आयुक्त(अपील)का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065- टेलेफैक्स07926305136

DIN : **20211264SW000000D061**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1435/2021 /4962 TO 4966

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-69/2021-22**
दिनाँक Date : **07-12-2021** जारी करने की तारीख Date of Issue 09.12.2021

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-PMR-009-20-21** दिनाँक: **25.01.2021** issued by Additional Commissioner, CGST& Central Excise, HQ, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Apollo Hospitals International Limited
Plot No. 1A, GIDC Estate,
Bhat, Gandhinagar - 382428

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(47) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(cxxiv) amount determined under Section 11 D;
(cxxv) amount of erroneous Cenvat Credit taken;
(cxxvi) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Apollo Hospitals International Ltd, Plot No. 14, Bhat GIDC Estate, Near Indira Bridge, Gandhinagar – 382 428 (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-PMR-009-20-21 dated 25-01-2021 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST and Central Excise, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is registered with the Service Tax department and holding Centralized Service Tax Registration No. AABCA4150HSD002 for 'Business Auxiliary Services', 'Cosmetic Surgery or Plastic Surgery' and Renting of Immovable Property' services. Information gathered by the department indicated that the appellant were not paying service tax on the fees retained by them in lieu of infrastructural support provided by them to the visiting consultants/doctors engaged by them. A SCN bearing No. V.ST/15-93/Off/OA/2012 dated 23.10.2012, covering the period from F.Y. 2007-08 to F.Y. 2011-12, was issued to them demanding Service Tax amounting to Rs.67,82,788/-. The said SCN was adjudicated vide OIO No. AHM-EXCUS-003-COM-007-14-15 dated 20.06.2014 and the demand for service tax was confirmed along with interest and penalty.

2.1 It was noticed that the appellant had, even after the issuance of SCN and its adjudication, failed to pay the applicable service tax on the amount retained by them from the visiting consultants/doctors engaged by them in lieu of infrastructural support provided and the appellant were also not filing the periodical returns. On scrutiny of the ST-3 returns filed by the appellant for the period F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017), it was found that they had not declared the details of the Business Support Services provided by them in the ST-3 returns and not paid the applicable service tax.

2.2 It was the contention of the appellant that in terms of the agreement entered into between the appellant and the Doctors, it appeared that the revenue from the patient was shared between them as per the agreed terms. It appeared to the department that the income shown by the appellant in their ledgers under the head 'Revenue sharing from Doctors' appeared to pertain to income under the category of Business Support Service. It further appeared that the appellant was providing 'support service of business or commerce' as defined under Section 65 (104c) read with Section 64 (105) (zzzq) inasmuch as they have been providing support services to the visiting doctors/consultants by providing them infrastructural and administrative support. With the introduction of the negative list regime from 01.07.2012, the nature of services provided by the appellant appeared to be covered under the definition of service and did not appear to be covered by the negative list of services and neither was it exempted under Notification No. 25/2012-ST dated 20.06.2012. The Service Tax liability of the appellant for the period of F.Y.2014-15 to F.Y. 2017-18 (upto June, 2017) was worked out at Rs.81,44,406/-.

2.3 The appellant was, therefore, issued a SCN bearing No. V.ST/15-27/DEM/OA/19-20 dated 16.10.2019 wherein it was proposed to demand and recover the service tax amounting to Rs.81,44,406/- under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalties under Section 76, 77 and 78 of the Finance Act, 1994 were also proposed.

2.4 The said SCN was adjudicated vide the impugned order and the demand for service tax Rs.81,44,406/- was confirmed under the proviso to sub-section (1) of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalty of Rs.10,000/- and Rs.81,44,406/- was imposed under Section 77 and 78 of the Finance Act, 1994 respectively.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds:

i) The adjudicating authority has erred in concluding that they are giving the facilities to the doctors and consultants and the appellant on their own were not treating the patients but have provided infrastructural support service which comes under the ambit of Business Support Service.

ii) The adjudicating authority has erred in brushing aside various judgments quoted in their defense merely on the ground that those judgments are not on identical issue and not squarely applicable to their case.

iii) The adjudicating authority has erred in holding the they had deliberately and willfully suppressed material facts and thereby upholding the invocation of the provisions of Section 73 (1) of the Finance Act, 1994.

4. Personal Hearing in the case was held on 02.11.2021, Shri Arjun Akruwala, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He further stated that the case is covered by the judgment of Hon'ble Tribunal in the case of Sir Gangaram Hospital. It was argued that the adjudicating authority has not discussed the case even though it was made as defense submission.

