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Transfer of property in goods used in Service Contracts: GST implications

The judgment of the Supreme Court in *Aristo Printers*¹, in a matter under the VAT laws, on transfer of property in goods in works contract, has triggered debate in the tax fraternity. The ratio of the judgment may have relevance not only in pending VAT disputes but also, in limited contexts, under GST where similar concepts concerning transfer of property in goods fall for consideration. The intention theory, which ruled for a considerable period

of time and was subsequently abandoned through the judgments of the Apex Court, has been revived under the GST regime. As intention is a state of mind, a thorough understanding of the law and careful drafting of commercial contracts accordingly are important for any businessman.

Intention Theory in pre-GST era

One of the pain points in the pre-GST era of VAT/Service tax was taxation of composite contracts involving both goods and services, particularly works contracts and catering contracts. Initially, the Courts applied the 'dominant intention' theory for the classification of a works contract as a sale of goods or a supply of service.

In *Rainbow Colour Lab*² and *Hindustan Shipyard*³ cases, the Supreme Court held that a division of a contract, post insertion of clause (29A) in Article 366 of the Constitution, can be made only if the works contract involved a dominant intention to transfer the property in goods and not in contracts where the

transfer of property in goods takes place as an incident to a contract of service.

The correctness of *Rainbow Colour Lab* (supra) was doubted in the *Associated Cement*⁴ case. Subsequently, a Full Bench of the Supreme Court in *Bharat Sanchar Nigam*⁵ held that only *Associated Cement* (supra) is to be followed and that of *Rainbow Colour Lab* (supra) is not to be followed. The Court clarified that "*after the 46th amendment.....there is no question of dominant nature test applying*". Still, there persisted an impression that in the case of a transaction involving a very small value of goods and where skill was more important, the transaction should not be a works contract but a service contract.

The Bombay High Court in *Ramdas Sobhraj*⁶ dispelled such doubts while holding, relying on *Matushree Textile*,⁷ that what is relevant for the applicability of the works contracts is the passing of the property in goods and not the quantity of goods that passes. The Allahabad High Court in *Aristo Printers*⁸ relied on *Matushree Textile* (supra) to hold that, in a printing contract, property in ink passes to customers as it is apparent on the printed paper. The law was finally settled by the judgment of the Supreme Court in *Larsen and Toubro Limited*,⁹ which was approved by the Constitution Bench in *Kone Elevator*¹⁰, wherein the Court reiterated that the dominant intention test is not applicable for determining whether a particular contract is a

¹ TS-688-SC-2025-VAT; 2025-TIOL-76-SC-MISC; 07.10.2025

² [2000] 118 STC 09 (SC): 02.02.2000

³ [2000] 119 STC 53 (SC): 20.07.2000

⁴ [2001] 124 STC 59 (SC): 25.01.2001

⁵ [2006] 145 STC 91 (SC): 02.03.2006

⁶ [2012] 55 VST 420 (Bombay): 25.10.2012

⁷ [2003] 132 STC 539 (Bombay): 22.08.2003

⁸ [2011] 41 VST 102 (Allahabad): 08.12.2010

⁹ [2013] 65 VST 1 (SC): 26.09.2013

¹⁰ [2014] 71 VST 01 (SC): 06.05.2014

works contract for the purposes of Article 366(29-A)(b).

Different forms of transfer of property in goods

The taxpayer assailed the correctness of the judgment in *Aristo Printers (supra)* before the Supreme Court in *Aristo Printers Private Limited v. Commissioner of Trade Tax, Lucknow, U.P.*¹¹

The Court noted that various High Courts and the Supreme Court have discussed the aspect of transfer of property in goods involved in the execution of works contracts in three buckets: (a) tangible transfer of property; (b) no transfer of property due to consumption of goods; and (c) transfer of property despite consumption of goods.

The Supreme Court ruled that printing lottery tickets on the paper supplied by the customer is a works contract. The use of ink, chemicals, and other processing materials in the printing of the lottery tickets amounts to transfer of property in goods. The taxable event, or the “deemed sale”, occurs at the precise moment the ink is applied to the paper. This act constitutes “incorporation in the works”, as the ink and the chemicals (with which the ink is mixed) are involved in the execution of the works contract and become a part of the lottery ticket. In this process, there is a tangible transfer of the diluted ink, a composite good comprising both the ink and the processing chemicals.

