

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA.No.1896/2012

Against Judgment dated 14-09-2012 in WPC.4303/2012 of this Court.

APPELLANT/APPELLANTS

M/S. SANJOSE PARISH HOSPITAL,
PAVARATTY
THRISSUR, REPRESENTED BY ITS DIRECTOR,
REV. FR. JOSEPH (NOBY) AMBOOKAN.

BY ADV.
SRI. P. N. D. NAMBOOTHIRI

RESPONDENT/RESPONDENTS

1. THE COMMERCIAL TAX OFFICER,
CHAVAKKAD, THRISSUR- 680 307.
2. THE INSPECTING ASST. COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES,
IRINJALAKUDA-680 121.
3. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT TAXES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

BY GOVERNMENT PLEADER FOR R1 TO R3

This Writ Appeal coming on for orders on 18.01.2019 along with connected cases upon perusing the appeal memorandum and this Court's order dated 13-04-2018, the court on the same day passed the following:-

a
18/1/19

(P.T.O)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA.No.1958/2012

Against Judgment dated 14-09-2012 in WPC.14218/2011 of this Court.

APPELLANT/PETITIONER:

KRISHNA NURSING HOME
CHITTOOR ROAD, ERNAKULAM, REPRESENTED BY ITS PROPRIETOR,
DR. SABAPATHY.

BY ADV. SRI. BECHU KURIAN THOMAS
ADV. SRI. PAUL JACOB (P)
ADV. SMT. NISHA JOHN
ADV. SRI. ENOCH DAVID SIMON JOEL

RESPONDENTS/ RESPONDENTS:

1. STATE OF KERALA ,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM - 1.
2. DEPUTY COMMISSIONER ,
OFFICE OF THE DEPUTY COMMISSIONER (INT.), DEPARTMENT OF COMMERCIAL
TAXES, ERNAKULAM - 682 011.
3. COMMERCIAL TAX OFFICER ,
KVAT CIRCLE III, ERNAKULAM, OFFICE OF THE COMMERCIAL TAX OFFICER,
KVAT CIRCLE III, CLAS TOWERS, OLD RAILWAY STATION ROAD,
ERNAKULAM - 682 018.

BY GOVERNMENT PLEADER FOR R1 TO R3.

This Writ Appeal coming on for orders on 18.01.2019 along with connected cases upon perusing the appeal memorandum and this Court's order dated 13-04-2018, the court on the same day passed the following:-

(P.T.O)

18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA No.1971/2012

Against Judgment dated 14-09-2012 in WPC.7129/2008 of this Court.

APPELLANT/PETITIONER

1. ASWINI HOSPITAL PVT LTD
KARUNAKARAN NAMBIAR ROAD, THRISSUR-680 020,
REPRESENTED BY ITS MANAGING DIRECTOR, DR.C.N.PARAMESWARAN.
2. AL SALAMA HOSPITAL
VENGARA P.O., MALAPPURAM-676 304,
REPRESENTED BY ITS PARTNER, M.ABDURAHIMAN KUTTY.
3. KERALA PRIVATE HOSPITALS' ASSOCIATION
(MODERN MEDICINE), STATE COMMITTEE, ASWINI HOSPITAL BUILDING,
K.N.ROAD, THRISSUR-20, REPRESENTED BY ITS PRESIDENT
DR.P.K.MOHAMMED RASHEED.

BY ADV. DR.K.B.MOHAMMED KUTTY (SR.)
ADV.SRI.K.ANAND (SR.)
ADV.SRI.A.KUMAR
ADV.SMT.G.MINI

RESPONDENTS

1. THE INTELLIGENCE OFFICER
SQUAD NO.1, OFFICE OF THE INSPECTING ASSISTANT,
COMMISSIONER (INTELLIGENCE),
DEPARTMENT OF COMMERCIAL TAXES, THRISSUR-680 001.
2. THE COMMERCIAL TAX OFFICER
DEPARTMENT OF COMMERCIAL TAXES, TIRURANGADI,
MALAPPURAM DISTRICT-676 306.
3. THE COMMISSIONER OF COMMERCIAL TAXES
PUBLIC BUILDINGS, THIRUVANANTHAPURAM-695 001.
4. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

GOVERNMENT PLEADER FOR R1 TO R4

This Writ Appeal coming on for orders on 18.01.2019 along with connected cases upon perusing the appeal memorandum and this Court's order dated 13-04-2018, the court on the same day passed the following:-

(P.T.O)

B
18/1/19
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA No. 1972/2012

Against Judgment dated 14-09-2012 in WPC.3682/2011 of this Court.

APPELLANT/PETITIONER:

PVS MEMORIAL HOSPITAL LTD.
KALOOR, KOCHI-682 017, REPRESENTED BY ITS EXECUTIVE DIRECTOR,
P.V.MINI.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
ADV.SRI.K.M.FIROZ

RESPONDENTS:

1. THE COMMERCIAL TAX OFFICER
KVAT CIRCLE-II, KALAMASSERY-683 104.
2. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER

This Writ Appeal coming on for orders on 18.01.2019 along with connected cases upon perusing the appeal memorandum and this Court's order dated 13-04-2018, the court on the same day passed the following:-

(P.T.O)

SB
6/1/19
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA.No.1993/2012

Against Judgment dated 14-09-2012 in WPC.1458/2011 of this Court.

APPELLANTS/PETITIONERS

1. THIRUVALLA MEDICAL MISSION HOSPITAL
(DEWAN BAHADUR DR. V. VARGHESE
HOSPITAL TRUST ASSOCIATION),
POST BOX NO.50, THIRUVALLA-689101,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.
2. DR. THOMAS KURUVILA
PROPRIETOR, G.K.HOSPITAL,
THIRUVALLA.
3. DR. VARGHESE JOSEPH
PROPRIETOR,
EYE MICRO SURGERY AND LASER CENTRE,
INTERNATIONAL TOURIST COMPLEX,
PUSHPAGIRI ROAD, THIRUVALLA-689101.

BY ADV. SRI. BECHU KURIAN THOMAS (SR.)
ADV. SRI. PAUL JACOB
ADV. SRI. ENOCH DAVID SIMON JOEL

RESPONDENTS/RESPONDENTS

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-1.
2. DEPUTY COMMISSIONER
OFFICE OF THE DEPUTY COMMISSIONER (INT.),
DEPARTMENT OF COMMERCIAL TAXES,
PATHANAMTHITTA-689101.
3. INTELLIGENCE OFFICER
SQUAD NO. II, PATHANAMTHITTA AT THIRUVALLA,
OFFICE OF THE INTELLIGENCE OFFICER,
SQUAD NO. II, PATHANAMTHITTA
AT 1ST FLOOR, REVENUE TOWER,
THIRUVALLA-689101.

GOVERNMENT PLEADER FOR R1 TO R3

This Writ Appeal coming on for orders on 18.01.2019 along with connected cases upon perusing the appeal memorandum and this Court's order dated 13-04-2018, the court on the same day passed the following:-

(P.T.O)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA.No.1998/2012

Against Judgment dated 14-09-2012 in WPC.3169/2011 of this Court.

PETITIONER:

THE SECRETARY, PUSHPAGIRI MEDICAL SOCIETY ,
TIRUVALLA-689 101, PATHANAMTHITTA DISTRICT, REPRESENTED BY ITS
PRESENT SECRETARY AND CHIEF EXECUTIVE OFFICER OF
PUSHPAGIRI MEDICAL COLLEGE, FR. THOMAS KODINATTUMKUNNEL.

BY ADV. DR. K. B. MUHAMED KUTTY (SR.)
ADV. SRI. K. M. FIROZ

RESPONDENTS:

1. THE INTELLIGENCE OFFICER ,
SQUAD NO. II, COMMERCIAL TAXES DEPARTMENT,
PATHANAMTHITTA AT THIRUVALLA, 689101.
2. THE COMMERCIAL TAX OFFICER
COMMERCIAL TAXES DEPARTMENT, THIRUVALLA-689101.
3. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, TAXES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER, FOR R1 TO R3

This Writ Appeal coming on for orders on 18.01.2019 along with
connected cases upon perusing the appeal memorandum and this Court's
order dated 13-04-2018, the court on the same day passed the
following:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA No.2029/2012

Against Judgment dated 14-09-2012 in WPC.6343/2012 of this Court.

APPELLANT/APPELLANTS

M/S.SANTHI NURSING HOME

PUNAYURKULAM,

REPRESENTED BY ITS MANAGING PARTNER DR.K.RAJESH.

BY ADV. SRI.P.N.D.NAMBOODHIRI

RESPONDENT/RESPONDENTS

1. THE COMMERCIAL TAX OFFICER
CHAVAKKAD, THRISSUR-680 307.
2. THE INSPECTING ASST. COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, IRINJALAKUDA-680 121.
3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT TAXES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

GOVERNMENT PLEADER FOR R1 TO R3

This Writ Appeal coming on for orders on 18.01.2019 along with connected cases upon perusing the appeal memorandum, and this Court's order dated 13.04.2018 the court on the same day passed the following:-

B
18/1/19
18/1/19

(p. t. o)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WA No. 823/2015

Against Judgment dated 24-03-2015 in WPC.9157/2015 of this Court.

APPELLANT/PETITIONER

M/S ROYAL HOSPITAL
KUNNAMKULAM,
THRISSUR DISTRICT,
REPRESENTED BY ITS PROPRIETOR,
DR. THOMAS MATHEW.

