



स न्यगेत जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20230264SW0000222FE6

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2518/2022 / 8634-38
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-149/2022-23
दिनांक Date : 31-01-2023 जारी करने की तारीख Date of Issue 20.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. CGST-VI/Dem-37/Symmers/AC/DAP/2021-22 दिनांक: 25.03.2022
passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Symmers Path Care
8-9, Narayan Chambers,
Behind Patang Hotel, Nehru Bridge,
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 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 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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक 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 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 सेवा कर 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 पढी 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 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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- 10^प 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

- (xxxvii) amount determined under Section 11 D;
(xxxviii) amount of erroneous Cenvat Credit taken;
(xxxix) 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

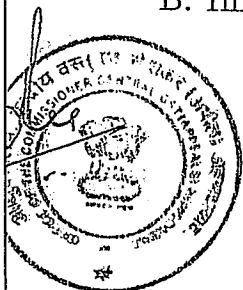
The present appeal has been filed by M/s. Symmers Path Care, 8-9, Narayan Chambers, Behind Patang Hotel, Nehru Bridge, Ahmedabad – 380 009 (hereinafter referred to as the “appellant”) against Order in Original No. CGST-VI/Dem-37/Symmers/AC/DAP/2021-22 dated 25.03.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division – VI, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that intelligence gathered by the departmental officers revealed that the appellant were engaged in providing Laboratory Analysis Test service in relation to Clinical Trial to Clinical Research Organisation (CRO) and Pharmaceutical Companies and that they were raising invoices for Technical Testing and Analysis service to their customers as part of Clinical Trials and Drug Testing. The appellant were receiving stool, blood and urine sample of human beings and animals and performed tests on these samples following which they formulated a report in the category of Pre-study and Post-study etc. It appeared that the said service provided by the appellant was in relation to Clinical Trials. However, the appellant were neither registered with the service tax department nor depositing service tax during the period from 01.10.2013 to 31.03.2017. It appeared that the appellant had wrongly claimed exemption under Serial No.2 of Notification No.25/2012-ST dated 20.06.2012, which was not available to them as only Healthcare Services are exempted under the said Notification. It appeared that the appellant had during the said period evaded payment of service tax amounting to Rs.44,13,482/-.

3. Therefore, the appellant was issued Show Cause Notice bearing No. IV/PI-III/DGGI/Symmers/18-19 dated 22.04.2019 wherein it was proposed to :

A. Levy and recover the service tax amounting to Rs.44,13,482/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

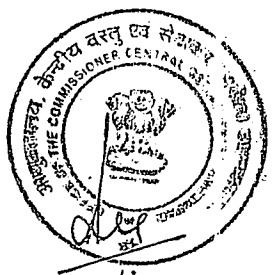
B. Impose penalty under Sections 76(i), 77 and 78 of the Finance Act, 1994.



C. Recover Late Fee under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

3. The SCN was adjudicated vide the impugned order wherein :
 - a) The demand of service tax amounting to Rs.44,13,482/- was confirmed.
 - b) Interest was ordered to be recovered under Section 75 of the Finance Act, 1994.
 - c) Penalty amounting to Rs.10,000/- was imposed under Section 77 (1) of the Finance Act, 1994.
 - d) Penalty amounting to Rs.44,13,482/- was imposed under Section 78 (1) of the Finance Act, 1994.
 - e) Late Fee/Penalty amounting to Rs.1,60,000/- was imposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

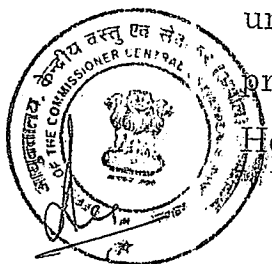
4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :
 - i. They have provided healthcare services by way of diagnosis. They are a Pathology Laboratory and offer services or facilities requiring diagnosis. The Partner of the firm is an Authorized Medical Practitioner.
 - ii. The healthcare services provided by them are exempt from service tax under Serial No.2 of Notification No.25/2012-ST dated 20.06.2012. As per the said Serial No.2, Health care services by a clinical establishment, an authorised medical practitioner or para-medics are fully exempt. As per paragraph 2 (t) of the said Notification, '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.
 - iii. As per Paragraph 2 (j) of the said Notification, '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.



