale" in both the Punjab and Haryana enactments, reveals that after setting out that a sale is a transfer of ownership in goods for consideration it proceeds to replicate Article 366 (29-A) of the Constitution of India. A medical procedure is a pure service with no part having the attributes or the elements set out in Article 366 (29-A) of the Constitution of India or the definition of sale under the Punjab and Haryana statutes and, therefore, cannot be held to involve a "sale".

161. In paragraph 31, the Court held as follows observed as under:

"For the purpose of attracting VAT, a transaction or a part thereof, which is essentially a service would have to qualify as a sale within the meaning of Sales of Goods Act, 1930 or the definition of sale. The fiction of a deemed sale applies only to such situations as would fall within the sub-clauses of Article 366(29-A) of the Constitution of India which permit severance of the service element from the sale element and empowers the State to tax the element of sale. A perusal of Article 366(29-A) of the Constitution of India does not enable us to record an opinion that it covers services provided by hospitals. Before such a transaction is put to tax, whether under the Haryana or Punjab VAT Act, it would have to satisfy the dominant nature test by reference to the substance of the contract. A contract for medical treatment necessarily involves medicines, supply of surgical items, stents, implants, valves, without which a medical procedure or medical treatment cannot be completed. The supply of these articles as held by the Allahabad and the Jharkhand High Courts are integral to and essential for the treatment offered to patients and even if one may categorize these as incidental to the actual medical procedure, one cannot but ignore that a medical procedure cannot be completed without supply of medicines, drugs, stents, implants, thereby leading to a singular conclusion that the State is not empowered under any provision of the Constitution much less the definition of goods, sale or dealer, to sever the contract and construe the supply of drugs, medicines, stents, implants etc. as a severable part of the contract and, therefore, exigible to VAT, as a sale. The situation would obviously be different if these articles are supplied from the pharmacy of a hospital. A deeming fiction, must be rational and not farcical. The dominant purpose of a hospital is to provide medical treatment and if during a medical procedure it is required to provide medicines, stents, implants etc., it cannot by a deeming fiction be held to be a "sale". A patient may have a choice as to the quality of implant/stent but even that choice is confined to the suitability of a stent etc. The fact that a hospital may charge money for individual stents etc., whether as part of a package or separately is entirely irrelevant. A contract of medical service cannot be said to be a contract for sale of a stent, or valve or of medicines to be used in a medical/surgical procedure. The essential element of such a contract is the procedure of knee

replacement, hip replacement, angioplasty, which as an intrinsic and integral part involves placing an implant whether in the knee, hip or a heart etc. The only choice available to the patient is the nature of the implant, namely, its quality but such a procedure is admittedly, a medical procedure and a service that cannot be completed without an implant/drugs and medicines as an integral part of the procedure. A private hospital does not provide medical services for free. The fact that it charges money, for drugs, medicines etc. cannot raise an inference of intent to sell goods in the shape of medicines, stents, implants etc. We are, therefore, in complete agreement with the opinion recorded by the Jharkhand High Court in Tata Main Hospital(supra) and the Allahabad High Court in M/s International Hospital Pvt. Ltd. v. State of U.P. and two others".

162. The Punjab and Haryana High Court ultimately held as follows:-

"31. We have considered the relevant statutory provisions of the Punjab and Haryana Statutes, the Bihar Finance Act, the Uttar Pradesh Act, the judgment of the Jharkhand and Allahabad High Courts, judgments of the Kerala High Court (cited by the respondents) are in respectful agreement with the opinion recorded by the Jharkhand High Court and the Allahabad High Court and find no reason to record a contrary opinion or to hold that the supply of medicines, drugs, stents, implants etc. to a patient during a medical procedure inhere any element of sale, much less sets out the ingredients of a 'sale'. The power to impose sales tax/VAT flows from Entry 54 of List II of Schedule VII and Article 366(29-A) of the Constitution, the latter assigning the status of a deemed sale to transactions where one or the other element of sale is missing, but where the element of sale is altogether missing and the transaction does not fall within any of the clauses of Article 366(29-A) of the Constitution of India, a State shall not be empowered to levy of value added tax on such a transaction. For the purpose of attracting VAT, a transaction or a part thereof, which is essentially a service would have to qualify as a sale within the meaning of Sales of Goods Act, 1930 or the definition of sale. The fiction of a deemed sale applies only to such