BY ADV. SRI. HUSSAIN KOYA VALIYAVEEDAKATH
ADV. SRI. K. ANAND
ADV. SRI. K. V. RAJENDRAN (WANDOOOR)
ADV. SRI. K. P. ABDUL AZEES

RESPONDENTS/RESPONDENTS

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. THE COMMERCIAL TAX OFFICER
OFFICE OF THE COMMERCIAL TAX OFFICE,
KUNNAMKULAM-680503.
3. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES,
ERNAKULAM-682018.
4. THE COLLECTOR/AUTHORIZED OFFICER
INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, COMMERCIAL TAX COMPLEX,
POOTHOLE, THRISSUR-680001.

GOVERNMENT PLEADER FOR R1 TO R4

This Writ Appeal coming on for orders on 18.01.2019 along with connected cases upon perusing the appeal memorandum, and this Court's order dated 13.04.2018, the court on the same day passed the following:-

(P.T.O)

B
28/1/19
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT.Rev No.11/2017

T.A.(VAT).1042/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE TRIBUNAL, PALAKKAD

REVISION PETITIONER

**M/S.HOLY CROSS HOSPITAL PVT. LTD., COURT ROAD,
MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR.M.C. JOY.**

RESPONDENT

**STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695 001.**

This petition again coming on for orders on 18.01.2019 along with connected cases upon perusing the petition and the affidavit filed in support thereof and this Court's order dated 13.04.2018 and upon hearing the arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and GOVERNMENT PLEADER for the respondent, the court passed the following ;

p.t.o

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08/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT.Rev No.12/2017

**T.A. (VAT).248/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE
TRIBUNAL, PALAKKAD**

REVISION PETITIONER

**M/S.HOLY CROSS HOSPITAL PVT. LTD. , COURT ROAD,
MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR.M.C. JOY.**

RESPONDENT

**STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695 001.**

**This petition again coming on for orders on 18.01.2019 along with
connected cases upon perusing the petition and the affidavit filed in support
thereof and this Court's order dated 13.04.2018 and upon hearing the
arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and
GOVERNMENT PLEADER for the respondent, the court passed the following ;**

p.t.o

lpd/-

S
18/1/19
SK
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT. Rev No.13/2017

T.A. (VAT) No.1043/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE TRIBUNAL, PALAKKAD

REVISION PETITIONER

**M/S. HOLY CROSS HOSPITAL PVT. LTD.,
COURT ROAD, MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR. M. C. JOY.**

RESPONDENT

**STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695001.**

This petition again coming on for orders on 18.01.2019 along with connected cases upon perusing the petition and the affidavit filed in support thereof and this Court's order dated 13.04.2018 and upon hearing the arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and GOVERNMENT PLEADER for the respondent, the court passed the following ;

p.t.o

lpd/-

**2
68/1/19**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT. Rev No.14/2017

T.A.(VAT) No. 251/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE TRIBUNAL, PALAKKAD

REVISION PETITIONER

**M/S.HOLY CROSS HOSPITAL PVT. LTD.,
COURT ROAD, MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR.M.C. JOY.**

RESPONDENT

**STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695001.**

This petition again coming on for orders on 18.01.2019 along with connected cases upon perusing the petition and the affidavit filed in support thereof and this Court's order dated 13.04.2018 and upon hearing the arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and GOVERNMENT PLEADER for the respondent, the court passed the following ;

p.t.o

lpd/-

8/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT.Rev No.191/2016

**T.A.(VAT).252/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE
TRIBUNAL, PALAKKAD**

REVISION PETITIONER

**M/S.HOLY CROSS HOSPITAL PVT. LTD.,
COURT ROAD, MANJERI 676 121, MALAPPURAM DISTRICT,
REPRESENTED BY DR.M.C.JOY**

RESPONDENT

**STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695 001.**

**This petition again coming on for orders on 18.01.2019 along with
connected cases upon perusing the petition and the affidavit filed in support
thereof and this Court's order dated 13.04.2018 and upon hearing the
arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and
GOVERNMENT PLEADER for the respondent, the court passed the following ;**

p.t.o

lpd/-

8/1/19
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT. Rev No. 5/2017

**T.A. (VAT). 249/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE
TRIBUNAL, PALAKKAD**

REVISION PETITIONER

**M/S. HOLY CROSS HOSPITAL PVT. LTD., COURT ROAD,
MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR. M. C. JOY.**

RESPONDENT

**STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695 001.**

**This petition again coming on for orders on 18.01.2019 along with
connected cases upon perusing the petition and the affidavit filed in support
thereof and this Court's order dated 13.04.2018 and upon hearing the
arguments of M/S A. KUMAR & G. MINI, Advocates for the petitioner and
GOVERNMENT PLEADER for the respondent, the court passed the following ;**

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**2
18/1/19**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT.Rev No.6/2017

T.A.(VAT).1044/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE TRIBUNAL, PALAKKAD

REVISION PETITIONER

**M/S.HOLY CROSS HOSPITAL PVT. LTD. , COURT ROAD,
MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR.M.C. JOY.**

RESPONDENT

**STATE OF KERALA , REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM.**

This petition again coming on for orders on 18.01.2019 along with connected cases upon perusing the petition and the affidavit filed in support thereof and this Court's order dated 13.04.2018 and upon hearing the arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and GOVERNMENT PLEADER for the respondent, the court passed the following ;

p.t.o

lpd/-

68/1/19
PK
68/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT. Rev No. 7/2017

T.A. (VAT). 1045/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE TRIBUNAL, PALAKKAD

REVISION PETITIONER

**M/S. HOLY CROSS HOSPITAL PVT. LTD. , COURT ROAD,
MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR. M. C. JOY.**

RESPONDENT

**STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695 001.**

This petition again coming on for orders on 18.01.2019 along with connected cases upon perusing the petition and the affidavit filed in support thereof and this Court's order dated 13.04.2018 and upon hearing the arguments of M/S A. KUMAR & G. MINI, Advocates for the petitioner and GOVERNMENT PLEADER for the respondent, the court passed the following ;

p.t.o

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18/1/19

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18/1/19*

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT. Rev No. 8/2017

T.A. (VAT) No. 247/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE TRIBUNAL, PALAKKAD

REVISION PETITIONER/APPELLANT

**M/S. HOLY CROSS HOSPITAL PVT. LTD.,
COURT ROAD, MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR. M. C. JOY.**

RESPONDENT/RESPONDENT

**STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695001.**

This petition again coming on for orders on 18.01.2019 along with connected cases upon perusing the petition and the affidavit filed in support thereof and this Court's order dated 13.04.2018 and upon hearing the arguments of M/S A. KUMAR & G. MINI, Advocates for the petitioner and GOVERNMENT PLEADER for the respondent, the court passed the following ;

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18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT.Rev No.9/2017

**T.A.(VAT).250/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE
TRIBUNAL, PALAKKAD**

REVISION PETITIONER/APELLANT

**M/S.HOLY CROSS HOSPITAL PVT. LTD., COURT ROAD,
MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR.M.C.JOY.**

RESPONDENT/RESPONDENT

**STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695 001.**

**This petition again coming on for orders on 18.01.2019 along with
connected cases upon perusing the petition and the affidavit filed in support
thereof and this Court's order dated 13.04.2018 and upon hearing the
arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and
GOVERNMENT PLEADER for the respondent, the court passed the following ;**

p.t.o

lpd/-

**6
18/1/19**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

OT.Rev No.10/2017

T.A.(VAT).253/2013 of the KERALA VALUE ADDED TAX ADDITIONAL APPELLATE
TRIBUNAL, PALAKKAD

REVISION PETITIONER

M/S.HOLY CROSS HOSPITAL PVT. LTD., COURT ROAD,
MANJERI-676121, MALAPPURAM DISTRICT,
REPRESENTED BY DR.M.C. JOY.

RESPONDENT

STATE OF KERALA, REPRESENTED BY SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM-695 001.

This petition again coming on for orders on 18.01.2019 along with
connected cases upon perusing the petition and the affidavit filed in support
thereof and this Court's order dated 13.04.2018 and upon hearing the
arguments of M/S A.KUMAR & G.MINI, Advocates for the petitioner and
GOVERNMENT PLEADER for the respondent, the court passed the following ;

p.t.o

lpd/-

2
28/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

ST.Rev. No.40/2012

**TA No.138/2010 of the KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH,
KOTTAYAM**

REVISION PETITIONER/RESPONDENT/REVENUE

**STATE OF KERALA,
REP. BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.**

RESPONDENT/APPELLANT/ASSESSEE

**M/S.KARUNA HOSPITAL,
THODUPUZZHA, PIN-685 584.**

This petition again coming on for orders on 18.01.2019 along with connected cases upon perusing the petition and the affidavit filed in support thereof and this Court's order dated 13.04.2018 and upon hearing the arguments of GOVERNMENT PLEADER for the petitioner, and M/s. KURIAN GEORGE KANNANTHANAM, TONY GEORGE KANNANTHANAM, JIJI THOMAS, Advocates for the respondent, the court passed the following ;

p.t.o

lpd/-

8/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No. 6914/2011

PETITIONER

**MGM MUTHOOT MEDICAL CENTRE,
COLLEGE ROAD, KOZHENCHERRY, REPRESENTED BY, ITS GENERAL MANAGER,
ADMN., BABU GEORGE.**

RESPONDENT

- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES,, THIRUVANANTHAPURAM-1.**
- 2. DEPUTY COMMISSIONER
OFFICE OF THE DEPUTY COMMISSIONER (INT.),, DEPARTMENT OF COMMERCIAL
TAXES, PATHANAMTHITTA.**
- 3. INTELLIGENCE OFFICER
SQUAD NO.I, COMMERCIAL TAXES, PATHANAMTHITTA.**

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay Ext/P3 order and Ext.P3(a) notice of demand and all further proceedings pursuant thereto, pending disposal of the writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S BECHU KURIAN THOMAS, ENOCH DAVID SIMON JOEL, PAUL JACOB P, Advocates for the petitioner and of M/S GOVERNMENT PLEADER, Advocates for the respondents, the court passed the following:

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18/1/19
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18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1949

WP(C).No.11170/2017(U)

PETITIONER:-

M/S. SANJOS PARISH HOSPITAL,
PAVARATTY, CHAVAKKAD, THRISSUR- 680 507,
REPRESENTED BY ITS MANAGING DIRECTOR,
REV. FR. JOSEPH POOVATHOOKKARAN.

