ISSUED VIDE MEMO NO. 683-685/ST-1, Dated 13.4.2006

ORDER OF CLARIFICATION MADE BY SHRI L.S.M. SALINS, FINANCIAL COMMISSIONER & PRINCIPAL SECRETARY, GOVERNMENT OF HARYANA, EXCISE AND TAXATION DEPARTMENT UNDER SECTION 56(3) OF THE HARYANA VALUE ADDED TAX ACT, 2003

Querist: M/s Escorts Hospital & Research Centre Ltd., Faridabad

This is an order of clarification under section 56(3) of HVAT Act, 2003 (VAT Act), on the application of Dr. N.K. Pandey, Executive Director, Escorts Hospital And Research Centre Limited, Faridabad seeking clarification, -

> "whether in the event of consumption of medicines and drugs, implanting of devices, giving diet of the patients as well as other consumables, given to the patients during the course of treatment of ailments of the patients, admitted in the hospital, amounts to be transfer of property in goods from the hospital to the patient and hence sale and thus liable to tax? Or whether it amounts to work contract which is divisible against indivisible package price charged from the patient by the hospital in view of 46th Constitutional amendment by deeming fiction and be dissected so that the tax can be levied to the extent of transfer of property in goods towards the cost of medicines, drugs, devices implanted, diet etc."

Apparently the querist runs a multi speciality hospital providing state of the art medical facilities. An attempt appears to have been made to pose a question and reply it in the same vein by citing various judicial pronouncements.

The "grounds of submission" have been gone through. The applicant hospital provides advanced quality health care treatment and facilities in centrally air conditioned premises with operation theatres, intensive care units, diagnostic centres, labs, X-ray facilities, MRI, rooms for patients for pre-operative investigations; post-operative convalescence and treatment and *outer* patient department , research labs and various other medical services and facilities. It has highly professional and specialized consultants, surgeons, doctors, paramedics, technicians, dieticians, nutritionists on its staff. It is thus an organised activity involving engagement of doctors and staff for initial diagnosis, medical advice, operations, drugs, medicines, consumables, implants, life saving devices,

hospitalization, nursing care, diet etc. It is managed by a company. Its activities are covered under the definition of "business" as given in section 2(f) of the Act.

This case falls on all the fours with the case of Malankara Orthodox Syrian Church vs Sales Tax Officer and another decided on December, 20th 2002 in the High Court of Kerala at Ernakulam and reported as (2004) 135 STC 224. It has been held that the supply of medicine is an integral part of the services rendered and it is significant in terms of cost to the patient and charged separately. With the exception of surgical cases, the medicines accounts for the main cost along with consultancy charges for the doctor, diagnostic fees. Thus medicine is as important, if not in terms of value and purpose as any thing else in medical treatment. The claim that the supply of medicine is only incidental cannot be accepted. It is as important as medical consultation or other services in the hospital. Therefore, supply of medicine in the course of medical treatment either to inpatients or outpatients has to be taken as one of the main activities in a hospital or a clinic. The hospitals are independently billing and charging for the medicines supplied and going by the nature of medicines involved in treatment, it is the main component of the cost to the patient and it is not an incidental transaction at all. Sale of medicines in terms of volume, frequency, continuity, regularity and in all other aspects it is one of the main activities in the hospital. 23STC 385 (SC) quoted by the querist holds that a medical practitioner is not a manufacturer. This decision has no relevance to the present case. 24 STC 173 (P&H) holds that a doctor who only dispense his own prescriptions for his patients is not a dealer. This decision follows 23 STC 385 so this is also of no help to the querist. The querist hospital supplies medicines to its patients in the course of treatment as part of its business, so it is a dealer within the meaning of clause (m) of section 2(i) of the Act.

Obviously the applicant hospital by virtue of conducting "business" as defined in section 2(1)(f) of the Act becomes a "dealer" as defined in section 2(1)(m) of the Act. Adding to it the definition of "goods" and "sale" given in section 2(1)(r) and 2(1)(ze) of the Act leaves no room for the applicant hospital to wriggle out of its liability to pay tax u/s 3 of the Act. The judicial pronouncements cited in the representation do not help the cause of the querist.

(L.S.M.SALINS)
Financial Commissioner & Principal Secretary
to Govt. Haryana, Excise & Taxation Department

Chandigarh
Dated 4.7.2006