In the process, the Supreme Court upheld the judgment of the Kerala

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High Court in *Enviro Chemicals v. State of Kerala*.¹² The Supreme Court also held that *Pest Control*,¹³ *M.K. Velu*,¹⁴ *Dynamic Cleaning*¹⁵ and *Microtol Sterilization*¹⁶ proceeded on the wrong footing.¹⁷ The emphasis of the courts on ‘consumption’ in the aforesaid cases was incorrect.

A works contract for providing pest control or cleaning services (as was the case in *Pest Control (supra)* and *Dynamic Cleaning (supra)*, respectively) would not lead to the creation of a new end product or a tangible transfer of property in goods. However, the chemicals used are indeed being transferred, as without such transfer of goods, it would be impossible to make an area clean or pest-free. Similarly, in *M.K. Velu (supra)* and *Microtol Sterilization (supra)*, the works contracts therein could not have been executed successfully without the transfer of

property in the fireworks and ethylene oxide, respectively. The chemicals, fireworks, and ethylene oxide are the primary goods facilitating the works under the respective contracts. It is in this context that they may be said to be incorporated in the ‘works’ of the respective contracts. Consequently, it is undeniable that the property in such goods is being transferred when the respective works contracts are executed. These goods differ from consumables such as water and electricity, which merely aid in executing works contracts and the property in them is not transferred before they are consumed.

In a recent GST judgment¹⁸ in respect of a business of offset printing press engaged in the printing and sales of brochures, books, magazines, posters, leaflets, photo books, notice etc. wherein the content would be supplied by the customer as digital files or digital video through CD/DVD/SVD/Pen drive and the materials required for printing the same, such as ink, papers, etc. are provided by the petitioners, the Kerala High Court agreed that by supplying printing material, there is a supply of goods in the form of paper used for printing. However, as far as the paper used for printing is concerned, it is only a material or means used for printing the actual property, which is the photographs, figures, etc., and therefore, it is only a tool or means to supply the service of printing of those contents supplied by the customers. In such circumstances, the activity of printing amounts to the predominant element of the composite supply, and the supply of paper by the petitioners,

¹¹ TS-688-SC-2025-VAT; 2025-TIOL-76-SC-MISC; 07.10.2025

¹² 2011 SCC OnLine Ker 3685: business of providing a service of chemical treatment of effluent water (transfer of property despite consumption of goods).

¹³ *Pest Control India Limited v Union of India & Ors.*, 1989 SCC OnLine Pat 288; [1989] 75 STC 188 (Patna HC): 14.09.1989

¹⁴ *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M.K Velu*, 1993 SCC OnLine Ker 577; [1993] 89 STC 40 (Kerala HC):20.01.1993

¹⁵ *Dynamic Industrial and Cleaning Services (P) Ltd. v State of Kerala & Anr*, 1994 SCC OnLine Ker 379; [1995] 97 STC 564 (Kerala HC): 24.05.1994

¹⁶ *Microtol Sterilization Services Pvt Limited v State of Kerala* 2009 SCC OnLine Ker 1480; [2009] 26 VST 213 (Kerala HC):25.03.2009

¹⁷ No transfer of property due to consumption of goods

¹⁸ *Stark Photo Book v The Assisstant Commissioner (Intelligence)* (2025) 35 Centax 121 (Ker.); TS-852-HCKER-2025-GST: 07.10.2025

which is only meant to affect such supply of service, has to be treated as an ancillary activity. Therefore, the tax liability has to be determined based on the activity of printing and the supply of goods in the form of paper used for printing is not at all relevant. To be precise, the fact that the final output contains photographs printed on the paper would not make the same an act of transfer of goods.

The Court further observed that “a distinction has to be drawn, between a case where printed material, wherein, the content was obtained by the assessee from its own source, and a case in which, the assessee undertook a service of printing of the material furnished by the customer. The first case referred to above, would fall under the category of supply of goods, whereas, the second one would fall under the category of supply of services.”

Application of pre-GST concepts in GST era

The definition of ‘works contract’ through Section 2(119) of the CGST Act, 2017 mirrors pre-GST law by using the phrase “transfer of property in goods (whether as goods or in some other form)...involved in the execution of such contract.” Thus, the understanding of transfer of property in goods in the pre-GST era will squarely apply to the works contract under GST law.

While the concept of works contract in the GST regime is limited to immovable property, for taxation of transactions involving supply of goods and services simultaneously, the Act has brought in the concept of composite supply, as defined under Section 2(30) of the CGST Act, which calls for determination of the principal supply [Section 2(90)].