- iv. They are a Pathology Laboratory and are a clinical establishment that offers services or facilities requiring diagnosis.
- v. Despite detailed submissions in this regard, the adjudicating authority has not recorded any discussion or finding on the contentions raised by them and mechanically presumed that their activity is nothing but systematic study of new drugs in human and non human subjects.
- vi. It may be noted that CROs undertake activity of study of new drugs and they as Pathology Laboratory only carry on pathological tests on samples supplied to them and they do not do any systematic study of new drugs.
- vii. They have never claimed exemption under Serial No.7 of the said Notification referred to in Paragraph 8.6 of the impugned order.
- viii. Presuming the activity of the CRO to be their activity is absolutely illegal and the impugned order has failed to record any finding or discussion on the main issue raised by them in their submissions that they are providing healthcare services.
- ix. There is no finding on their claim for exemption under Serial No.2 of Notification No.25/2012-ST dated 20.06.2012.
- x. The impugned order is a non-speaking order and deserves to be set aside as it is in violation of the principles of natural justice. Reliance is placed upon the judgment in the case of Anil Products Ltd. Vs. CCE – 2010 (257) ELT 523 (Guj.).
- xi. They submit copy of the Shops and Establishment Certificate to show that they are a Pathology Laboratory and, thus, a clinical establishment. Copy of the M.D. Degree of their Partner and certificate of Registration with Gujarat Medical Council is submitted.
- xii. The pathology tests carried out by them on blood or urine or stool does not cease to be healthcare services when it is provided by a clinical establishment, an authorized medical practitioner or para-medics.
- xiii. Merely by coining words like 'laboratory analysis test service' as stated in the SCN, their services does not become taxable when it satisfies all the conditions for exemption as healthcare services.
- xiv. Merely because the services are provided to CRO, the service does not go out of the ambit of exemption under the said Notification.
- xv. Reliance is placed upon the decision in the case of Dr. Lal Path Lab Pvt. Ltd. Vs. CCE – 2006 (4) STR 527 (Tri.-Del.) which was affirmed by the High Court of P&H – 2007 (8) STR 337 (P&H).

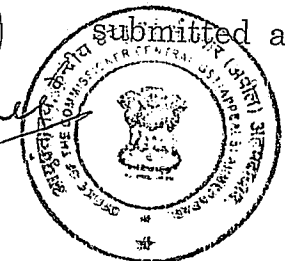


- xvi. The SCN at Page 19 shows the calculation of service tax, without stating even the rate of service tax, without stating on which value the service tax is calculated and without calculating deduction for service tax. The impugned order needs to be dropped in the ground that it mechanically confirms the demand without considering their plea and without even recording any finding.
- xvii. Even if service tax is payable, the value should be treated as inclusive of service tax as no service tax is recovered by them. Reliance is placed upon the judgment in the case of Godfrey Phillips India Ltd. Vs. CCE – 2018 (10) GSTL (Tri.-Mum.) and CCE Vs. Advantage Media Consultant – 2009 (14) STR J49 (SC).
- xviii. The statutory provisions about exemption are plain and unambiguous and there is nothing therein to exclude diagnostic healthcare services provided to CROs. In absence of any such provision, exemption cannot be denied under any pretext when the language of the notification clearly exempts healthcare services.
- xix. Reliance is placed upon the judgment in the case of Ranbaxy Laboratories Ltd. Vs. UOI – 2012 (27) STR 193 (SC) and Trutuf Safety Glass Industries Vs. Commissioner of Sales Tax, UP – 2007 (215) ELT 14 (SC).
- xx. No interest is payable as service tax itself is not payable on healthcare services as they are exempt.
- xxi. The penalties have been imposed upon them despite there being no violation, of any of the provisions of the Finance Act, 1994 or the Rules made thereunder, on their part. When no service tax is payable, no compliance under Finance Act, 1994 or the Rules made thereunder are required on their part.
- xxii. With effect from 01.07.2017, the provisions of Chapter V of the Finance Act, 1994 have been omitted vide Section 173 of the Central Goods and Services Act, 2017. Further, in view of the Constitution (One Hundred and First Amendment) Act, 2016, the levy of service tax was done away with, with effect from 16.09.2016.
- xxiii. Section 6 of the General Clauses Act, 1897, saves the rights accrued under the old legislation and gives the power of the legislature to initiate proceedings in respect of any liability incurred under the old statute. However, in the case of Rayala Corporation Vs. Directorate of



Enforcement [1969 (2) SCC 412], a five bench of Hon'ble Supreme Court held that Section of the General Clauses Act, 1897 applies only to repeals and not omissions.