BY ADV.: SRI. P. N. DAMODARAN NAMBOODIRI

RESPONDENTS:-

1. THE COMMERCIAL TAX OFFICER, CHAVAKKAD,
THRISSUR- 680 307.
2. THE INSPECTING ASST. COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, IRINJALAKUDA- 680 121.
3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVT. TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

BY ADV.: GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ORDERS ON 18.01.19 ALONG WITH CONNECTED CASES AND UPON PERUSING THIS COURT'S REFERENCE ORDER DATED 13.04.18, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. T. O

18/01/19
S/P
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C).No.11173/2017 (V)

PETITIONER:-

M/S. ROYAL HOSPITAL, KUNNAMKULAM, THRISSUR DISTRICT,
REPRESENTED BY ITS PROPRIETOR,
DR. THOMAS MATHEW.

BY ADV.: M/S HUSSAIN KOYA VALIYAVEEDAKATH, K. ANAND

RESPONDENTS:-

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.
2. THE COMMERCIAL TAX OFFICER,
OFFICE OF THE COMMERCIAL TAX OFFICE, KUNNAMKULAM, 680 503
3. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, ERNAKULAM-682 018
4. THE COLLECTOR/AUTHORIZED OFFICER,
INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES,
COMMERCIAL TAXES COMPLEX, POOTHOLE, THRISSUR, 680004.

BY ADV.: GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ORDERS ON 18.01.19 ALONG
WITH CONNECTED CASES AND UPON PERUSING THIS COURT'S REFERENCE ORDER DATED
13.04.18, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.T.O

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18/1/19
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18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C)No.13406/2013(A)

PETITIONER

M/S.SANJOS PARISH HOSPITAL,
PAVARATTY, REPRESENTED BY ITS MANAGING DIRECTOR REV.FR.JOSEPH
(NOBY) AMBOOKAN.

BY ADVOCATE-SRI.P.N.D.NAMBOOTHIRI

RESPONDENTS

1. THE COMMERCIAL TAX OFFICER,
CHAVAKKAD - 680 307, THRISSUR.
2. THE INSPECTING ASST.COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, IRINJALAKUDA - 680 121.
3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

R1 TO R3 BY GOVERNMENT PLEADER

This Writ Petition (Civil) having come up for orders on 18-01-2019 along with connected cases and upon perusing this Court's order dated 13-04-2018, the Court on the same day passed the following:

P.T.O

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.13872/2017

PETITIONER

M/S. MOIDU MEDICARE (P) LTD.

NATIONAL HOSPITAL COMPOUND, INDIRA GANDHI ROAD, CALICUT 673 001, REP. BY
ITS AUTHORIZED SIGNATORY, MR.ASHIK

BY ADVOCATES M/S A.KUMAR, SMT.G.MINI, P.J.ANILKUMAR & P.S.SREE PRASAD,

RESPONDENT

INTELLIGENCE OFFICER (IB)-III

COMMERCIAL TAXES, KOZHIKODE 673 001.

This WP(C) having come up for order on 18-01-2019 along with connected cases and upon perusing this court's order dated 13-04-2018, the court on the same day passed the following:

2
18/01/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.14754/2017(T)

PETITIONER

M/S. LAKESHORE HOSPITAL & RESEARCH CENTRE LTD.
MARADU, NETTOOR, KOCHI REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR. SASIDHARAN PILLAI

BY ADV.: M/S A.KUMAR, P.J.ANILKUMAR, G.MINI & P.S.SREEPRASAD

RESPONDENTS

1. STATE OF KERALA REPRESENTED BY SECRETARY TAXES DEPARTMENT
GOVT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695 001
2. INTELLIGENCE OFFICER (IB) COMMERCIAL TAXES
MATTANCHERRY, MINI CIVIL STATION, ALUVA- 683101
3. COMMERCIAL TAX OFFICER, SECOND CIRCLE,
TRIPUNITHURA, ERNAKULAM -682 301

BY ADV.: GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ORDERS ON 18.01.19 ALONG
WITH CONNECTED CASES AND UPON PERUSING THIS COURT'S REFERENCE ORDER DATED
13.04.18, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.T.O

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18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.24584/2013 (W)

PETITIONER

**M/S.SANTHI NURSING HOME, PUNAYURKULAM
REPRESENTED BY ITS MANAGING PARTNER DR. K. RAJESH.**

RESPONDENTS

1. **THE COMMERCIAL TAX OFFICER,
CHAVAKKAD-680307, THRISSUR.**
2. **THE INSPECTING ASST. COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES, IRINJALAKUDA-680121.**
3. **THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695001.**

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings pursuant to Exhibit P2 order pending disposal of the Writ Petition in the interest of justice.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 13.4.2018 and upon hearing the arguments of SRI. P.N.DAMODARAN NAMBOODIRI, Advocate for the petitioner and of GOVERNMENT PLEADER for Respondents, the court passed the following:-

[P.T.O]

8
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.28069/2012

PETITIONER

MOTHER HOSPITAL PRIVATE LIMITED,
PULLAZHY POST, OLARIKKARA, THRISSUR - 680 012,
REPRESENTED BY ITS DIRECTOR DR.P.A. ABDUL HAKKIM.

BY ADVOCATES M/S TOMSON T.EMMANUEL & JENSON FRANCIS PAYANKAN

RESPONDENTS

1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, 2ND CIRCLE, THRISSUR - 680 003.
2. ASSISTANT COMMISSIONER APPEALS,
COMMERCIAL TAXES, THRISSUR - 680 003.
3. INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES, THRISSUR - 680 003.
4. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

This WP(C) having come up for order on 18-01-2019 along with connected cases and upon perusing this court's order dated 13-04-2018, the court on the same day passed the following:

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18/01/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.28100/2009 (F)

PETITIONER:

LISIE HOSPITAL, ERNAKULAM,
REPRESENTED BY ITS DIRECTOR FR.MATHEW MUTTAMTHOTTY.

BY SRI.BECHU KURIAN THOMAS (SENIOR ADVOCATE)
ADVS.SRI.PAUL JACOB
SRI.ROSHEN D.ALEXANDER
SMT.INDU SUSAN JACOB
SMT.NISHA JOHN
SRI.ENOCH DAVID SIMON JOEL

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.
2. DEPUTY COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER(INT.),
DEPARTMENT OF COMMERCIAL TAXES, EDAPALLY, ERNAKULAM.
3. INTELLIGENCE OFFICER (IB),
OFFICE OF THE DEPUTY COMMISSIONER(INT.),
DEPARTMENT OF COMMERCIAL TAXES, EDAPALLY, ERNAKULAM.

R1 TO R3 BY GOVERNMENT PLEADER

This Writ Petition (Civil) having come up for orders on 18/01/2019 along with connected cases and this Court's order dated 13/04/2018, the Court on the same day passed the following:

Kss/18.1.19.

p.t.o.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No. 3483/2011

PETITIONER

**M/S LOURDE HOSPITAL,
PACHALAM, ERNAKULAM, REPRESENTED BY ITS DIRECTOR.**

BY ADVOCATES M/S NISHA JOHN, ENOCH DAVID SIMON JOEL, GEORGE A. CHERIAN, PAUL JACOB P, RONY JOSE, ROSHEN. D. ALEXANDER, SHERINE JOSEPH, S. SREEDEV,

RESPONDENTS

- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES, THIRUVANANTHAPURAM-1.**
- 2. DEPUTY COMMISSIONER, OFFICE OF THE DEPUTY COMMISSIONER (INT.),
DEPARTMENT OF COMMERCIAL TAXES, EDAPALLY, ERNAKULAM, KOCHI-24.**
- 3. THE COMMERCIAL TAX OFFICER, OFFICE OF THE COMMERCIAL TAX OFFICER,
FIRST CIRCLE, ERNAKULAM, KOCHI-24.**

By GOVERNMENT PLEADER

This WP(C) having come up for order on 18-01-2019 along with connected cases and upon perusing this court's order dated 13-04-2018, the court on the same day passed the following:

ce
18/01/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.3762/2011

PETITIONERS:

1. **ST.THOMAS HOSPITAL,
MALAKARA, PATHANAMTHITTA DISTRICT,
REPRESENTED BY ITS PROPRIETOR, DR.CHERIYAN.**
2. **CHRISTIAN MISSION HOSPITAL,
PANDALAM, PATHANAMTHITTA DISTRICT, REPRESENTED BY,
ITS MANAGING PARTNER, DR.T.G.VARGHESE.**
3. **M.G.M MUTHOOT MEDICAL CENTRE,
PATHANAMTHITTA DISTRICT, REPRESENTED BY ITS ADMINISTRATOR,
MATHEWS PHILIP.**
4. **HOLY CROSS HOSPITAL,
ADOOR, PATHANAMTHITTA DISTRICT,
REPRESENTED BY ITS ADMINISTRATOR, SR.JOSIA.**
5. **CHITHRA MULTI SPECIALITY HOSPITAL,
PANDALAM, PATHANAMTHITTA DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER, DR.T.SADHANA.**

**BY ADV. SHRI.BECHU KURIAN THOMAS (SR.), ALONG WITH
M/S.PAUL JACOB P, ENOCH DAVID SIMON JOEL &
ROSHEN.D.ALEXANDER**

RESPONDENTS:

1. **STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-1**
2. **DEPUTY COMMISSIONER
OFFICE OF THE DEPUTY COMMISSIONER (INT),
DEPARTMENT OF COMMERCIAL TAXES,, PATHANAMTHITTA 689 101.**
3. **INTELLIGENCE OFFICER SQUAD NO.1
OFFICE OF THE INSPECTING ASST COMMISSIONER (INT),
COMMERCIAL TAXES, PATHANAMTHITTA - 689 101.**

BY ADV.: GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ORDERS ON 18.01.19 ALONG
WITH CONNECTED CASES AND UPON PERUSING THIS COURT'S REFERENCE ORDER DATED
13.04.18, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.T.O.