Section 2(90) of the CGST Act defines ‘principal supply’ as the supply which constitutes the predominant element of a composite supply and to which

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any other supply forming part of that supply is ancillary. The phrases ‘naturally bundled’, ‘predominant element’ and ‘ancillary’ have not been defined under the GST Act.

In a commercial transaction, which aspect of the supply is of predominance will have to be decided on a case-to-case basis, in the facts and circumstances of each case.

In a matter before the Authority for Advance Ruling, Gujarat,¹⁹ the applicant was engaged in the business of carrying out blasting work at various sites by means of use of explosives and other materials for which it had obtained a licence from the Petroleum and Explosives Safety Organization. During the entire blasting activity, explosives were neither handed over to the client nor were they in the possession of the client. Any leftover quantity of explosives was collected back by the applicant. The Authority referred to the Supreme Court’s judgment in the State of Gujarat v. Bharat Pest Control²⁰ to hold that there is a deemed supply of explosives by the applicant to the client as well as a supply of service in the form of the

blasting work. The activity was held to be a composite supply.

In the case of composite supplies of ‘works contract’ and ‘restaurant service’, the Act itself provides certainty by inclusion in Schedule II. However, for other supplies involving goods and services both, the predominant element of supply will have to be ascertained. One of the transactions open for litigation is that of health care services. Recently, the Gujarat High Court, in a detailed judgment,²¹ has upheld the levy of VAT on the goods portion in hospital services, observing that a simple treatment with medicine cannot be equated with complicated medical procedures undertaken by the petitioner hospitals involving skill and use of expensive implants/prosthetics and use of laboratory testing equipment. It is true that the dominant intention of the contract was not to transfer the property in goods, i.e. consumables, medicines, implants, stents, etc. used in the treatment of indoor patients by the petitioner hospitals, but the same was for rendering of services. However, the



¹⁹ 2018-TIOL-173-AAR-GST: 27.08.2018

²⁰ 2018-VIL-02-SC; [2018] 55 GSTR 99 (SC); [2018] 13 GSTL 401 (SC): 30.01.2018

²¹ Bankers Cardiology Private Limited & Anr v Commissioner of Commercial Tax & Anr TS-634-HC-2025(GUJ)-VAT: 25.07.2025

ultimate transaction is nothing but a transfer of movable property and it would be open for the respondent State to levy sales tax/VAT on the materials used in such contract if such contract otherwise has the element of “works contract” which would fall within clause(b) of Article 366(29A) of the Constitution, as it would amount to transfer either in goods or some other form.

Extending this logic to the GST regime, though services by way of health care services by a clinical establishment, an authorised medical practitioner or paramedics are exempt from GST,²² where the cost of a package for treatment of the same disease differs significantly according to the kind of implant used, the Revenue may dispute the availability of the exemption, asserting the predominant intention as sale of goods.

The Delhi High Court is examining whether medicines and consumables supplied to hospital inpatients are



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liable to GST or form part of exempt inpatient healthcare services. The court issued notice on a writ petition filed by Escorts Heart Institute²³ challenging a GST demand of ₹6.66 crore raised by the CGST Delhi Audit Commissionerate. While allowing adjudication proceedings to continue, the High Court restrained tax authorities from passing any final order until the petition is finally decided. The tax department alleged that GST was embedded in the MRP charged for medicines, implants, and consumables during inpatient treatment and was collected but not remitted. The hospital argued that such supplies are part of exempt composite healthcare services.

Tests for determining predominant intention

Determining whether a transfer of property in goods has occurred is a fact-intensive enquiry, heavily dependent on the circumstances surrounding a particular case, such as the subject and terms of the contract

itself. In such a scenario, it is neither possible to lay down any “general principles” nor is it advisable to do so. The Supreme Court in *Collector of Central Excise, New Delhi v. Ballarpur Industries Limited*²⁴ has recognised this position.

It is not necessary that a transaction should fall within either a composite supply or a mixed supply. A single contract instrument may consist of two distinct supplies, one of goods and the other of services. This position is recognised by the CBIC in Circular No. 47/21/2018-GST dated 08.06.2018.²⁵

Composite supply in EU VAT

Composite supplies are one of the most commonly debated issues under European VAT (EU VAT). Despite its unquestionable relevance as a topic, there is no settled rule providing a clear indication of how to deal with the issue of single or multiple supplies. Fortunately, some guidance on the VAT treatment of composite supplies has been provided, through the years, by the Court of Justice of the European Union (CJEU).

The EU’s doctrine on composite supplies has a main rule and two exceptions. The main rule stipulates that every transaction must normally be regarded as distinct and independent for VAT purposes. This primary course is termed as ‘splitting’.

