Fresenius Medical Care India Pvt. Ltd. v. Commissioner of CGST – Delhi East

Taxability of Equipment Leasing as Deemed Sale or Service under Article 366(29A)(d) and Section 66E.

Date of Order: August 24, 2026
Case Law No: GIB-CESTAT-PB-2026-101
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The appellant was engaged in trading dialysis equipment and providing maintenance and leasing services. Service tax was paid on AMC and CMC services, while leasing of equipment was treated as deemed sale and subjected to VAT. During audit, the Department took the view that the leasing transactions were taxable services because ownership, possession and effective control remained with the appellant.

The Department alleged that the taxable leasing services had not been declared in ST-3 returns and that the appellant had suppressed the relevant facts with intent to evade service tax. A show cause notice was issued invoking the extended limitation and the proposed demand, interest and penalties were subsequently confirmed by the Order-in-Original.

COURT OBSERVATIONS

The Tribunal examined the distinction between a deemed sale and a taxable service. It noted that Article 366(29A)(d) covers transfer of the right to use goods, whereas Section 66E covers transfer of goods by hiring, leasing or licensing without transfer of the right to use those goods.

The Tribunal relied upon the principles laid down in **BSNL v. Union of India**, under which a transfer of the right to use goods requires, among other things, a legal right in the transferee to use the goods and exclusion of the transferor during the relevant period.

On examining the actual agreement, the Tribunal found that the equipment could be used only in accordance with the appellant's specifications and instructions, the appellant retained maintenance and insurance responsibilities, and it retained rights of inspection. The Tribunal held that the relevant conditions for transfer of the right to use were not satisfied.

The Tribunal concluded that mere permission to inspect and maintain the equipment was insufficient to establish a deemed sale. The usage of the equipment remained subject to the appellant's approval and maintenance and insurance expenses remained with the appellant. Payment of VAT was also held insufficient to change the character of the transaction.

FINAL VERDICT

The Tribunal found **no infirmity in the Order-in-Original** and held that the activity constituted a taxable service. The appeal filed by the appellant was therefore **dismissed**.

CASE REFERRED BY COURT

- **Bharat Sanchar Nigam Ltd. v. Union of India (BSNL)** — Supreme Court of India — **2006**; exact order date not stated in the PDF. The Tribunal applied the principles concerning transfer of the right to use goods.
- **Indian Compressors v. Union of India** — Delhi High Court — **2025**; exact order date not stated in the PDF. The Tribunal expressly stated that it drew support from this decision.