18/1/19
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.3838/2011(D)

PETITIONER

**VIJAYA KUMARA MENON HOSPITAL,
NORTH FORT GATE, TRIPUNITHURA ERNAKULAM DISTRICT,
REPRESENTED BY ITS PROPRIETOR DR. K. BHARATHAN,
S/O. K. KUMARA MENON, AGED 60, JAIVIJAY,
N.F.GATE, TRIPUNITHURA.**

**BY ADVS. K. C. CHARLES,
A. T. RENJU,
E. N. HARI,
M. POLY MATHAI,
P. CHELLAPPAN,
VIMAL K. CHARLES,**

RESPONDENTS

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES,
TRIVANDRUM, PIN- 695001.**
- 2. COMMERCIAL TAX OFFICER COMMERCIAL TAX,
COMMERCIAL TAX OFFICE, K.V.A.T. CIRCLE I,
TRIPUNITHURA, PIN- 682334.**
- 3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM, PIN- 682415.**

R1 TO R3 BY GOVERNMENT PLEADER

This Writ Petition (Civil) having come up for orders on 18/01/2019 along with with connected cases and this Court's order dated 13/04/2018, the Court on the same day passed the following:

p.t.o.

pb/18.01.19.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.4027/2011

PETITIONER

**ERNAKULAM MEDICAL CENTRE, NH BYPASS, KOCHI-682028,
REPRESENTED BY ITS MANAGING DIRECTOR, C.I.GOPALAN.**

**By ADVS. BECHU KURIAN THOMAS,
ENOCH DAVID SIMON JOEL,**

RESPONDENTS

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-1.**
- 2. DEPUTY COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER(INT.),
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM-683104.**
- 3. COMMERCIAL TAX OFFICER, KVAT CIRCLE-II,
KALAMASSERY, OFFICE OF THE COMMERCIAL TAX OFFICER,
IIND CIRCLE, KALAMASSERY- 683104.**

R1 TO R3 BY GOVERNMENT PLEADER

**This Writ Petition (Civil) having come up for orders on 18/01/2019
along with with connected cases and this Court's order dated 13/04/2018, the
Court on the same day passed the following:**

p.t.o.

pb/18.01.19.

18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.4028/2011

PETITIONER

1. **DEVI HOSPITAL PVT. LTD.,
XXI/64, NEAR NSS COLLEGE, NORTH FORT GATE, THRIPIUNITHURA,
ERNAKULAM 682301, REPRESENTED BY ITS MANAGING DIRECTOR,
MADHAVAN NAMBALAT.**
2. **VARMA MEDICAL CLINIC, MAIN ROAD, THRIPIUNITHURA,
REPRESENTED BY ITS ADMINISTRATOR, K.K.STEPHEN- 682301.**

**BY ADV. BECHU KURIAN THOMAS, (SENIOR)
BY ADV. ENOCH DAVID SIMON JOEL**

RESPONDENT

1. **STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF COMMERCIAL TAXES, THIRUVANANTHAPURAM-1.**
2. **DEPUTY COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER (INT.),
DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM- 682301.**
3. **COMMERCIAL TAX OFFICER, KVAT CIRCLE-I
KVAT CIRCLE-I, THRIPIUNITHURA, OFFICE OF THE COMMERCIAL TAX,
OFFICER, 1ST CIRCLE, THRIPIUNITHURA- 682301.**

R1 TO R3 BY GOVERNMENT PLEADER

**This Writ Petition (Civil) having come up for orders on 18/01/2019
along with with connected cases and this Court's order dated 13/04/2018,
the Court on the same day passed the following:**

p.t.o.

pb/18.01.19.

18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE A. MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C).No.6352/2013(T)

PETITIONER

**M/S SANTHI NURSING HOME, PUNAYURKULAM,
REPRESENTED BY ITS MANAGING PARTNER DR.K.RAJESH.**

BY ADV.: SRI.P.N.DAMODARAN NAMBOODIRI

RESPONDENTS

- 1. THE COMMERCIAL TAX OFFICER,
CHAVAKKAD-680307, THRISSUR.**
- 2. THE INSPECTING ASST.COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
IRINJALAKUDA-680121.**
- 3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT TAXES
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.**

BY ADV.: GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ORDERS ON 18.01.19
ALONG WITH CONNECTED CASES AND UPON PERUSING THIS COURT'S REFERENCE
ORDER DATED 13.04.18, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.T.O

CM
18/1/19

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present :

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE ASHOK MENON

Friday, the 18th day of January 2019/28th Pousha, 1940

WP(C) No.14047/2018 (E)

PETITIONER:

M/S.IQRAA INTERNATIONAL HOSPITAL AND RESEARCH CENTRE,
MALAPARAMBA, KOZHIKODE, REPRESENTED BY ITS
EXECUTIVE DIRECTOR, P.C.ANWAR.

BY ADVS.SRI.K.P.ABDUL AZEES
SMT.SHOBA ANNAMMA EAPEN
SMT.ARCHANA.T.

RESPONDENTS:

1. THE STATE TAX OFFICER,
IIIRD CIRCLE, DEPARTMENT OF STATE GST,
KOZHIKODE - 673 004.
2. THE COMMISSIONER,
COMMERCIAL TAXES, THIRUVANANTHAPURAM-695 001.
3. STATE OF KERALA,
REPRESENTED BY SECRETARY (TAXES),
THIRUVANANTHAPURAM - 695 001.

R1 TO R3 BY GOVERNMENT PLEADER

This Writ Petition (Civil) having come up for orders on 18/01/2019 along with connected cases and this Court's order dated 13/04/2018, the Court on the same day passed the following:

Kss/18.1.19.

p.t.o.

"C.R."

K.Vinod Chandran, A.Muhamed Mustaque & Ashok Menon, JJ.

W.A.Nos.1896/2012, 1958/2012, 1971/2012, 1972/2012,
1993/2012, 1998/2012, 2029/2012, 823/2015;
O.T.Rev.Nos.11/2017, 12/2017, 13/2017, 14/2017, 191/2016,
5/2017, 6/2017, 7/2017, 8/2017, 9/2017,
10/2017;
S.T.Rev.40/2012;
W.P.(C) Nos.6914/2011, 11170/2017, 11173/2017, 13406/2013,
13872/2017, 14754/2017, 24584/2013, 28069/2012,
28100/2009, 3483/2011, 3762/2011, 3838/2011,
4027/11, 4028/2011, 6352/2013 & 14047/2018.

Dated, this the 18th day of January, 2019

O R D E R

Vinod Chandran, J.

The above cases - Writ Appeals, Revisions and Writ Petitions - have been placed before us by virtue of a reference order dated 13.04.2018 passed by a Division Bench of this Court. The question referred for consideration is as to whether the medicines supplied, implants carried out, the consumables used and surgical tools exclusively used in a particular procedure, as part of treatment of patients in a hospital, the price of which is recovered by way of bills from the patients are 'sale of goods' as contemplated by the legislation levying such tax; herein the Kerala Value Added Tax Act, 2003 [for brevity "KVAT Act"]. The Division Bench was of the opinion that though under the VAT Act the hospitals may require registration as a dealer since they have Pharmacies through which medicines and other components required for the treatment are sold; not only to in-patients

but also to out-patients, such transactions would not be exigible to tax under the sales tax enactment as it forms part of services rendered by the hospital. The Division Bench, which made the reference, relied on Bharat Sanchar Nigam Ltd. & Another v. Union of India & Others [(2006) 3 SCC 1] to take a different view from that held by this Court; by Benches of varying strength of quorum. The difference of opinion, so arising in the mind of the Division Bench being in conflict with a number of decisions of this Court on the very same aspect, the last of which also noticed Bharat Sanchar Nigam Ltd.; but found the dictum therein to have no relevance to the particular transactions as carried out by the hospitals, a reference was necessitated.

2. Some of the petitioners are also concerned with the tax leviable on the consumables including medicines as supplied by the Pharmacies to out-patients who are not admitted to the hospital for a definite medical treatment or surgical procedure. There being no view expressed on that aspect nor a reference made by the Division Bench, we would not look into that aspect. This would have to be necessarily considered by a Division Bench; whether the answer we give in the reference, is in favour of the assessee or against on the other aspect.

