



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN: 20231064SW000000E3C3

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2245/2023-APPEAL/3399 - 2403

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-120/2023-24
 दिनांक Date : 20-10-2023 जारी करने की तारीख Date of Issue 20.10.2023

आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 337/AC/DEMAND/22-23 दिनांक: 23.12.2022 , issued
 by The Assistant Commissioner, CGST Division-I, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
 M/s. Patel Artiben Bhagvatiprasad, Arti Maternity & Nursing Home, 3, Gayatri
 Chambers, Nr. S.D. High School, Saujpur Bogha, Ahmedabad - 382345

2. Respondent
 The Assistant Commissioner, CGST Division-I, Ahmedabad North, Ground Floor,
 Jivabhai Mansion, Ashram Road, Ahmedabad-380009

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 :

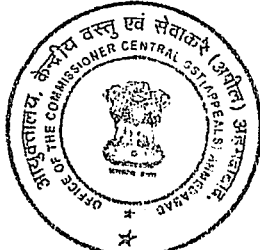
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त
 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 हानि कारखाने 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 में हो माल की प्रक्रिया 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 मामलों 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 ड्यूटी क्रेडिट 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई. का मुख्यशीर्ष 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 रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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, Bahumali Bhawan, 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. Registrar 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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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 notwithstanding the fact that the one appeal to the Appellate 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय 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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर 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.

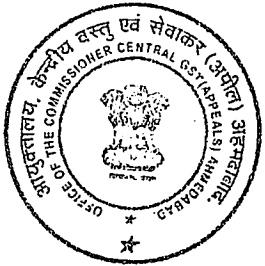
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) 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 मांग 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

M/s. Patel Artiben Bhagvatiprasad, Arti Maternity & Nursing Home, 3, Gayatri Chambers, Near G. D. High School, Saijpur Bogha, Ahmedabad - 382345 (*hereinafter referred to as "the appellant"*) have filed the present appeal against Order-in-Original No.337/AC/DEMAND/2022-23 dated 23.12.2022 (*hereinafter referred to as "the impugned order"*) passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (*hereinafter referred to as "the adjudicating authority"*). The appellant are holding PAN No. ADMPP3903C.

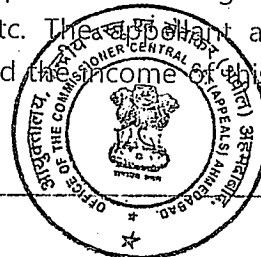
2. Briefly stated the facts of the case are that on scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had earned substantial taxable income of Rs.35,26,000/- during the F.Y 2015-16, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. They had neither obtained Service Tax registration nor paid the applicable service tax on such income. The appellant were therefore called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for said period. However, they did not respond to the letters issued by the department.

2.1 The appellant were therefore issued a Show Cause Notice (SCN) No. STC/ARII/Patel Artiben Bhagwati Prasad / Un-Reg/15-16 proposing Service Tax demand of Rs. 5,11,270/- for the F.Y 2015-16, under proviso to Section 73(1) of the Finance Act, 1994; recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994 were also proposed. The SCN also proposed recovery of un-quantified amount of Service Tax for the period F.Y 2016-17 & F.Y 2017-18 (up to Jun-17).

2.2 The said Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the Service Tax demand of Rs. 5,11,270/- was confirmed along with interest. Penalty of Rs. 5,11,270/- was imposed on the appellant under Section 78 of the Finance Act, 1994; Penalty of Rs. 10,000/- each was also imposed under Section 77(1)(a) and Section 77(1)(c) of the Finance Act, 1994. However, penalty under Section 77(2) was not imposed.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below:

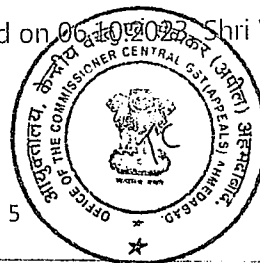
- The appellant is an individual and engaged in the healthcare services. She is pursuing a clinical establishment viz 'Aarti Maternity & Nursing Home'. This clinical establishment provides health care services in gynaecological treatments. The appellant is not having any other source of income except income received from this clinical establishment, which is operated by herself and her husband Dr. Bhagwatiprasad Narandas Patel.
- This clinical establishment provides healthcare facilities to the pregnant women, such as operation theatre, resting rooms which is required after being operated, various other facilities like medical consultation etc. The appellant also files income tax returns regularly in which she has showed the income of this clinical



establishment from year to year. The income generated and showed in the Income Tax Return is nothing but the income generated from such medical facilities provided to the patients. These services cannot be attributable to Service Tax as per the mega exemption Notification No.25/2012-ST dated 20.06.2012.