5. I find that the issue before me for decision is whether the income booked under the head of 'Revenue sharing from Doctors' by the appellant is income from providing Business Support Service - support service of business or commerce and later as service and accordingly chargeable to Service Tax. The demand pertains to the period F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

5.1 I find that prior to the introduction of negative list regime from 01.07.2012, services relating to health care was covered by Section 65 (105) (zzzzo) of the Finance Act, 1994, which is reproduced as below :

"to any person,-

(i) by a clinical establishment; or
(ii) by a doctor not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine;"

The term clinical establishment is defined under Section 65 (25a) of the Finance Act, 1994 to mean :

" a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premise and having more that twenty-five beds for in-patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or"

The services defined under the above said Section 65 (105) (zzzzo) of the Finance Act, 1994 were exempted vide Notification No. 30/2011-ST dated 25.04.2011.

5.2 With the introduction of negative list of service regime from 01.07.2012, "*Health care services by a clinical establishment, an authorised medical practitioner or para-medics*;" were exempted by virtue of Sr. No. 2 of Notification No. 25/2012-ST dated 20.6.2012. The term 'clinical establishment' was defined by clause (j) of para 2 of the said notification as under :

"clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

5.3 The term ' health care services' is defined under clause (t) of para 2 of the said notification as under :

"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or

to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

5.4 In the present case, I find that the appellant is a hospital – a clinical establishment - and engaged in providing health care services with visiting consultants/doctors engaged by them. It is the contention of the appellant that the services provided by them are health care services and not Business Support Service as alleged by the department. I find that the in terms of the agreement between the appellant and the doctors, the patients were treated by the doctors using the infrastructure of the appellant. It is not disputed that the infrastructure of the appellant is for treatment of the patients. Further, the health care services to the patients cannot be provided without either the doctors or the infrastructure of the appellant. Both are an essential part of the health care service provided to the patients. Therefore, to allege that the infrastructural support provided by the appellant is support services of business or commerce is unfounded and totally without any merit.

6. I find that the above issue is no more *res integra* in view of the decision of the Hon'ble Tribunal in the case of Sir Gangaram Hospital Vs. Commissioner of Central Excise, Delhi –I reported in 2018 (11) GSTL 427 (Tri.-Del). In the said case involving similar issue, the Hon'ble Tribunal had held that :

> **"6.** The proceedings by the Revenue, initiated against the appellant hospitals, are mainly on the inference drawn to the effect that the retained amount by the hospitals out of total charges collected from the patients should be considered as an amount for providing the infrastructure like room and certain other secretarial facilities to the doctors to attend to their work in the appellants hospitals. We find this is only an inference and not coming out manifestly from the terms of the agreement. Here, it is very relevant to note that the appellant hospitals are engaged in providing health care services. This can be done by appointing the required professionals directly as employees. The same can also be done by having contractual arrangements like the present ones. In such arrangement, the doctors of required qualification are engaged/contractually appointed to provide health care services. It is a mutually beneficial arrangement. There is a revenue sharing model. The doctor is attending to the patient for treatment using his professional skill and knowledge. The appellants hospitals are managing the patients from the time they enter the hospital till they leave the premises. ID cards are provided, records are maintained, all the supporting assistance are also provided when the patients are in the appellant hospital premises. The appellant hospital also manages the follow-up procedures and provide for further health service in the manner as required by the patients. As can be seen that the appellants hospitals are actually availing the

professional services of the doctors for providing health care service. For this, they are paying the doctors. The retained money out of the amount charged from the patients is necessarily also for such health care services. The patient paid the full amount to the appellant hospitals and received health care services. For providing such services, the appellants entered into an agreement, as discussed above, with various consulting doctors. We do not find any business support services in such arrangement.

7. The inference made by the Revenue that the retained amount by the hospital is to compensate the infrastructural support provided to the doctors can be examined in another angle also. Reading the statutory provisions for BSS, we note that the services mentioned therein are "provided in relation to business or commerce." As such, to bring in a tax liability on the appellant hospital, it should be held that they are providing infrastructural support services in relation to business or commerce. That means, the doctors are in business or commerce and are provided with infrastructural support. This apparently is the view of the Revenue. We are not in agreement with such proposition. Doctors are engaged in medical profession. As examined by Hon'ble Gujarat High Court in *Dr. K.K. Shah* (supra), though in an income-tax case, we note that there is a discernable difference between "business" and "profession". The Gujarat High Court referred to decision of Hon'ble Supreme Court in *Dr. Devender Surtis* - AIR 1962 SC 63. The Supreme Court observed as below :

> "There is a fundamental distinction between a professional activity and an activity of a commercial character" : "...a "profession"... involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, of surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities" "...a professional activity must be an activity carried on by an individual by his personal skill and intelligence..... and unless the profession carried on by (a person) also partakes of the character of a commercial nature" the professional activity cannot be said to be an activity of a commercial character."