3. We need not refer to the individual facts to answer the reference and what we broadly stated as to the legal issue arising, would encompass the essential bare facts. We need only notice the various decisions of this Court, the Hon'ble Supreme Court and the various other High Courts to answer the question, which is purely on law; whether the drugs, implants and other consumables used in the treatment of in-patients in a hospital could be deemed to be 'sale of goods' under Article 366(29A) (f) of the Constitution of India.

4. We have heard learned Senior Counsel Sri.Bechu Kurian Thomas, learned Counsel Sri.A.Kumar, Sri.P.N.Damodaran Namboodiri, Sri.K.P.Abdul Azees for the petitioners and appellants and Senior Government Pleader Sri.C.K.Govindan for the State.

5. The first decision on the point, which has been referred to and extensively relied on in all the later decisions, is Malankara Orthodox Syrian Church v. Sales Tax Officer [(2004) 135 STC 224 (Ker.)]. A learned Single Judge of this Court considered the question as to whether a hospital is a 'dealer' within the definition of the term contained in the Kerala General Sales Tax Act, 1963 [for brevity "KGST Act"]. Under the said enactment, proceedings were issued by

the Sales Tax authorities to the petitioner-hospital, directing them to take registration under the Act as also produce books of accounts and also separate proceedings threatening penalty for non-registration and non-compliance of the statutory provisions. The learned Single Judge found that though there might be qualitative and quantitative distinguishing aspects with respect to the standard of services provided, essentially the activities in a hospital are one and the same. The assessee had also relied on a notification issued under the Act [SRO 1090 of 1999 and SRO 802 of 2001], which provided exemption to medical practitioners dispensing medicines from their own dispensaries. To the said notification, there was an Explanation added with effect from 16.08.2001, excluding hospitals and clinics from the definition of 'medical practitioners'. The learned Single Judge found that the exemption was only to medical practitioners dispensing medicine from their dispensaries as distinguished from a hospital or clinic, wherein also the dispensation of medicine is on the prescription of a medical practitioner. The exemption even without the Explanation, was held to be of a limited nature and applicable only to such dispensaries wherein no medical or surgical care is

provided by way of in-patient treatment and a Doctor carries on only consultation.

6. The contention of the assessee therein that the hospitals are also run by medical practitioners was negated and it was observed, there could be hospitals owned by companies, partnerships, trusts or by individuals who may or may not be medically qualified. The exemption was held to be not covering an organised activity of running a hospital even if the owners are doctors. Examining the definition of "business", "dealer", "sales" and "turnover", the assessee's contention that the supply of medicine is only incidental and essential to the rendering of medical services was rejected. It was found that supply of medicine is an integral part of the treatment or medical services rendered and it is significant in terms of the cost to the patient and was charged separately. Relying on Explanation (3C) to the definition of "sale" as found in Section 2(xxi), it was held that the legislative intent is to enlarge the scope of the operation of the Act to cover sales effected in the course of rendering services also; ie: all types of services. The definition clause of "dealer", it was found, includes the supply of goods in the course of rendering service and is not limited to food and articles of human consumption alone. The

introduction of "supply of goods as part of service" in the context of Article 366(29A) (f) though intended to get over the decision in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1978) 42 STC 386], the State legislation brought within its ambit even goods supplied in the course of services other than supply of food and articles of human consumption, was the finding. Going further, it was held that while food served to a guest in a hotel is only incidental and part of the obligatory service to be extended in a hotel; the supply of medicine in the course of treatment is not an incidental activity, but is the main and integral part of treatment. The supply of medicines by way of sales was found to be the major part of the business in a hospital, which is an activity deriving profits.

7. The decision of the Supreme Court in State of Tamil Nadu v. Board of Trustees of the Port of Madras [(1999) 114 STC 520] and State of Gujarat v. Raipur Manufacturing Co. Ltd. [(1967) 19 STC 1] were held to be not applicable to the sale of medicines as carried out by the hospitals. The hospitals were required to take out registration as a "dealer" under the taxation act and the question of levy, in the context of the first sale alone being taxable under the KGST Act, was left to be considered by the appropriate

officers. The appeal from Malankara Orthodox Syrian Church rejected in W.A.No.555 of 2003 by decision dated 26.11.2003 did not consider the aforesaid aspects. Referring to the question raised as to whether the appellants-hospitals were dealers under the KGST Act, the Division Bench noticed that there was an opportunity given to the hospitals by way of issuance of a notice, which was not responded to. Since the appellants were admittedly selling medicines, it was held that the notice issued cannot be held to be void. As to the predominant activity of the appellants, whether it be sale of medicines, it was a question of fact which could be examined on evidence only by the authorities under the Act, was the finding of the Division Bench.

8. Again, yet another hospital, run by a Trust, challenged the demands made for registration and production of books of accounts, contending that the decision of the Supreme Court in Board of Trustees of the Port of Madras and Commissioner of Sales Tax v. Sai Publication Fund [(2002) 4 SCC 57] were not correctly appreciated and applied. Yet another Division Bench noticed the decision in W.A.No.555 of 2003 and independently found a distinction from both the Board of Trustees of the Port of Madras and Sai Publication Fund. This Division Bench also noticed that the appellant had

not produced any evidence to indicate what their predominant activity was. The Writ Appeal filed from the judgment of the learned Single Judge was dismissed by judgment dated 31.10.2005 in W.A.No.1134 of 2005. The issue was once more agitated before this Court under the KGST Act insofar as a hospital claiming exemption for the sale of artificial lens used for replacement of the natural lens in the course of cataract operation. A learned Single Judge of this Court followed Malankara Orthodox Syrian Church and a Division Bench in Comtrust Eye Hospital v. Addl. Sales Tax Officer [(2009) 20 VST 532] affirmed the said view.

9. Yet again the question arose under the KVAT Act, especially in the context of the decision of the Hon'ble Supreme Court in Bharat Sanchar Nigam Ltd.; the judgment in which batch of writ petitions are impugned in the Writ Appeals placed before us. The learned Single Judge relied on Malankara Orthodox Syrian Church and the decision in appeal from that judgment. The judgment in W.A.No.1134 of 2005 was also referred to and relied upon. The definitions under the KVAT Act were found to be *in pari materia* with that of the KGST Act, under which the aforesaid decisions were passed. The decision in Bharat Sanchar Nigam Ltd. was found to be on the question of whether electro magnetic waves or

radio frequencies were goods for the purpose of Article 366(29A) (d). The reliance placed by the assessee-petitioners on the statement made in para 44 of the judgment, wherein the Hon'ble Supreme Court had cited an example as to a patient being given a pill by a hospital, was held to be not laid down as a principle covering all transactions in a hospital. The learned Single Judge held that Bharat Sanchar Nigam Ltd. was not rendered in the context of the provisions of the KVAT Act and the issue raised and decided was not in the context of a comparable controversy. It was held that the mere citing of an example of a pill in the course of a treatment cannot be held to be a declaration as to all transactions occurring in a hospital to be outside the taxation law. Hospitals in the present case were established by Public Limited Companies, which are incorporated with a profit motive. On the said reasoning, it was held that if in a hospital, medicines and other consumables are sold to a patient and bills are raised, there cannot be any refuge taken under a mere example cited by the Supreme Court in a decision totally unrelated to the subject. The hospitals cannot avoid such statutory liabilities, was the specific finding.

10. We have been taken through a number of decisions of various other High Courts which took a contrary view from

that taken by this Court, especially following Bharat Sanchar Nigam Ltd.. However, before looking into those, we would first independently consider the issue on the basis of the binding precedent as available from Bharat Sanchar Nigam Ltd., relying on which the reference has been made. At the outset, we have to emphasise that the contention of the State insofar as bringing in the sale of drugs, implants, consumables, etc. in the course of medical treatment under the sale of goods as provided in the sales tax enactment is based on clause (f) of Article 366(29A). We, hence, notice briefly the legal history of Article 366(29A) as noticed in Bharat Sanchar Nigam Ltd. with reference to the specific question here, as to whether there can be a separation of the service and sale element in the subject transactions carried out in the course of medical treatment. Prior to the 46th amendment as noticed in Bharat Sanchar Nigam Ltd., composite contracts such as works contracts, hire purchase contracts and catering contracts, were not assessable as contracts for sale of goods. State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.-I [(1958) 9 STC 353 (SC)] found the classical concept of sale to apply to the entry in the legislative List, which postulated three essential components to constitute a transaction of sale, viz., (i) an agreement to

transfer title, (ii) supported by consideration, and (iii) an actual transfer of title in the goods. In the absence of any one of these elements, there would be no sale and a contract which is entire and indivisible with no agreement for sale of goods would not attract the levy of sales tax was the finding. When there is no such separation, the contract was a composite one and there could be no classification made as a sale of goods, it was held. Likewise, in State of Punjab v. Associated Hotels of India Ltd. [(1972) 1 SCC 472], the question arose as to the service of supply of food at hotels to the residents could be assessed under the sales tax laws as a sale of goods. There being no distinct agreement for sale and the serving of food to the residents in a hotel being part of the service, as part of the hoteliers obligation; there was no warrant to charge sales tax on the food supplied, found the Supreme Court. The three contracts - works contract, hire purchase contract and catering contract - along with other transactions (with which we are not concerned in the present case) were deemed to be sales under Article 366(29A) by an amendment to the Constitution. However, the position even after the said amendment, with respect to transactions of a composite nature based on an indivisible contract, were not covered under the

specific clauses (a) to (f). The position as to other composite contracts remained the same and there could be no separation of a composite, indivisible transaction so as to tax the transfer of goods, if at all there is such a transfer in the course of such composite contract or the service rendered.