situations as would fall within the sub-clauses of Article 366(29-A) of the Constitution of India which permit severance of the service element from the sale element and empowers the State to tax the element of sale. A perusal of Article 366(29-A) of the Constitution of India does not enable us to record an opinion that it covers services provided by hospitals. Before such a transaction is put to tax, whether under the Haryana or Punjab VAT Act, it would have to satisfy the dominant nature test by reference to the substance of the contract. A contract for medical treatment necessarily involves medicines, supply of surgical items, stents, implants, valves, without which a medical procedure or medical treatment cannot be completed. The supply of these articles as held by the Allahabad and the Jharkhand High Courts are integral to and essential for the treatment offered to patients and even if one may categorize these as incidental to the actual medical procedure, one cannot but ignore that a medical procedure cannot be completed without supply of medicines, drugs, stents, implants, thereby leading to a singular conclusion that the State is not empowered under any provision of the Constitution much less the definition of goods, sale or dealer, to sever the contract and construe the supply of drugs, medicines, stents, implants etc. as a severable part of the contract and, therefore, exigible to VAT, as a sale. The situation would obviously be different if these articles are supplied from the pharmacy of a hospital.

- 32.A deeming fiction, must be rational and not farcical. The dominant purpose of a hospital is to provide medical treatment and if during a medical procedure it is required to provide medicines, stents, implants etc., it cannot by a deeming fiction be held to be a "sale". A patient may have a choice as to the quality of implant/stent but even that choice is confined to the suitability of a stent etc. The fact that a hospital may charge money for individual stents etc., whether as part of a package or separately is entirely irrelevant. A contract of medical service cannot be said to be a contract for sale of a stent, or valve or of medicines to

be used in a medical/surgical procedure. The essential element of such a contract is the procedure of knee replacement, hip replacement, angioplasty, which as an intrinsic and integral part involves placing an implant whether in the knee, hip or a heart etc. The only choice available to the patient is the nature of the implant, namely, its quality but such a procedure is admittedly, a medical procedure and a service that cannot be completed without an implant/drugs and medicines as an integral part of the procedure. A private hospital does not provide medical services for free. The fact that it charges money, for drugs, medicines etc. cannot raise an inference of intent to sell goods in the shape of medicines, stents, implants etc. We are, therefore, in complete agreement with the opinion recorded by the Jharkhand High Court in Tata Main Hospital (supra) and the Allahabad High Court in M/s International Hospital Pvt. Ltd. v. State of U.P. and two others.

33. An argument that the definition of "sale" under the Bihar and the Uttar Pradesh Acts, is entirely different, must also fail. A perusal of the definition of sale in the Bihar and the Uttar Pradesh Statutes reveals that this argument has apparently been raised by disregarding the definition of sale in these statutes which are essentially identical to the definition of sale of the present statute."

163. In my view, the above reasoning of the Punjab & Haryana High Court runs not only contrary to the express language in Art.366 (29A) of the Constitution of India but also to the ratio of the Hon'ble Supreme Court in BSNL versus Union of India (2003) 6 SCC 1 itself. In para 42, the Hon'ble Supreme Court held as under:-

42. All the sub-clauses of Article 366(29-A) serve to bring transactions where one or more of the essential ingredients of a sale as defined in the Sale of Goods Act, 1930 are absent, within the ambit of purchase and sales for the purposes of levy of sales tax. To this extent only is the principle enunciated in Gannon Dunkerley Ltd. [State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., (1958) 9 STC 353 : AIR 1958 SC 560 : 1959 SCR 379] (sic modified). The amendment

especially allows specific composite contracts viz. works contracts [sub-clause (b)]; hire-purchase contracts [sub-clause (c)], catering contracts [sub-clause (e)] by legal fiction to be divisible contracts where the sale element could be isolated and be subjected to sales tax.

164. The Hon'ble Supreme Court in BSNL Vs UOI (2006)3 SCC 1; 2006(2)STR161 was concerned with taxability of transaction between the subscribers/users of pre-paid mobile phone connection and mobile telephone operators and ordinary land line connection provided by BSNL to its subscriber wherein along with the telephone connection, BSNL also transferred telephone instruments free of cost for use by its customers while retaining its ownership over it.