Two notable exceptions, however, are generally acknowledged to this main approach. Under the first exception, a single composite supply exists where one or more supplies constitute a principal supply, while the other supply or supplies constitute one or more ancillary supplies which ought to receive the tax treatment

²² Serial number 74 in Notification number 12/2017 (CTR): 28.06.2017

²³ Escorts Heart Institute and Research Center Limited v Additional Commissioner of CGST Audit-I & Ors [W.P.(C) 19355/2025, CM APPL. 80732/2025 & CM APPL. 80733/2025] order dated 19.12.2025

²⁴ 1989 (43) E.L.T. 804 (S.C.); (1989) 4 SCC 566: 29.09.1989 as quoted by the Supreme Court in *Aristo Printers* (supra)

²⁵ Servicing of cars involving both supply of goods (spare parts) and services (labour) where the value of goods and services are shown separately.



Express communication of intention of parties to contract

Drafting contractual clauses that effectively address indirect tax issues is a nuanced and often complex task. While tax obligations are generally governed by statute, the way these obligations are distributed between contracting parties is largely a matter of private negotiation, judged by looking at the commercial intent, the jurisdiction's tax laws, and the common practices in the relevant industry, looked through the eyes of an average customer.

Indian Courts have emphasized the contractual intention of parties in tax matters. Intention is a state of mind. Intention is an inference to be drawn from the relevant facts.²⁹ No person can make out the state of mind of another person. The state of a person's mind can only be determined by deducing facts of a case from the underlying documents. In most jurisdictions, Courts aim to uphold the intent of the parties unless a clause contravenes mandatory tax law.

In this respect, it is relevant whether the customer, being an average customer, has a single economic purpose in purchasing the service consisting of several elements.³⁰ An approach consisting of taking account of the intention of each recipient individually would be contrary to the objectives of the VAT system of ensuring legal certainty and a correct and straightforward application of the provisions of law.³¹

There is also a single supply where one or more elements are to be regarded as

constituting the principal supply, while other elements are to be regarded, by contrast, as one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a service must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied.^{32,33}

Whether a single price is charged is not decisive. If the service provided to customers consists of several elements for a single price, the single price may, however, suggest that there is a single service, but if the customers intend to buy two distinct services, the single price will need to be split using the simplest possible method of calculation.³⁴

Whether the customer is allowed to purchase one of the supplies from another service provider is also important in order to determine whether there is a single supply or two distinct supplies.³⁵



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of the principal supply.²⁶ As such, the VAT treatment under this first exception follows the Latin maxim '*accessorium sequitur principale*' or the 'principle of absorption' of the ancillary (or subordinate) supply into the main (or principal) supply. However, a single supply also exists, and that is the second exception widely acknowledged, where two or more elements (i.e., the supplies) made by a taxable person are so closely linked that they form, objectively, a single, indivisible economic supply that would be artificial to split.²⁷

The ECJ has admitted²⁸ that the price of different elements of supply itself is not a decisive factor for the determination of principal supply. The CBIC has toed this line of reasoning through Circular Number 34/8/2018-GST dated 01.03.2018 and Circular Number 11/11/2017-GST dated 20.10.2017.

²⁶ See Card Protection C-349/96 para 32

²⁷ Levob Verzekeringen B.V, OB Bank N.V, v. Staatssecretaris van Financiën, (C-41/04) 27.10.2005, paragraphs 20 and 22

²⁸ Aktiebolaget NN v Skatteverket (case C-111/05) decided on 29.03.2007

²⁹ CIT v Vikram Cotton Mills Ltd [1988] 169 ITR 597 (SC) – Matter involved taxation under the head 'Income from House Property'

³⁰ Levob Verzekeringen B.V, OB Bank N.V, v. Staatssecretaris van Financiën, (C-41/04) 27.10.2005 para 24

³¹ Město Žamberk v Finanční ředitelství v Hradci Králové C-18/12 : 21.02.2013 para 36

³² Card Protection Plan Ltd v. Commissioners of Customs and Excise C-349/96 25.02.1999 para 30

³³ Stadion Amsterdam CV v. Staatssecretaris van Financiën, C-463/16 : 18.01.2018

³⁴ Card Protection Plan Ltd v. Commissioners of Customs and Excise C-349/96 25.02.1999 para 31

³⁵ Minister Finansów v Wojskowa Agencja Mieszkaniowa w Warszawie (C-42/14) : 16.04.2015