11. We here notice paragraphs 44 to 46 and 50 of Bharat Sanchar Nigam Ltd.:

"44. Gannon Dunkerley survived the 46th 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 Art. 366(29A) 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. Courts must move with the times. But the 46th 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 46th 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(29A). Transactions which are mutant sales are limited to the clauses of Article 366(29A). All other transactions would have to qualify as sales within the meaning of Sale of Goods Act, 1930 for the purpose of levy of sales tax.

45. Of all the different kinds of composite transactions the drafters of the 46th Amendment chose three specific situations, a works contract, a hire-purchase contract and a catering contract to bring within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been Constitutionally permitted in clauses (b) and (f) of Clause (29A) of Art. 366, there is no other service which has been permitted to be so split. For example the clauses of Art.366(29A) do not cover hospital services. 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.

46. 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's case, 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 (29A) 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. We will, for the want of a better phrase, call this the dominant nature test.

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50. We agree. After the 46th Amendment, the sale element of those contracts which are covered by the six sub-clauses of 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, *C.K.Jidheesh v. Union of India*, (2005) 8 Scale 784, held that the aforesaid

observations in *Associated Cement* (supra) were merely obiter and that *Rainbow Colour Lab* (supra) was still good law, it was not correct. It is necessary to note that *Associated Cement* [(2001) 4 SCC 593] did not say that in all cases of composite transactions the 46th Amendment would apply".

{Underlining by us for emphasis}

12. Hence, the sale element in those composite, inseparable contracts which are covered by the six sub-clauses of Article 366(29A) can be separated and subject to sales tax. With respect to all other composite transactions, the State would not have such power to distinctly tax the transfer of goods forming part of a composite contract or a rendering of service. As has been held in *Bharat Sanchar Nigam Ltd.*, the dominant nature test survives even after the 46th amendment. With due respect, we find the declaration of the Hon'ble 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 the 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.

13. As to the specific question dealt with in Bharat Sanchar Nigam Ltd., of the activation of mobile phone connections involving a sale or service or both together, the Court noticed a consensus among the respondent-States as to the alleged 'goods' element in telecommunication being the electromagnetic waves by which data generated by the subscriber was transmitted to the desired destination. Looking at what the electromagnetic waves are and the purpose it serves, it was held that they are neither abstracted nor consumed in the sense that they are not extinguished by their user. Suffice it to refer to paragraph 63:

"63. It is clear, electromagnetic waves are neither abstracted nor are they consumed in the sense that they are not extinguished by their user. They are not delivered, stored or possessed. Nor are they marketable. They are merely the medium of communication. What is transmitted is not an electromagnetic wave but the signal through such means. The signals are generated by the subscribers themselves. In telecommunication what is transmitted is the message by means of the telegraph. No part of the telegraph itself is transferable or deliverable to the subscribers".

It was held that though incorporeal rights may be goods for the purpose of levying sales tax, electromagnetic waves cannot come within such definition since they are not abstractable; nor are they capable of delivery. On the question of whether the SIM Cards and the sale of such cards qualify for the purpose of levy of tax on sale of goods, it was held that the same is ultimately a question of fact. However, the assessing authorities were directed to keep in mind the following principles in determining the issue:

"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 (para 87)".

Again, the Hon'ble Supreme Court emphasized on the aspect of sale being a part of the service rendered; there telecommunication services by the service provider; being outside the scope of levy of tax on sale of goods for reason of the same being an integral part of the service rendered.

14. We also notice the concurring judgment, which emphasizes that "*the Amendment introduced fiction by which*

six instances of transactions were treated as deemed sale of goods and that the said definition as to deemed sales will have to be read in every provision of the Constitution wherever the phrase "tax on sale or purchase of goods" occurs"(sic). Apposite also would be paragraphs 108 and 109:

"108. In the background of the above, the history prevailing at the time of the 46th Amendment and pre-enacting history as seen in the Statement of Objects and Reasons, Article 366 (29A) has to be interpreted. Each fiction by which those six transactions which are not otherwise sales are deemed to be sales independently operates only in that sub clause.

109. While the true scope of the amendment may be appreciated by overall reading of the entirety of Article 366 (29A), deemed sale under each particular sub-clause has to be determined only within the parameters of the provisions in that sub-clause. One sub-clause cannot be projected into another sub-clause and fiction upon fiction is not permissible. As to the interpretation of fiction, particularly in the sales tax legislation, the principle has been authoritatively laid down in the *Bengal Immunity Co. Ltd. v. State of Bihar* [1955] 2 SCR 603 at 657.

"The operative provisions of the several parts of Article 286, namely, clause (1)(a), clause (1)(b), clause (2) and clause (3) are manifestly intended to deal with different topics and, therefore, one cannot be projected or read into another." (S.R. Das, J.)".

15. It goes without saying, when one of the clauses under Article 366(29A) cannot be projected into another clause, there also cannot be any other transaction projected into the specific sub clauses which, by a deeming fiction, distinguishes the transfer of goods from within a composite transaction; though not answering the definition of a sale of goods. The fiction so created in the six instances cannot be imported into any other transactions. We are afraid that this essential principle was lost sight of in Malankara Orthodox Syrian Church when it held, based on Explanation (3C) to the definition of "sale" contained in Section 2(xxi) of the KGST Act as follows:

"The petitioners contended that the definition introduced under the explanation (3C) to the term "sale" contained in section 2(xxi) of the Act contemplates only food and articles of human consumption and the same does not take in "medicine". Even though the amendment was brought to cover hotels, the legislative intent is to enlarge the scope of the operation of the Act to cover sales effected in the course of rendering services also. Moreover, in the definition clause of "dealer" the supply of goods in the course of rendering service is not limited to food and articles of human consumption alone".

16. When the Constitution by a deeming fiction permitted only certain transactions to be treated as sale of goods, the State legislature cannot enlarge the scope of the definition in excess of that available in the deeming fiction to those transactions not strictly answering the definition of sale of goods or extend the fiction to those other transactions. In the Explanation, the State legislature cannot have any intention in excess of the fiction as brought in by the amendment to the Constitution. Even if such an intention was there, to the extent it is beyond and steps out of the ambit of, the fiction created by the 46th amendment, it would be vitiated for total absence of legislative power. The definition of sale as found in Section 2(xxi) of the KGST Act took care of instances as provided under clauses (a) to (f) in Article 366(29A) respectively by Explanations (1A), (2), (3), (3A), (3B) and (3C). Some of these were existing prior to the 4th amendment, which was held to be not included in the definition of 'sale of goods' by the Hon'ble Supreme Court by various decisions which led to the 46th Amendment. After the deeming fiction was introduced by Article 366(29A), all the transactions coming under the aforesaid Explanations stood validated as sale of goods. Similarly in the KVAT Act, Section 2(xliii) defines 'sale' and the Explanations I to VI

took care of the transactions covered by clauses (a) to (f) of Article 366(29A). Under the KGST Act and KVAT Act, the State cannot legislate in excess of the specific transactions brought in under Article 366(29A), to create further deeming fiction with respect to other composite transactions.

17. Malankara Orthodox Syrian Church also went on to hold that there is a clear distinction between supply of food as part of service in a hotel and supply of medicine in the course of medical treatment. Purportedly 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. We have to observe 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. However, the emphasis laid by the Hon'ble Supreme Court in Gannon Dunkerley-I was solely as to the composite nature of the contract and the two aspects being inseparable. The dominant nature test is to discern the essential nature, character and attributes of the transaction and not the valuation of the different elements or aspects

coming within a composite transaction.

18. Malankara Orthodox Syrian Church also erred in the emphasis it gave to the hospital services being carried on as a business for earning profits to find the inseparable transaction; of administration of drugs, use of consumables and implants carried out, liable to be taxed as sale of goods. Deriving profit is not a criterion which could decide the levy of tax on sale of goods. Profits and gains of business are taxed as income under the Income-tax Act, 1961 under a specific head of income as decipherable from Section 14 of that Act. It can lead to a levy of sales tax only if there is a sale of goods as defined under the taxing enactment. We find it apposite to draw strength from Haleema Zubair Vs. State Of Kerala 2008 (16) SCC 504 ; where this aspect was stressed. We extract paragraph 15 from the said decision:

"15. The High Court furthermore committed a serious error insofar as it failed to draw a distinction between the assessment under income tax and assessment under sales tax. Whereas income tax is levied on income under the Income Tax Act irrespective of the sources from which such an income had been derived, sales tax is levied only on the quantum of sales and, therefore, element of transaction of sale is a prerequisite for levy of sales tax. This aspect

of the matter has been considered by this Court in *Girdhari Lal Nannelal v. CST [1976 (3) SCC 701]* wherein it was held: (SCC p. 704, para 7)

"7. The approach which may be permissible for imposing liability for payment of income tax in respect of the unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income tax it may in appropriate cases be permissible to treat unexplained acquisition of money by the assessee to be assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources. Further, whereas in a case like the present a credit entry in respect of Rs 10,000 stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact that neither the assessee firm nor its partner or his wife adduced satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of the firm accruing from undisclosed sale transactions. It was, in our opinion, necessary to produce more material in order to connect the amount of Rs 10,000 with the income of the assessee firm as a result of sales. In the absence of such material, the mere absence of explanation regarding the source of Rs 10,000 would not justify the conclusion that the sum in dispute represents profits of the firm derived from undisclosed sales."