- The appellant was possessing ample evidence to substantiate her claim. The appellant had to apply for biomedical waste authorization certificate. The application was made in the name of the clinical establishment by the appellant in the Gujarat pollution control Board for such an approval. Accordingly, she was issued such certificate under the biomedical waste (management and handling) (amendment) Rules, 2003. The appellant was granted authorization for 8 Nos. of beds with various kinds of hazardous to be disposed of by a certificate dated 31.07.2014. Thus, the income generated by the appellant can never be said to be generated from any other source other than the clinical establishment.
- The adjudicating authority has erred in levying services tax without giving sufficient and specific opportunity to the appellant and thereby violating the principles of natural justice. The appellant should therefore be allowed to produce additional evidence during the course of appellate proceedings and should be admitted.
- The adjudicating authority has failed to understand that the services provided by the appellant is a clinical establishment services and exempted from service tax as per the mega exemption Notification No. 25/2012-ST dated 20.06.2012.
- The demand for the period April, 2015 to September, 2015 is time barred as notice was issued beyond the extended period of 25 October, 2020.
- As per the provisions of Section 67(2), when Service Tax is not collected from service recipient, the same should be considered as inclusive of tax without seeing any further condition. However, the said benefit has not been extended to the appellant by the assessing officer.
- The appellant may also be granted the basic exemption of Rs.10,00,000 while working out the amount of chargeable services. The adjudicating authority also failed to appreciate that penalty can be levied only if there is a fraud, collusion, willful misstatement, suppression of facts or contravention of any provisions with intent to evade payment of service tax. He has not found any of such intent in the order passed by him.
- The adjudicating authority has erred in law and or on facts in imposing penalty of Rs.10,000/- under Section 77(l)(a) of the Finance Act, 1994. He also erred in imposing penalty of Rs.10,000/- under Section 77(l)(c) of the Finance Act, 1994.

4. Personal hearing in the case was held on 06.10.2023. Shri Vivek Chavda, Advocate



appeared on behalf of the appellant. He reiterated the submissions made in appeal memorandum as well as those made in the additional written submission dated 11.09.2023.

5. I have carefully gone through the facts of the case, grounds of appeal, additional submission and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the service tax demand of Rs. 5,11,270/- against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period F.Y 2015-16.

6. The appellant before the adjudicating authority submitted documents like Certificate of Registration in Form-C issued under Section 5 of the Bombay Nursing Homes Registration Act, 1949 issued by Ahmedabad Municipal Corporation; Copy of Certificate dated 30.09.1981 evidencing training of Laboratory Technician Course undertaken by the appellant, Copy of ITR, Copy of Income & Expenditure statement and Balance Sheet for the F.Y. 2015-16. Based on these documents, the adjudicating authority had observed that the exemption claimed under Notification No. 25/2012-ST dated 20.06.2012, cannot be granted. He observed that the clinical establishment 'Arti Maternity Hospital' is registered in the name of Dr. Bhagwatiprasad Nararidas Patel who is the husband of the appellant. Further, he also observed that the appellant is not a authorized medical practitioner or para medics and is merely holding a certificate of training for Laboratory Technician Course which no way is connected to the business affairs of the Arti Maternity & Nursing Home and also does not fall within the scope of 'health care services' defined in the above notification.

6.1 To examine the issue relevant text of the notification is re-produced below;

[Notification No. 25/2012-S.T..dated20-6-2012]

Exemptions from Service tax Mega Notifications - Notification No. 12/2012-ST superseded

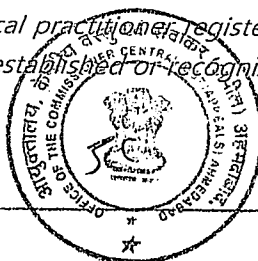
In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210E, dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 668 of the said Act, namely:-

1.XXXX

2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

2. Definitions. - For the purpose of this notification, unless the context otherwise requires,

(d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in



India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force;

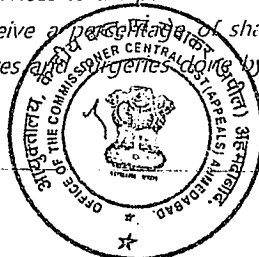
(j) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines 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