165. Commercial Tax Departments of various State Governments had taken a categorical stand that there was a sale of sim card therefore the Mobile Service Providers were liable to sales tax. Similarly, it was contended that there was a transfer of right to use of telephone instruments and therefore BSNL was liable to pay tax. The Hon'ble Supreme Court gave its decision in the facts peculiar to the case before it.

166. The Full Bench of the Kerala High Court in Aswini Hospital Pvt.Ltd's case, (In some the journals, title for the case goes with the name Sanjose Parish Hospital and Others Vs THE CTO Thrissur 2019 (3) TMI 1017) has considered all the three mentioned cases of the Jharkhand High Court, Allahabad High Court and that of the Punjab and Haryana High Court and has accepted the views given therein. Though the Full Bench of Kerala High Court has reproduced paragraph 50 from BSNL VS UOI in addition to other paragraphs Nos.44, 45 and 46, yet it has held as follows:-

"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. As has been held in Bharat Sanchar Nigal Ltd. [2006]3VST95, the dominant nature test survives even after the 46th amendment. With due respect, we find the declaration of the Honourable Supreme Court as to hospital services not enabled of differentiation as sale and services to be binding with all the force as available under article 141 of the Constitution of India. The sale, if any made, in the course of the treatment of a patient in a hospital, is with the sole intention of curing the patient, which is an inseparable part of service offered in a hospital and

it does not intend to create any separate rights on such drugs, implants or consumables used in the course of treatment."

167. The Full Bench of the Kerala High Court recognised the existence of sale in the course of provision of medical /health services. Yet it held there is no tax payable by the Hospital under the Kerala VAT Act, 2005. The Full Bench of the Kerala High Court further referred to *Malankara Orthodox Syrian Church Vs. Sales Tax Officer and another* (2004) 135 STC 224 (Ker), wherein it was held that there is a clear distinction between the supply of food as part of service in a hotel and supply of medicine in the course of medical treatment wherein the dominant test was applied to find that the main component in the case of medical treatment was the value of medicines involved in the treatment and it is not an incidental transaction at all. The Court held that the dominant test does not depend upon the value of the service or consideration for the sale of goods. If value was the sole consideration, even in a works contract, a composite one of supply of goods and labour, the value would be more with respect to goods used in the construction than the labour.

168. As the reason for bringing the 46th amendment to the Constitution was to bring such indivisible contracts within the purview of sales tax, the view of the Hon'ble court in *Gannon Dunkerley's case* post the above amendment has no precedential value.

169. In *Rainbow Colour Lab and another versus State of MP* (2000) 2 SCC 385, the Honourable Supreme Court held that prior to amendment to Article 366, the States could not levy sales tax on sale of goods involved in a works contract because the contract was indivisible.

170. It observed that all that has happened in law after 46th Amendment and the Supreme Court's decision in *Builders Association of India case* (1989) 2 SCC 645 is that it is now open to the court to divide the works contract into 2 separate contracts by a legal fiction; (1) contract for sale of goods involved in the said works contract; and for supply of labour and service. This division of contract under the amended law could be made only if the works contract involves a dominant intention to transfer the property in goods and not in contracts where the transfer of property takes place as an incident of the contract of service.

171. Thus, while recognising the amendment, the Honourable Supreme Court once again held that every contract, be it a service contract or otherwise, may involve use of some material or other in the execution of the said contract. It said that State is not empowered by the amended law to impose sales tax on such incidental materials used in such contracts.

172. However, the above view was overruled by the Honourable Supreme Court subsequently in Associated Cement Companies Limited versus Commissioner of Customs (2001) 4SCC 593 by holding that the conclusion arrived in Rainbow Colour Lab Case referred to supra runs counter to the express provisions contained in Article 366 (29-A) as also to the decision of the Constitution Bench of the Supreme Court in Builders Association of India versus Union of India (1989) 2 SCC 645. Though the above view was also reiterated by the Hon'ble Supreme Court in BSNL versus Union of India case referred to supra, yet a different conclusion arrived in para 44 on an issue with which it was not concerned with.

