

Doctors Surgery on GST

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WHAT

happens if you are not liable to pay GST, but your supplier collects GST from you and the supplier distributes that GST among its agencies, so that even if they want to refund the GST, they don't have it as it was further distributed?

And what if the supplier collecting GST is a premier organisation of the Government of India and the ones who paid the GST are highly talented doctors?

The DNB (Diplomate National Board) is a postgraduate degree similar to MD/MS awarded to specialist doctors in India after completion of a three year residency.

The Government of India established the National Board of Examinations in Medical Sciences (NBEMS) in 1975 with the objective of improving the quality of the Medical Education by establishing high and uniform standards of postgraduate examinations in modern medicine on an all India basis and utilizing existing infrastructure for capacity building.

NBEMS administers Post Graduate, Doctoral and Post-Doctoral level Programmes in various disciplines of modern medicine. Post Graduate courses are offered to Post MBBS and Post Diploma candidates leading to the award of Diplomate of National Board (DNB) qualifications. Doctoral courses are offered to MD/MS/DNB qualified postgraduates conferring them with Doctorate of National Board (DrNB) qualifications. NBEMS administers skill enhancing fellowship courses at Doctoral and Post-Doctoral levels awarding Fellow of National Board (FNB) qualifications.

On 15.01.2021, the NBE issued a notice to the effect that:

the annual course fee payable by an NBE trainee is as follows:

Fee	GST @ 18%	Total
Rs. 1,25,000/-	Rs. 22,500/-	Rs. 1,47,500/-

The entire annual course fee is to be paid as one single transaction. Further, it is to be noted that the **payment of GST, presently @ 18%, is mandatory as per government directives.**

On 15.02.2021, the NBE issued a notice clarifying that:

the following annual course fee shall be applicable for all ongoing Broad Specialty (DNB), Super Specialty (DrNB) and Fellowship (FNB) trainees irrespective of the year of their joining

Fee	GST @ 18%	Total
Rs. 1,25,000/-	Rs. 22,500/-	Rs. 1,47,500/-

On 19.08.2021, they issued another notice to the effect that:

the annual course fee payable by an NBEMS trainee is as follows:

Fee	GST @ 18%	Total
Rs. 1,25,000/-	Rs. 22,500/-	Rs. 1,47,500/-

The entire annual course fee is to be paid by the trainee as one single transaction. Further, it is to be noted that **the payment of GST, presently @ 18%, is mandatory as per Government directives .**

ASSOCIATION OF 'DIPLOMATE OF NATIONAL BOARD' DOCTORS, aggrieved by the collection of GST, filed a petition in the Supreme Court. The Supreme Court heard the matter on 23.08.2021. The petitioner submitted that:

- (i) GST at the rate of 18% is being charged on the course fee payable by candidates for the DNB course conducted under the auspices of the National Board of Examinations.
- (ii) As regards GST, in terms of the notification of the Union Ministry of Finance in the Department of Revenue dated 17 June 2021, courses conducted by NBE stand exempted. (What they meant was Circular No. [151/07/2021-GST](#), dated 17 June 2021)

The Supreme Court issued notice and posted the case for hearing on 3rd September 2021.

On 3rd September 2021, the Supreme Court ordered:

Since the petition is by the Association of Diplomate of National Board Doctors, which is based in Delhi and the primary relief which has been sought is against the National Board of Examinations, which is also situated in Delhi, we leave it open to the petitioner to pursue its remedies under Article 226 of the Constitution.

The Petition under Article 32 of the Constitution is, therefore, dismissed keeping the remedies of the petitioner open.

Thus, in effect, the doctors were advised to approach the Delhi High Court. Promptly, they reached the High Court with a writ petition under Article 226.

On 16.09.2021, the Delhi High Court noted,

Present writ petition has been filed challenging the notifications dated 15th January 2021, 15th February 2021 and 19th August, 2021 issued by the Respondent No.2 imposing 18% GST on Diplomate of National Board (DNB) candidates and also increasing the fee payable in contravention to the prospectus and draft guidelines by Respondent No 1.

Petitioner also seeks directions to the Respondent No. 2 to mandatorily follow and implement the clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination) and not to collect GST from

DNB candidates in future as well as to refund the GST collected from DNB students in view of the impugned notifications

The High Court issued notice and posted the case for hearing on 25th October 2021.

On 25th October, the matter was posted to 28th January 2022.