19. With respect to hospital services, we cannot but observe that the sale of drugs, implants and other

consumables are a part of the medical treatment rendered. There is no identity of the medicines or consumables or implants, as it does not lie in the mind or mouth of the patient to identify the drugs to be administered in the course of the treatment. Though a patient on his volition could refuse to take a particular drug, he cannot demand, as a matter of right, that a drug be administered to him in the course of the medical treatment. A demand of that nature will not be complied with by either a medical practitioner or a hospital, the latter of whom dispenses medicines only in accordance with the directions of the attending Physician or Surgeon. A person visits a hospital primarily for the purpose of curing an ailment or arresting or preventing it. At the hospital he places himself at the disposal of the Physician or the Surgeon who decides on the course of treatment to be taken which may or may not involve the administration of drugs, implants being carried out and other consumables being used in the course of the treatment. The cost of the implants, consumables or the drugs is irrelevant insofar as deciding what is the dominant nature of the transaction or service rendered to the patient in a hospital, which, without any doubt, is the therapeutic treatment rendered. The patient has no control or say, has limited control, on the procedures

taken in the course of the treatment, the drugs administered and the consumables used.

20. Larsen & Toubro Ltd. v. State of Karnataka [(2013) 65 VST 1 (SC)] was concerned with the question as to whether a development contract aimed at developing a land by making construction thereon amounts to a works contract or not. The agreement was one which was intended at developing and marketing flats to the customers. The developer entered into the agreement with the owner by virtue of which, after construction of the multi-storeyed building, 25% of the built up area was agreed to be surrendered to the owners of the land. 75% of the area was to be retained by the developer for sale to third parties. The Court noticed Gannon Dunkerley-I, which held the works contract to be indivisible contract not enabling the State to tax the transfer of goods made in pursuance of such indivisible contract. Article 366(29A) was noticed and it was held that after the 46th Amendment of the Constitution whether a works contract involved a dominant intention to transfer the property in goods was not at all material. Even if the dominant intention of the contract was not to transfer the property in goods and was of rendering of a service or the ultimate transaction is transfer of immovable property, then also it is open to the State to levy

sales tax on the materials used in such contract was the finding. Bharat Sanchar Nigam Ltd. was relied on, specifically on the aspect of the declaration that Gannon Dunkerley-I survived insofar as the definition of "sale" for the purposes of the Constitution in general and for the purpose of Entry 54 List II in particular, except to the extent the clauses in Article 366(29A) operate and also as to the dominant nature test being confined to a composite transaction not covered by Article 366(29A). When it was held in Bharat Sanchar Nigam Ltd. that dominant nature test has no application to a composite transaction covered by the clauses of Article 366(29A) as a corollary, it has to be understood as surviving insofar as the transactions not covered by the six clauses under Article 366(29A). Paragraph 67 is extracted hereunder:

"67. In view of the statement of law in *Associated Cement* [2001) 4 SCC 593] and *Bharat Sanchar* [(2006) 145 STC 91], the argument advanced on behalf of the appellants that dominant nature test must be applied to find out the true nature of transaction as to whether there is a contract of sale of goods or the contract of service in a composite transaction covered by clauses of article 366(29A) has no merit and the same is rejected".

21. The declaration so made was with respect to the development contract which was held to be a works contract. As to the other transactions the dominant nature test applies and in hospital services the dominant intention is provision of medical care and treatment, to effectively cure the patient of his/her ailment and it is not the sale of drugs, implants or other consumables. The service offered is one of medical treatment and the dispensation or administration of drugs or implants carried out in the course of surgical procedures and the consumables used in the course of any medical procedure would be an inseparable, indivisible part of the treatment rendered. The business expediency has no control in the administration of drugs, use of consumables or the implants carried out and neither does the control lie with the hospital, as a corporate or other legal entity. The supply of drugs use of consumables and the implants made are on professional medical advice intended at curing the patient and not deriving profits. Though not a charitable activity, hospitals cannot be said to be a business house established primarily for sale of drugs, consumables or implants. The principle is that mere passing of property in an article or commodity during the course of the performance of a contract or service, which is essentially one and indivisible, does

not render it a transaction of sale, except in the case of the specific instances as available in clauses (b), (c) and (f) of Article 366(29A). The fiction extends to only the specific clauses as coming under Article 366(29A) and stops there and does not extend beyond that or encompass any other composite transaction.

22. In this context, fruitful reference can also be made to Federation of Hotel and Restaurant Association of India v. Union of India [(2018) 2 SCC 97]. The issue raised therein was the applicability of Standards of Weights and Measures Act, 1976 read with enactment of 1985 and the Legal Meteorology Act, 2009. Whether the provisions of the said enactments would interdict the sale of mineral water in hotels and restaurants at prices above maximum retail price (MRP) was the issue considered. The Hon'ble Supreme Court found that the definition of "sale" in the said enactments have not incorporated the deeming fiction as available under Article 366(29A). Despite 46th amendment made in the Constitution, the judgment in Associated Hotels of India Ltd., would apply to the sale of mineral water in hotels which does not qualify the definition of sale of goods as per the enactments considered therein. The supply of mineral water, though for a price, is in the course of the service

rendered by the hotelier to the customer. Paragraphs 11 and 12 of the decision can be usefully referred, to answer, in the negative; the contention raised by the State that the services rendered in a hospital would also be included under clause (f) of Article 366(29A). Paragraphs 11 and 12 are extracted hereunder:

"11. As has been stated in the trilogy of judgments in *Associated Hotels of India Ltd.* and the two Northern India Caterers (India) Ltd. [(1978) 4 SCC 36 & (1980) 2 SCC 167], it is clear that when "sale" of food and drinks takes place in hotels and restaurants, there is really one indivisible contract of service coupled incidentally with sale of food and drinks. Since it is not possible to divide the "service element", which is the dominant element, from the "sale element", it is clear that such composite contracts cannot be the subject-matter of sales tax legislation, as was held in those judgments.

12. Bearing these judgments in mind, Parliament amended the Constitution and introduced the Constitution (Forty-sixth Amendment) Act, by which it introduced Article 366(29-A). Sub-clause (f), with which we are directly concerned, reads as follows:-

"366(29-A) (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".

A reading of the constitutional amendment would show that supply by way of or as part of any service of food or other article for human consumption is now deemed to be a sale of goods by the person making the transfer, delivery or supply".

{underlining by us to emphatically say that clause(f) does not travel beyond this}

Clause (f) of Article 366(29A) specifically introduced a deeming fiction insofar as catering contracts and supply of food and beverages in hotels and restaurants and permitted the supply of such food and drinks to be deemed to be sale of goods, though an integral part of the indivisible service rendered by the hotelier or restaurateur.

23. We also notice the Statement of Objects and Reasons appended to the Constitution (Forty-Sixth Amendment) Bill, 1981, which was enacted as the Constitution (Forty-Sixth Amendment) Act, 1982. We extract a portion of paragraph 3, 8 and clauses (vi) of paragraph 9:

"3. xxx In the *Associated Hotels of India case* (AIR 1972 S.C.1131), the Supreme Court held that there is no sale involved in the supply of food or drink by a hotelier to a person lodged in the hotel.

xxx

xxx

xxx

8. Besides the above mentioned matters, a new problem has arisen as a result of the decision of the Supreme Court in *Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi* (AIR 1978 SC 1591). States have been proceeding on the basis that the

Associated Hotels of India case was applicable only to supply of food or drink by a hotelier to a person lodged in the hotel and that tax was leviable on the sale of foodstuffs by a restaurant. But overruling the decision of the Delhi High Court, the Supreme Court has held in the above case that service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. It would not make any difference whether the visitor to the restaurant is charged for the meal as a whole or according to each dish separately.

9. It is, therefore, proposed to suitably amend the Constitution to include in article 366 a definition of "tax on the sale or purchase of goods" by inserting a new clause (29A). The definition would specifically include within the scope of that expression tax on -

xxx

xxx

xxx

(vi) the supply, by way of or as part of any service, of food or any drink for cash, deferred payment or other valuable consideration".

This would specifically indicate that the intention of the amendment, while introducing clause (f), was to get over the decisions in Associated Hotels of India Ltd. and Northern India Caterers (India) Ltd. What was brought under the

deeming fiction is the specific supply of food or drink in a hotel or in a restaurant, which is part of the service rendered by a hotelier or restaurateur. No reliance can be placed on the said deeming fiction, to bring in hospital services and differentiate the sale and service element so as to tax the sale of drugs, implants and other consumables, in the course of medical services rendered, as sale of goods. The dominant nature test squarely applies insofar as hospital services are concerned, which are essentially the service of providing medical treatment to an ailing individual. The words "any other article for human consumption" as found in clause (f) of Article 366(29A) has to be understood in relation to food and drink as available in clause (f). Though drugs are also taken orally, it cannot be said to be a consumption as in the case of a food or drink. Definitely the implants and other consumables cannot come within the meaning of 'human consumption' as contemplated in clause (f). We, hence, find that the decisions of this Court, as cited herein before, finding the sale of drugs, implants and consumables by a hospital to its inpatients, in the course of medical treatment administered, cannot be separated from the composite indivisible service of providing medical care and treatment and it cannot be said to be a sale of goods. Nor

would the deeming provision under Article 366(29A) of the Constitution take in such services to differentiate the distinct elements, comprised in one, inseparable, indivisible transaction.