173. Following paragraphs from the decision of the Hon'ble Supreme Court in BSNL Vs UOI (2006) 3 SCC 1 which were relied in the 4 decisions of the High Courts :-

43. Gannon Dunkerley survived the Forty-sixth Constitutional Amendment in two respects. First with regard to the definition of "sale" for the purposes of the Constitution in general and for the purposes of Entry 54 of List II in particular except to the extent that the clauses in Article 366(29-A) operate. By introducing separate categories of "deemed sales", the meaning of the word "goods" was not altered. Thus the definitions of the composite elements of a sale such as intention of the parties, goods, delivery etc. would continue to be defined according to known legal connotations. This does not mean that the content of the concepts remain static. The courts must move with the time. But the Forty-Six Amendment does not give a licence, for example to assume that a transaction is a sale and then to look around for what could be the goods. The word "goods" has not been altered by the Forty-Six Amendment. That ingredient of a sale continues to have the same definition. The second respect in which Gannon Dunkerley has survived is with reference to the dominant nature test to be applied to a composite transaction not covered by Article 366(29-A). Transactions which are mutant sales are limited to the clauses of Article 366(29-A). All other transactions would have to qualify as sales within the meaning of the Sales of Goods Act, 1930 for the purpose of levy of sales tax.

44. Of all the different kinds of composite transactions the drafters of the Forty-sixth Amendment chose three specific situations, a works contract, a hire-purchase contract and a catering contract to bring them 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 sub-clauses (b) and (f) of clause (29-A) of Article 366, there is no other service which has been permitted to be so split. For example, the sub-clauses of Article 366(29-A) do not cover hospital services. Therefore, if during the treatment of a patient in a hospital, he or she is given a pill, can the Sales Tax Authorities tax the transaction as a sale? Doctors, lawyers and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking, with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.

45. The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley case [State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., (1958) 9 STC 353 : AIR 1958 SC 560 : 1959 SCR 379] , namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), 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 test therefore for composite contracts other than those mentioned in Article 366(29-A) continues to be: Did the parties have in mind or intend separate rights arising out of the sale of goods? If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is "the substance of the contract" [See Atiyah: The Sale of Goods, (1995 reprint) p. 27.] . We will, for the want of a better phrase, call this the dominant nature test.

"50. We agree. After the 46th amendment, the sale element of those contracts which are covered by the six sub-clause (29A) of article 366 are separable and may be subjected to sales tax by the States under entry 54 of List II and there is no question of the dominant nature test applying. Therefore when in 2005, Jideesh (C.K.) v. Union of India (2006) 3 VST 1 (SC); (2006) 144 STC 322 (SC); (2005) 279 ITR 118 (SC);

(2005) 5 RC 670; (2005) 8 Scale 784, held that the aforesaid observations in Associated Cement Companies Ltd. V. Commissioner of Customs (2001) 124 STC 59 (SC); (2001) 4 SCC 593 were merely obiter and that Rainbow Colour Lab V. State of Madhya Pradesh (2000) 118 STC 9 (SC); (2000) 2 SCC 385 was still good law, it was not correct. It is necessary to note that Associated Cement (2001) 124 STC 59 (SC); (2001) 4 SCC 593 did not say that in all cases of composite transactions the 4th Amendment would apply" (Underlying by us for emphasis) (From BSNL)"

174. Though in paragraph 44, the Hon'ble Supreme Court has held that sub-clauses of Article 366(29-A) do not cover hospital services, there is no legal basis follow the said conclusion any longer in the light of subsequent decisions of the Hon'ble Supreme Court.

175. It should also be remembered that the Hon'ble Supreme Court in BSNL Vs Union of India (2006) 3 SCC 1 was concerned with telephone instruments and sim-cards given to subscribers. The issue was whether there was sale (i.e transfer of right to use) or service or both. For answering the issue, the Hon'ble Supreme Court framed the following questions of law to be answered by it in the facts of the cases before it:-

A) What are "goods" in telecommunication for the purposes of Article 366(29-A) (d)?

(B) Is there any transfer of any right to use any goods by providing access or telephone connection by the telephone service provider to a subscriber?

(C) Is the nature of the transaction involved in providing telephone connection a composite contract of service and sale? If so, is it possible for the States to tax the sale element?

(D) If the providing of a telephone connection involves sale, is such sale an inter-State one?

(E) Would the "aspect theory" be applicable to the transaction enabling the States to levy sales tax on the same transaction in respect of which the Union Government levies service tax?

176. The Majority view of the Hon'ble Supreme in para 87, 88 and 92 in (2006) 3 SCC 1 answered the above questions as follows: -

87. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact, as has been correctly submitted by the States. In determining the issue, however the assessing authorities will have to keep in

mind the following principles: if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasise that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the "aspects" doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in *Federation of Hotel & Restaurant Assn. of India v. Union of India* [(1989) 3 SCC 634] : (SCC pp. 652-53, paras 30-31)

" '... subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power'.

a) ***

There might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects."

