



POOR PATIENTS, HEALTHY HOSPITALS WITH DR. GST?

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A contract for medical treatment, especially indoor treatment is a composite contract, necessarily involves supply of medicines, surgical items, stents, implants, valves etc. without which a medical procedure or medical treatment cannot be completed. The supply of these articles are integral to and essential for the treatment offered to patients by the hospitals through medical and para-medical services. By virtue of notification no 12/2017 (entry sr. no 74, SAC 9993) all such services of Health care by *clinical establishments, authorized medical practitioners or para-medics are exempted under Goods and Services Tax.*

In pre-GST regime also, though there was huge litigation on such contracts but various judgments hold such contracts are not sale, and thus not exigible to VAT. Some of such cases are narrated below for understanding the issue in a better way:

In very popular case of Fortis Health Care Ltd., And Another (“the Petitioners”) filed an application before the Excise & Taxation Commissioner, Punjab, Patiala Division, Patiala (“the Commissioner”), sought advance determination of the issue if supply of medicines, drugs, stents etc., to patients during a medical procedure (“impugned goods”) are a ‘Sale’, under the Punjab VAT Act, 2005 (“Punjab VAT Act”).

The Commissioner *vide* Order dated August 10, 2005 responded the aforesaid question in favour of Revenue and therefore the impugned goods are made exigible to VAT (“Order 1”). Thereafter, the Petitioner got registered as a dealer under the Punjab VAT Act and the Central Sales Tax Act, 1956 and started discharging their statutory obligations.

In another case, the Hon’ble High Court of Jharkhand in *Tata Main Hospital Vs. The State of Jharkhand and others [2008(2) JCR 174 (Jhr.)]* (“Tata Main Hospital Case”) held that the impugned goods are not exigible to VAT as the same is not ‘Sale’. Being aggrieved, the State of Jharkhand, filed a Special Leave Petition before the Hon’ble Supreme Court, which was dismissed. Hon’ble Courts took the view that medical procedure is a pure service with no part having the attributes or the elements set out in Article 366 (29A) of the Constitution or the definition of ‘Sale’ under the Punjab and Haryana statutes and, therefore, cannot be held to involve a ‘Sale’. A contract for medical treatment involves supply of medicines, surgical items, stents, implants, valves etc., without which a medical procedure or medical treatment cannot be completed.

The situation would be different if, these articles are supplied from the pharmacy of a hospital to the patient.

Considering the seriousness and impact of the issue, GST policy and law makers has taken a call and came out with clear cut guidelines that all such contracts are exempt from Goods and Service tax (GST) through notification no 12/2017 under CGST Act, 2017 (Notification no 9/2017 dt 28.06.2017 IGST Act, 2017) as amended from time to time, except human health and social care services as covered at Sr No 31, (under Entry no.9993) of notification no 11/2017 dt 28.06.2017.

But said notifications do not cover services like:

- hair transplant or
- cosmetic or
- plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Respective provisions of the said notification no 12/2017 are reproduced as under:

Entry at Sr. no 74: Services by way of -

- health care services by a clinical establishment*, an authorised medical practitioner or para-medics;*
- services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.*

**“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*

If we go by the above mentioned clauses of said notification, it is clear that health care services by hospitals, services of doctors and para-medics i.e testing laboratories, nursing staff, physiotherapist etc. to the patients are totally exempted from GST.

Apart from health care services as provided by clinical establishments, the notification has also exempted the services related with **transportation of patients in ambulance** for their timely treatment.

Entry no 73 of said notification, Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation is exempt from GST

Entry no 75 of above said notification specifies, Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.

It is input service to clinical establishments or hospitals, which has been kept outside the preview of the GST and is provided by other medical establishments like test laboratories to hospitals. By exempting these services from GST, would help the hospitals to provide cheap treatment to the patients.

Similarly, GST has taken care of health of Animals and Birds through entry no 46, Heading 9983 (Notification 12/2017) Services by a veterinary clinic in relation to health care of animals or birds which are exempted from GST.

The matter was further clarified by CBIT through its **circular no 32/06/2018-GST dt 12.02.2018**. The circular specified that:

- Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.
- Healthcare services have been defined to mean 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 [para 2(zg) of notification No. 12/2017- CT(Rate)].

Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors, nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc., is towards the healthcare services provided by the hospitals to the patients and are exempt

- The Circular further clarified that Food supplied to the in-patients as advised by the doctor/ nutritionists is a part of composite supply of healthcare and not separately taxable.

Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors or its staff members are taxable under GST.

On the other side, input services to hospitals like *Housekeeping, Maintenance of equipments, Manpower Supply, Technical services, Professional services and Civil contracts* etc. are taxable and that too on higher side. Under pre-GST regime such services were charged at 15% and now under GST the rate of tax is 18% which will ultimately impact the health of patient.

Similarly Medical equipments used for medical treatments are subject to GST in all most all slabs namely 0%, 5%, 12%, 18% and 28%. **Only hearing aids are not taxable under GST.**

Medicines including their salts and other Pharmaceutical items are also subject to GST in different slabs such as 5%, 12% and 18% for which we need to their HSN code.

Items such as **artificial limbs** are subject to GST @5% and so on.

As services of clinical establishments i.e Health services, are exempted from GST but all of its input supplies of goods and services, except few as narrated above, are subject to GST. Clinical establishments are not in a position to avail input tax credit of GST paid on its input goods and services which will make their output services costly. It has direct impact on the health of patients and medical treatments get costly.

In the whole process of implementation of GST, especially in health sector, the health services have gone costlier and the patients are the overall sufferer. Their health is not good and clinical establishments or hospitals in corporate sector get benefited through overall improvement in logistics, supply chain management, subsuming of various taxes under GST, ITC credit on inter-state supplies etc.

To go by the true spirit of GST, where the consumer is suppose to be benefited, the inflationary impact of GST should be compensated through refund mechanism with stringent provisions under law or by exempting supply of inputs goods and services to clinical establishments. Otherwise the purpose of implementation of GST defeated.

Cost Records and Audit under Companies Act, 2013

Under Section 148 of the Companies Act, 2013 Cost Records and Audit has been introduced on corporate clinical establishments. Such establishments are mandatory to undergo Cost Audit of their Cost records maintained for their cost of services provided and expenses incurred on to provide such services.

With the help of cost data, one can establish actual cost and margin per patient by the clinical establishments and the benefits under GST can be transferred to the patients.

Such audits must be extended to other than corporate clinical establishments also, so that such benefits of cost reductions can be made available to the whole of the society.

Corporate Social Responsibility under Companies Act, 2013

The expenses made by the corporate sector hospitals for CSR under Companies Act would not benefit the society unless the patients are actually benefitted.

Conclusion

The main objective of hospitals, clinical establishments and medical professionals is to serve the man kind in general or otherwise during wars, accidents, natural disasters etc. irrespective of cast, creed, religion, area, society and country. Due to slowdown in policy making, depressions in economy, foreign body attacks, GST was injected in economy to fasten the recovery, treat the illness of the economical disasters i.e scams, NPAs and corruption to provide good economic health to country at large. It was a thought process that Dr. GST will treat all illness in the economy and will ensure good health and wealth to the country. Let us hope that Dr. GST will play its role for which it was brought out and policies will be framed accordingly.