24. The learned Senior Government Pleader Sri.C.K. Govindan then raised a contention that the drugs are essential commodities and hence, the sale of drugs by a hospital even in the course of the provision of medical treatment would fall under clause (a) of Article 366(29A). The argument is based on M/s.Vishnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer & Others [AIR 1978 SC 449] and the amendment brought forth, providing a deeming fiction as to sale of goods even in such instances covered by clause (a) of Article 366(29A); which is in the nature of a clarification. In M/s.Vishnu Agencies (Pvt.) Ltd. the contention was that transfer of controlled commodities in pursuance of direction issued under a control order cannot be brought under the definition of 'sale of goods' for reason of the element of volition by the seller and the mutual assent, being absent as held in M/s.New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar [AIR 1963 SC 1207]. This decision was overruled by the seven Judge Bench in M/s.Vishnu Agencies (Pvt.) Ltd. Despite this, for more clarity, clause (a) was

brought in, under Article 366(29A).

25. Reference is made to the Statement of Objects and Reasons as referred to earlier, to further advance this contention specifically paragraph 4 and 9(i), as extracted here:

4. In the *New India Mills* case (AIR 1963 SC 1207), the Supreme Court took the view that in the transfer of controlled commodities in pursuance of a direction under a Control Order, the element of volition by the seller, or mutual assent, is absent and, therefore, there is no sale as defined in the Sale of Goods Act, 1930. However, in *Oil and Natural Gas Commission vs. State of Bihar* (AIR 1976 SC 2478), the Supreme Court had occasion to consider its earlier decisions with regard to the liability of transfers of controlled commodities to be charged to sales tax. The Supreme Court held that where there are any statutory compulsions, the statute itself should be treated as supplying the consensus and furnishing the modality of the consensus. In *Vishnu Agencies vs. Commercial Tax Officer* (AIR 1978 SC 449), six of the seven Judges concurred in overruling the decision, in *New India Sugar Mills* case while the seventh Judge held the case to be distinguishable. It is, therefore, considered desirable to put the matter beyond any doubt.

9. It is, therefore, proposed to suitably amend the Constitution to include in article 366 a definition of "tax on the sale or purchase of goods"

by inserting a new clause (29A). The definition would specifically include within the scope of that expression tax on -

(i) transfer for consideration of controlled commodities;

26. We cannot but observe that the contention urged is slightly far-fetched, especially since an essential commodity is always not a controlled commodity and herein, the fetter on the State to tax the sale of goods is not by reason of the absence of a consensus *ad idem*. In any event, we notice the decision in M/s.Vishnu Agencies (Pvt.) Ltd. Therein, the question raised was on the sale and supply of essential goods of short supply, regulated by a control order. Whether the sale made as a result of the directions issued under a control order, being a compulsory sale made by a dealer, is exigible to sales tax was the question raised. One of the instances which came up for consideration before the Supreme Court in that case was in the context of the control orders issued by the Government of West Bengal for regulating supply and distribution of cement, an essential commodity. The dealer supplied cement to persons, only on valid permits issued by the authorities to obtain the commodity. If the sale involved an element of volition or consensuality, the transactions would amount to sales and

not otherwise. The specific contention was raised, since the cement control order restrained disposal of cement except in accordance with the conditions contained in a written order of the authorised authority. This provided a limitation on the dealers' right to supply and consequently no person could purchase the controlled commodity freely and in the open market, but can effect a purchase only in pursuance of a written order, that too specifying the quantity permitted. There was also a restriction, by which a dealer may charge for the commodity at a price not more than the notified price. These conditions/restrictions resulted in an absence of element of volition or consensuality; thus taking away the transaction, from the definition of sale of goods as has been held in M/s.New India Sugar Mills Ltd., was the contention taken.

27. The Supreme Court in M/s.Vishnu Agencies (Pvt.) Ltd. noticed the decision of the three Judge Bench and found that the majority, in M/s.New India Sugar Mills Ltd. on the instance of a sale of sugar, made by a dealer to a State Government, by reason of a specific allotment order issued by the Sugar Controller, found it to be a transaction under compulsion. There being no specific offer and acceptance, by a written or agreed contract for sale and there being

absence of volition in the matter of supply of sugar, the majority found it to be not exigible to sales tax. However, the dissenting opinion too was noticed, as finding such consent "may be express or implied and it cannot be said that unless the offer and acceptance are there in an elementary form, there can be no taxable sale". The seven Judge Bench in M/s.Vishnu Agencies (Pvt.) Ltd. opined that the true position in law is as set out in the dissenting judgment in M/s.New India Sugar Mills Ltd. and the majority view was held to be not good law. We deem it appropriate to extract paragraphs 23 & 24 :

"23. These limitations on the normal right of dealers and consumers to supply and obtain the goods, the obligations imposed on the parties and the penalties prescribed by the Control Order do not, in our opinion, militate against the position that eventually, the parties must be deemed to have completed the transactions under an agreement by which one party bound itself to supply the stated quantity of goods to the other at a price not higher than the notified price and the other party consented to accept the goods on the terms and conditions mentioned in the permit or the order of allotment issued in its favour by the concerned authority. Offer and acceptance need not always be in an elementary form, nor indeed does the Law of Contract or of Sale of Goods require that consent to a

contract must be express. It is commonplace that offer and acceptance can be spelt out from the conduct of the parties which covers not only their acts but omissions as well. Indeed, on occasions, silence can be more eloquent than eloquence itself. Just as correspondence between the parties can constitute or disclose an offer and acceptance, so can their conduct. This is because, law does not require offer and acceptance to conform to any set pattern or formula.

24. In order, therefore, to determine whether there was any agreement or consensuality between the parties, we must have regard to their conduct at or about the time when the goods changed hands. In the first place, it is not obligatory on a trader to deal in cement nor on any one to acquire it. The primary fact, therefore, is that the decision of the trader to deal in an essential commodity is volitional. Such volition carries with it the willingness to trade in the commodity strictly on the terms of Control Orders. The consumer too, who is under no legal compulsion to acquire or possess cement, decides as a matter of his volition to obtain it on the terms of the permit or the order of allotment issued in his favour. That brings the two parties together, one of whom is willing to supply the essential commodity and the other to receive it. When the allottee presents his permit to the dealer, he signifies his willingness to obtain the commodity from the dealer on the terms stated in the permit. His conduct reflects his consent. And when, upon the

presentation of the permit, the dealer acts upon it, he impliedly agrees to supply the commodity to the allottee on the terms by which he has voluntarily bound himself to trade in the commodity. His conduct too reflects his consent. Thus, though both parties are bound to comply with the legal requirements governing the transaction, they agree as between themselves to enter into the transaction on statutory terms, one agreeing to supply the commodity to the other on those terms and the other agreeing to accept it from him on the very terms. It is therefore not correct to say that the transactions between the appellant and the allottees are not consensual. They, with their free consent, agreed to enter into the transactions".

28. The fundamental fallacy, in the argument so raised, is the fact that the State fails to realise the distinction with respect to an essential commodity and a controlled commodity. In the present case, there is absolutely no restriction or control insofar as the drugs are concerned, which, though an essential commodity, the dispensation of which is neither restricted nor controlled by the State in the manner in which a commodity is subjected to a control as understood in the decisions above referred. Further, it has to be emphasised that it is not the absence of a contract between the hospital and patient, that takes

away the sale or rather dispensation and administration of drugs, implants and consumables from the definition of sale of goods. The reigning factor which takes, such drugs, implants and consumables administered or used in the course of medical treatment, out of the definition of 'sale of goods', is that it is an integral, indivisible part of the composite transaction rendering medical treatment and care, which is a service rendered. There can be no differentiation made of the various aspects or elements involved in such service rendered. The element of sale is an integral part of the medical service and cannot be separated or distinctly plucked away from the composite transaction so as to levy tax on the sale element. The consensual nature of a sale and the absence of a contract are not the fetter on the State to tax the sale of drugs, consumables and implants. The State is fettered in so far as the levy being not competent and permissible, when the sale is effected in the course of a composite service or contract; not possible of bifurcation and isolation from the composite transaction, for effectuating a separate levy on the value of the sale effected.

29. We notice that the decisions of the High Courts of Allahabad, Punjab and Haryana and Jharkhand, respectively

reported in International Hospital Pvt. Ltd. v. State of U.P. & Others [(2014) 71 VST 139 (All)], Fortis Health Care Limited and Another v. State of Punjab and Others [(2015) VTL-73-P&H] and Tata Main Hospital v. The State of Jharkhand & Others [2008 (2) JCR 174 Jhr.] are in consonance with our finding. The decision of the High Court of Jharkhand has also been challenged before the Hon'ble Supreme Court by a Special Leave Petition, which was dismissed. We do not find a necessity to extract the reasoning in the said decisions; which we notice is in tandem with our findings. Malankara Orthodox Syrian Church was noticed in the aforesaid decisions, but was distinguished on facts and in any event, the judgments of the learned Single Judge as also the Division Bench of this Court have only a persuasive effect on those other High Courts. Suffice it to notice that the three High Courts referred to above considered the very same transactions, we were concerned with, as part of a service rendered in a hospital and held the same not permissible of being distinctly taxed as sale of goods on the precedents we also relied on.

30. We, in the light of the findings above, answer the reference and agree with the Division Bench which doubted the earlier judgments of this Court. We hold that the

decisions in Malankara Orthodox Syrian Church, Comtrust Eye Hospital, W.A.No.555 of 2003 and W.A.No.1134 of 2005 do not propound and declare the correct position in law. We have referred essentially to the reasoning in Malankara Orthodox Syrian Church, since the other decisions have followed the said reasoning, with which we do not agree.

We direct the Registry to place the matters before the Division Bench for consideration of the individual cases.

Sd/-
K.Vinod Chandran,
Judge.

Sd/-
A.Muhamed Mustaque,
Judge.

Sd/-
Ashok Menon,
Judge

vku/-

[true copy]