88. No one denies the legislative competence of the States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Article 366 (29-A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax. As was said in *Larsen & Toubro v. Union of India* [(1993) 1 SCC 364] : (SCC p. 395, para 47)

"The cost of establishment of the contractor which is relatable to supply of labour and services cannot be

included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods."

92. For the reasons aforesaid, we answer the questions formulated by us earlier in the following manner:

(A) Goods do not include electromagnetic waves or radio frequencies for the purpose of Article 366(29-A)(d). The goods in telecommunication are limited to the handsets supplied by the service provider. As far as the SIM cards are concerned, the issue is left for determination by the assessing authorities.

(B) There may be a transfer of right to use goods as defined in answer to the previous question by giving a telephone connection.

(C) The nature of the transaction involved in providing the telephone connection may be a composite contract of service and sale. It is possible for the State to tax the sale element provided there is a discernible sale and only to the extent relatable to such sale.

(D) The issue is left unanswered.

(E) The 'aspect theory' would not apply to enable the value of the services to be included in the sale of goods or the price of goods in the value of the service.

177. The concurring and separate view authored by Hon'ble Mr. Justice A.R.Lashmanan reads as under:-

97. To constitute a transaction for the transfer of the right to use the goods, the transaction must have the following attributes:

- (a) there must be goods available for delivery;
- (b) there must be a consensus ad idem as to the identity of the goods;
- (c) the transferee should have a legal right to use the goods—consequently all legal consequences of such use including any permissions or licences required therefor should be available to the transferee;
- (d) for the period during which the transferee has such legal right, it has to be the exclusion to the transferor—this is the necessary concomitant of the plain language of the statute viz. a "transfer of the right to use" and not merely a licence to use the goods;
- (e) having transferred the right to use the goods during the period for which it is to be transferred,

the owner cannot again transfer the same rights to others.

178. The mobile telephone operators had taken a plea that they were providing services to the subscribers and therefore were liable to service tax under the provisions of the Finance Act, 1994 and therefore the same transaction cannot be taxed once again as sales tax.

179. The Hon'ble Supreme Court thus laid down the test as to what would constitute a "transfer of right to use" for the purpose of Clause (d) of Art 366(29A) of the Constitution of India and the corresponding definition in the respective State Tax Laws.

180. The example/illustration in para 44 and 45 of the above decision which appears to be the basis of the relief in the four mentioned cases cannot be applied to kind of hospital/medical service provided by the petitioners.

181. The observation of the Hon'ble Supreme Court that "The Test therefore for composite contracts other than those mentioned in Article 366 (29-A) continues to be, did the parties have in mind or intend separate rights arising out of sale of goods and that if there was no such intention there is no sale even if the contract could be disintegrated is to be applied with caution. The "dominant nature test" propounded in BSNL Vs. UOI [2006] 3 SCC 1 will require reconsideration in the light of the following:-

- i. observation in para 50 of the same decision;
- ii. in the light of observation in para 41 of decision of the Hon'ble Supreme Court in Builders Association case [1989] 2 SCC 645; and
- iii. in the light of the observation of the Hon'ble Supreme Court in Larsen and Toubro Ltd. Vs State of Karnataka and another [2013] 65VST 1 (SC). (2014) 1 SCC 708 wherein it was held that in Article 366(29-A)(b) the term "works contract" covers all genre of works contract and it is not limited to one specie of the contract and the Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366.

182. The Court in Larsen and Toubro Ltd. Vs State of Karnataka and another cited supra further held that in our opinion, the term "works contract" in Article 366(29-A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term

encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome Gannon Dunkerley (1) [State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd., AIR 1958 SC 560 : 1959 SCR 379]

183. Further, the decision of the Hon'ble Supreme Court in BSNL versus Union of India (2006) 3 SCC 1, based on which the four High Courts have given relief to the four hospitals in Jharkand, Allahabad, Punjab and Haryana and Kerala ought to have been applied with caution and circumspection as the said case was concerned with "transfer of right of use" which is another specie of sale and different from "works contract".

184. In the four cited decisions on the subject, the respective High Court examined the issue from a common perspective. These courts have not examined the issue from the point view of "work contract". Therefore, the ratio given and followed by them are not binding on this Court.