On 28th January 2022, it was found that one of the respondents had filed an affidavit which was extremely vague and does not clarify the correct position at all. So, the Court directed the respondent no.3 to file a better affidavit clearly specifying as to **whether GST was payable on the course fee collected** by respondent No.2 from the petitioners.

Next listing was on 12th July 2022. On that day respondent No. 3, as directed handed over an affidavit stating:

"That, with regard to the query raised by this Hon'ble Court as to whether GST is payable on the course fee collected by respondent no. 2 i.e., National Board of Examinations (NBE) from the petitioner, it is submitted that under GST laws any service provided by an educational institution to its student for imparting education recognized by law is exempt from GST (entry no. 66 to notification no. [12/2017-CT\(R\)](#) refers). Therefore, fee charged for medical education by medical college to its student is exempt from GST. This does not change even if the fee is passed through DNB, who in the instant case is acting only as a pure agent in so far as this fee amount is concern. It is not clear as to why DNB has taken a contrary interpretation with reference to the fee amount collected from medical students on behalf of medical colleges.

It is thus reiterated that there is no change in provisions of taxability of GST by the CBIC which has necessitated NBE to issue such communication (notices dated 15.01.21 & 15.02.21). Services provided by NBE by way of conduct of examination (including entrance examination) for students is also exempt from GST."

The Court listed the matter to 16th August 2022 and stayed the collection of GST from the students.

On 16th August 2022, the Court asked the National Board of Examinations (NBE) i.e., respondent no.2 to file an affidavit with details like -

- (i) The names of the students who deposited the GST.
- (ii) The amount deposited by the **concerned** students.
- (iii) The hospitals/institutes which received the GST amount.
- (iv) Whether the aforesaid amount has been remitted by the **concerned** hospitals/institutes, to the **concerned** jurisdictional authority.

The next date was 06.12.2022.

On 06.12.2022, the respondents sought some more time to comply and the case was posted to 23.01.2023.

On 23.01.2023., the case was posted to 09.03.2023. This date was declared a holiday and it was taken up on 10.03.2023 and posted to 19.05.2023.

On 19.05.2023, the High Court observed,

The petitioner has filed the present petition, impugning the notifications dated 15.01.2021, 15.02.2021 and 19.08.2021, issued by the National Board of Examination ("**NBE**"), to the extent that the candidates have been directed to deposit the fees as well as Goods and Services Tax with NBE.

According to the petitioner, GST is not payable on the course fee. This is also confirmed by Respondent No. 3 in the affidavit filed on 09.07.2022.

It is not disputed that GST is not payable on the course fee. **NBE also acknowledges that its demand from the candidates to pay GST on the course fee was erroneous.**

Undisputedly, the candidates are required to be refunded the amount collected as GST.

However, learned Counsel for NBE submits that the funds collected from various candidates, including the GST collected, are no longer available with NBE. **The entire funds have been disbursed to various hospitals .**

In the circumstances, we consider it apposite to direct NBE to file an affidavit disclosing:

- a. the names of all candidates from whom course fee and GST was collected.
- b. the quantum of course fee and GST separately.
- c. the name of the hospital to which such course fee and GST was remitted in respect of each candidate; and
- d. the mode and the date of remitting the said funds to the hospital.

Let the affidavit be filed within a period of six weeks from today.

List on 05.09.2023.

That's where it stands now. The NBE conceded that it collected GST erroneously, but it doesn't have it now as it has been disbursed. Now, who should suffer for the lapse of NBE? Why should it be the student doctors? We don't even know whether the erroneously collected GST has reached the government. And if it did, can they get a refund ever?

What were the options before NBE?

1. They could have consulted **some** lawyers. But what is the guarantee that lawyers' opinion would be correct and accepted by the department?
2. They could have consulted the department. But the Department can only give Show Cause Notices, not advice.
3. They could have gone to Advance Ruling Authority, which would have ruled that GST is payable. That could have solved the problem. The collection of GST would have become legit.

What would have happened if they did not pay the GST?

They would have been summoned by the GST department and made to wait for hours outside the chambers of superior officers like Superintendents, statements recorded and litigation ensured for eternity. So, maybe the best option was to collect GST from the students and pay it to the government. This could have been the safest option. But these student doctors instead of concentrating on their surgery and medicine took to the laws and are going round the courts spoiling the show, just for that 18% GST! Haven't they heard that GST is a good and simple tax?

Will they start teaching GST in medical schools?

Until Next week