(t) "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,

6.2 Going by the above notification, I find that the health care services by a clinical establishment are exempted. The appellant claim that 'Aarti Maternity & Nursing Home' is a clinical establishment operated by the appellant and her husband (Dr. Bhagwatiprasad Narandas Patel) hence the income earned from such establishment shall be exempted vide above notification. It is observed that in the Balance Sheet the appellant has shown Nursing Home income as well as Laboratory Income. The appellant has filed the ITR in respect of 'Aarti Maternity & Nursing Home' which is a clinical establishment registered under Ahmedabad Municipal Corporation. This establishment is also operated by the appellant's husband who by profession is a registered medical practitioner. Thus, the clinical establishment is jointly run by both the parties with shared obligations, responsibilities and benefits. The medical practitioner is providing the treatment and the appellant who is a trained Laboratory Technician is providing the services of the diagnosis of disease. Clinical laboratories are healthcare facilities providing a wide range of laboratory procedures which aid the physicians in carrying out the diagnosis, treatment, and management of patients. Hence the diagnostic services provided by the appellant under a Nursing Home which is a clinical establishment shall also be covered under healthcare services.

6.3 It is observed that Hon'ble Principal Bench, CESTAT New Delhi in the case of **M/s. Maharaja Agrasen Hospital Chairtable Trust (Service Tax Appeal No. 52193 of 2016)** by relying on the decision passed in the case **M/s. Sir Ganga Ram' Hospital vs. Commissioner of Service Tax, New Delhi-2** (2020 (11) TMI 536-CESTAT NEW DELHI), held that the health care services provided by the clinical establishments by engaging consultant doctors are exempted.

"5. The claim of the Revenue is that the appellants have provided infrastructural support service to various doctors. As a consideration for such support, they have retained a part of the amount collected from visiting patients. We have perused some of the agreements/appointment arrangements entered into between the appellants hospitals and the individual doctors. Typically, the arrangement contains details like duration "of time for consultation, the obligations on the part of the doctors, fee to be paid, procedure for termination of agreement, etc. The agreements generally talk about appointment of consultants to provide services to the patients who will visit or admitted in the appellants hospital. The doctors will receive a percentage of share of the collection from the patients in case of consultation, procedures and medicines by them. In



some cases, there is a provision for treating patients from low economic background without any financial benefits. On careful consideration of various terms and conditions and the scope of arrangement, we are of the considered view that such arrangement are for joint benefit of both the parties with shared obligations, responsibilities and benefits. The agreements do not specify the specific nature or list of facilities which can be categorized as infrastructural support to the any consideration attributable to such infrastructural support service.

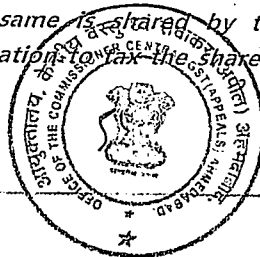
6. The proceedings by the Revenue, initiated against the appellant hospitals, are mainly on the inference drawn to the effect that the retained amount by the hospitals out of total charges collected from the patients should be considered as an amount for providing the infrastructure like room and certain 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 appellant 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 appellant 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.

XXXX XXXX XXXX

9. Under negative list regime w.e.f. 01.07.2012, 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 01.07.2010 to 01.05.2011. With effect from 01.05.2011, health care services were exempt from service tax under Notification No. 30/2011 ST:MANU/DSTX/0055/2011. After introduction of negative list tax regime, Notification No. 25/2011 ST:MANU/DSTX/0065/2012 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."

XXXX XXXX XXXX

11. These two provisions available in Notification No. 25/2012: MANU/DSTX/0065/2012 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 10 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



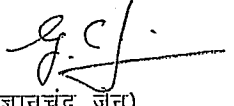
establishment on the ground that they have supported the commerce or business of doctors by providing infrastructure. We find that such assertion is neither factually nor legally sustainable."

7. Thus, by applying the ratio of above decision and the facts of the case, I find that the income earned by the appellant pertains to the healthcare services provided by a clinical establishment, hence, shall be exemptions in terms of Notification No. 25/2012 ST.

8. When the demand does not sustain, question of interest and- penalties does not arise. Accordingly, I find that the impugned order confirming the service tax demand of Rs.5,11,270/- alongwith interest and penalties is not sustainable on merits.

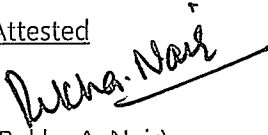
9. In view of the above discussion, I set-aside the impugned order and allow the appeal of the appellant.

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.


(ज्ञानचंद जैन)
आयुक्त (अपील)

Date: 20.10.2023

Attested


(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Patel Artiben Bhagvatiprasad,
Arti Maternity & Nursing Home,
3, Gayatri Chambers, Near G. D. High School,
Saujpur Bogha, Ahmedabad - 382345

Appellant

The Assistant Commissioner
CGST, Division-1,
Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.

(For uploading the OIA)

2-4. Guard File.