185. The definition of "works contract" in Section 2(43) of the Tamil Nadu Value Added Tax Act, 2006 is of very wide import. It is a generic definition. It is not limited. It is not confined to any specific genre of contract involving service and supply of goods. It is also not confined to immoveable property. Any agreement for fitting or installation of any moveable property such as prosthetics can qualify as "works contract".

186. It encompasses within its fold it every possible and conceivable commercial transactions which involve sale and service. Therefore, Medical / Health service cannot be carved out as separate specie of service and/or sale different from the definition of "works contract" for the purpose of the Tamil Nadu Value Added Tax Act, 2006.

187. "Works contract" includes any agreement for "fitting out" of any movable property. It is not confined to any genre of contract. Therefore, fitting out or implanting of prosthetics into the physiology or the body of the patient for alleviation of pain or for improvement of the life of the patient in the course of medical/surgical procedure can be construed as "works contract". It is for the petitioners to demonstrate how the definition of works contract is not attracted to this case.

188. Thus, there is merits in the contention of the respondent that the medical/Health services rendered by the petitioners could fall within the ambit of the Article 366 (29-A) of the Constitution of India read with the provisions of

the Tamil Nadu Value Added Tax Act, 2006. At the same time, dispensing of medicine to such patients while they undergo treatment as an inpatient in the hospital cannot come within the purview of the definition of "works contract". Consequently, no tax can be demanded on the value of such medicine.

189. Under section 2(43) of the Tamil Nadu Value Added Tax Act, 2006 the definition of "works contract" includes any agreement for carrying out building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property for cash or deferred payment or other valuable consideration. The words fitting out of any immovable property can bring within its purview the fixing of valves, stents, metal plates, artificial hips and knees etc.

190. In my view, the extended definition of sale in Section 2(33) (ii) and the definition of the expression "works contract" as defined in section 2(43) of the Tamil Nadu Value Added Tax Act, 2006 makes it clear that it is of wide import as compared to the amended definition of sale in Section 2 (h) of the Madras General Sales Tax Act, 1939 vide Madras General Sales Tax (Amendment) Act 25 of 1947 which fell for consideration in I Gannon Dunkerley's case. For an easy comparison both the definitions are extracted below:-

Madras General Sales Tax Act, (Mad.9 of 1939)	The Tamil Nadu Value Added Act, 2006
"works contract" as meaning any agreement for carrying out for cash or for deferred payment or other valuable consideration, the building construction, fitting out, improvement or repair of any building road, bridge or other immovable property or the fitting out, improvement or repair of any immovable property.	"works contract" includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

191. While the definition of the expression "works contract" Madras General Sales Tax Act, 1939 was confined to construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or fitting out, improvement or repair of a immovable property. On the other hand, the definition of "works contract" in section 2(43) of the Tamil Nadu Value Added Tax Act, 2006 with which this court is concerned in these cases is of wide import.

192.The Hon'ble Supreme Court in Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] held that "In the matter of taxation laws, the court permits a great latitude to the discretion of the legislature. The State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably. The courts view the laws relating to economic activities with greater latitude than other matters."

193.In T.N. Kalyana Mandapam Assn. v. Union of India, (2004) 5 SCC 632 the Hon'ble Supreme Court held that a levy of service tax on a particular kind of service could not be struck down on the ground that it does not conform to a common understanding of the word "service" so long as it does not transgress any specific restriction contained in the Constitution. Some logic will apply to "works contract".

194.In my view, the expression "works contract" cannot be given a restricted meaning merely because "works contract" as a concept was originally confined to contracts relating to immoveable properties alone as was noted in the definition of "works contract" in Madras General Sales Tax Act, 1939 which fell for consideration in the 1st Gannon Dunkerley's case. However, after the 46th amendment to the Constitution, the definition of "work contract" was widened and it is broad based taking within its fold every possible and conceivable contracts involving transfer of property while providing services.

195.Therefore, the definition of "works contract" can include hospital/health/Medical services involving composite contracts where there is not only a provision of service but also supply of goods along with such service. The definition takes within its fold such services also. The respondents are therefore justified in proposing a demand to tax the petitioner.