8. Applying the above ratio and examining the scope of the tax entry for BSS, we are of the considered view that there is no taxable activity identifiable in the present arrangement for tax liability of the appellant hospitals.

9. Under negative list regime w.e.f. 1-7-2012, the health care services are exempt from service tax. Earlier the health care services were only taxed for specified category of hospitals and for specified patients during the period 1-7-2010 to 1-5-2011. With effect from 1-5-2011, health care services were exempt from service tax under Notification No. 30/2011-S.T. After introduction of negative list tax regime, Notification No. 25/2011-S.T. exempted levy of service tax on health care services rendered by clinical establishments. We have examined the scope of the terms 'clinical establishments' and 'health care services'. The notification defines these terms. The term 'clinical establishments' is defined as below :

"Clinical establishment" means hospital, nursing home, clinic, sanatorium or any other institution by whatever name called, that offers services or facilities requiring diagnosis or treatment of care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent

entity or a part of an establishment to carry out diagnostic or investigative services of diseases."

10. The terms 'health care services' is defined as below :

"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment but does not include their transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of both affected due to congenial defects, developmental abnormalities, injury or trauma."

11. These two provisions available in Notification No. 25/2012 will show that a clinical establishment providing health care services are exempted from service tax. The view of the Revenue that in spite of such exemption available to health care services, a part of the consideration received for such health care services from the patients shall be taxed as business support service/taxable service is not tenable. In effect this will defeat the exemption provided to the health care services by clinical establishments. Admittedly, the health care services are provided by the clinical establishments by engaging consultant doctors in terms of the arrangement as discussed above. For such services, amount is collected from the patients. The same is shared by the clinical establishment with the doctors. There is no legal justification to tax the share of clinical establishment on the ground that they have supported the commerce or business of doctors by providing infrastructure. We find that such assertion is neither factually nor legally sustainable.

12. The Revenue has filed an appeal against order dated 1-2-2016 of Commissioner of Service Tax, Delhi-I. In similar set of facts, as discussed above, the Commissioner, after detailed examination, held that the respondent (hospital) is not providing any services to the consultants/doctors. The service provided by the respondent hospital would merit classification under Health Care Services extended to the patients. Accordingly, the demand proceedings against the respondent hospital was dropped. Revenue filed appeal against the said order. In view of our detailed analysis on the same dispute while dealing with appeals by the appellant hospitals, as above, we find no merit in the present appeal by the Revenue. We are in agreement with the ratio and decision of the Commissioner in the impugned order. Accordingly, the appeal by the Revenue is dismissed.

13. In view of above discussion and analysis, we hold that the impugned orders against which appellant hospitals filed appeal are devoid of merit, the same are set-aside. Upholding the order dated 1-2-2016 of Commissioner, Service Tax, New Delhi, we dismiss the appeal by the Revenue. All the 7 appeals are disposed of in these terms."

7. I further find that, by relying upon the above judgment of the Hon'ble Tribunal, similar view was taken in the following cases :-

I) CCE & ST, Panchkula Vs. Alchemist Hospital Limited – Final Order No. 60185-60186/2019 dated 20.02.2019 passed by the Hon'ble Tribunal, Chandigarh.

II) Ivy Health & Life Sciences Pvt Ltd Vs. CCE, Chandigarh-II/Ludhiana – Final Order No. 63652-60654/2019 dated 21.02.2019 passed by the Hon'ble Tribunal, Chandigarh.

III) Fortis Healthcare (India) Limited Vs. CCE & ST, Chandigarh-I – Order No.60742/2019 dated 03.09.2019 passed by the Hon'ble Tribunal, Chandigarh.

IV) Sir Ganga Ram Hospital Vs. Commissioner of Service Tax, New Delhi – 2020 (43) GSTL 390 (Tri.Del)

8. In view of the above judgments of the Hon'ble Tribunal and by following the principles of judicial discipline, I hold that the service provided by the appellant is not support service of business or commerce but health care services and, therefore, the appellant are not liable to pay service tax on the income booked under the head of 'Revenue sharing from Doctors'.

9. In view of the above, the demand confirmed vide the impugned order is not legally sustainable. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

7th December, 2021

(**Akhilesh Kumar**)
Commissioner (Appeals)

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

Date: .12.2021.

BY RPAD / SPEED POST

To

M/s. Apollo Hospitals International Ltd, Appellant

Plot No. 14, Bhat GIDC Estate,
Near Indira Bridge,
Gandhinagar – 382 428

Respondent

The Additional Commissioner,
CGST & Central Excise,
Commissionerate : Gandhinagar

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar. (for uploading the OIA)
4. Guard File.
5. P.A. File.