196. To plug-in, the above loophole and leakage of revenue, the Madras General Sales Tax Act, 1939 was amended by the Madras General Sales Tax Act (Amendment) Act 25 of 1947. It sought to introduce new provisions into the Madras General Sales Tax Act, 1939. Since even this attempt also turned futile in the light of the 1st Gannon Dunkerley's case, the 46th amendment to the Constitution introduced and was later passed. This led to amendments to the definition of sale and introduction of a new definition of the expression "works contract".

197. The reasons given in the four High Courts' decision would have been acceptable in the era prior to the 46th amendment to the Constitution. Further, the definition of "sale" and "works contract" before the 46th amendment to the Constitution of in most of the Sales Tax enactments in the country was confined to "immoveable property" as is evident from a reading of the definition of sale in the Madras General Sales Tax Act, 1939 which fell for consideration in 1st Gannon Dunerkerly's case.

198. In my view, there is not only transfer of possession of prosthetics into the physiology of the patient but also the ownership of such prosthetics to the patient for consideration in the course of the provision of medical/health service. Similarly, in the course of taking x-ray, scan, MRI/CT Scan for such in-patient, cost of which get included into the package are taxable as such activity can be termed as the processing of moveable property.

199. As the notices also deal with other issues, I leave it open for the petitioners to give a proper reply to the respective notices impugned on those aspects.

200. In my view, the observation of the Hon'ble Supreme Court in BSNL versus Union of India (2006) 3 SCC 1 and the four decision cannot be apply for the following reasons:-

- i. In BSNL versus Union of India (2006) 3 SCC 1, the Hon'ble Supreme Court was not concerned with "works contract".;
- ii. The Court was concerned with "transfer of right to use" of goods which is different with "works contract";
- iii. The obiter dicta or the observation in para 44 of and the illustration in BSNL versus Union of India (2006) 3 SCC 1 cannot be construed as a binding ratio for the reason given in this order;
- iv. The four decisions of the different High Court which were cited on behalf of the petitioners though have a persuasive value are not binding on this Court particularly in the light of the fact that the Courts did not examine the issue from the pererspective of the defitnion of "works contract" in the respective tax enactments . They merely discussed the issue from the perspective definition of "sale" simplicitor;
- v. Therefore, the ratio in the four decisions do not have a binding ratio for this Court to follow them.

vi. Since the dispute pertains to the assessment years 2006 onwards considerable time has lapsed, the petitioners are directed to file their respective replies within two months from the date of receipt of this Order;

vii. Petitioner shall co-operate with the respondent assessing officer by furnishing all records that are available with them within 30 days of this order.

viii. The respondent shall exclude the value of medicine and other consultation charges while determining the taxable value. The demand shall be confirmed to the value of prosthetics and charges incurred towards X-ray, C.T. Scan, PET Scan etc.

ix. The respondent assessing officer shall hear out the petitioners separately and pass appropriate order on merits all the other issues raised in the respective notices impugned in these writ petitions;

x. The respondent assessing officer shall keep the observations contained herein while passing final orders in response to the impugned notices;

xi. If the Covid-19 pandemic continues, the respondent may hear the petitioners through video conference and pass such order within a period of 6 months from the date of this order;

xii. It is for the petitioner to approach the Government independently and request the Government for a suitable retrospective relaxation by way of exemption for hospital/medical services rendered by them in the light of the fact that the same activity/transaction appears to have been exempted under the GST Regime from July 2017.

201. These writ petitions stand disposed of with the above observation. No Cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1 THE SECRETARY TO GOVERNMENT,
STATE OF TAMILNADU
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT,
FORT ST.GEORGE,
CHENNAI 9.
- 2 THE ASSISTANT COMMISSIONER (CT) ,
ALANDUR ASSESSMENT CIRCLE,
NO.12 VEDAGIRI STREET,
ALANDUR, CHENNAI 16.
- 3 THE ASSISTANT COMMISSIONER (CT) ,
ADYAR I ASSESSMENT CIRCLE,
CHENNAI-28.
- 4 THE COMMERCIAL TAX OFFICER,
SRIPERUMBUDUR ASSESSMENT CIRCLE,
VARADHARAJAPURAM-602 103,
KANCHEEPURAM DISTRICT.

W.P.Nos.2982 to 2987 of 2012, 3476 to 3479 of 2012,
12137 to 12140 of 2012 and
32137 to 32140 of 2012

GJ ii[CO]

SRG 04/08/2020

सत्यमेव जयते

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