- xxiv. In the present case, the legislature has omitted the provisions of Chapter-V of the Act. Thus, Section 6 of the General Clauses Act, 1897 shall not be applicable in view of the judgment of Hon'ble Supreme Court in Rayala Corporation (supra). Therefore, no proceedings can be initiated, and no liability can be fastened by the Government in respect of the any alleged violation or non-compliance of the provisions contained in Chapter-V of the Act, as omitted vide Section 173 of the CGST Act, 2017.
- xxv. Confirming the demand of service tax by invoking extended period of limitation despite there being no evidence of suppression or intent to evade payment of tax on their part. It is submitted that it be held that the penalties cannot be imposed and extended period cannot be invoked.
- xxvi. They are of the bonafide belief that all healthcare services are exempt from service tax. They have provided all the information to the department immediately and not suppressed any information. All the income received were recorded in the books of accounts and nothing was suppressed.
- xxvii. There is no evidence reflecting upon any positive act of suppression or mis-statement with intent to evade payment of service tax.
- xxviii. The demand for the period from 01.10.2013 to 31.03.2016 is time barred as the SCN was served on 24.04.2019 after the normal period of limitation.
- xxix. Penalty cannot be imposed on them and extended period of limitation cannot be invoked in view of the decision in the case of Monarch Catalyst Pvt. Ltd. V. CCE – 2016 (41) STR 904 (Tri.-Mum.); Pahwa Chemicals P. Ltd. Vs. CCE, Delhi – 2005 (189) ELT 257 (SC); Orient Packaging Ltd. Vs. CCE – 2011 (23) STR 167 (Tri.-Del.) and Ballarpur Industries Ltd. Vs. CCE – 2014 (36) STR 1122 (Tri.-Mum).
5. Personal Hearing in the case was held on 12.01.2023. Shri Nilesh Suchak, Shri Nandesh Barai, both Chartered Accountants and Dr. Anish Shah, Partner of the appellant, appeared on behalf of appellant for the hearing. They submitted a written submission during hearing. They argued the case on



merits as well as on limitation. They reiterated the submissions made in appeal memorandum.

6. In the additional written submissions filed on 12.01.2023, the appellant have basically reiterated the submissions made in the appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions as well as submissions made at the time of personal hearing and the materials available on records. The issue before me for decision is as to whether the services provided by the appellant fall within the ambit of 'health care services' and are exempted in terms of Serial No.2 of Notification No. 25/2012-ST dated 20.06.2012 or otherwise. Further, whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand along with interest and penalty is legal and proper or otherwise. The demand pertains to the period October, 2013 to June, 2017.

8. It is observed from the materials available on record that in the SCN issued to the appellant, it is alleged that they are providing Laboratory Analysis Test service in relation to Clinical Trial to Clinical Research Organisation (CRO) and Pharmaceutical Companies and that the appellant was raising invoices for providing Technical Testing and Analysis service to their customers as part of Clinical Trials and Drug Testing. The appellant have, however, claimed that the services provided by them are Health Care services and exempted under Serial No.2 of Notification No.25/2012-ST dated 20.06.2012. As against this, the adjudicating authority has in the impugned order held that the activity undertaken by the appellant is nothing but systematic study of new drug in human and non human subject and is Technical Testing and Analysis Service provided in connection with clinical trials.

8.1 It is pertinent to refer to Serial No.2 of Notification No.25/2012-ST dated 20.06.2012, the text of which is reproduced below :

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



8.2 It is observed that 'health care services has been defined in Para 2 (t) of the said Notification as :

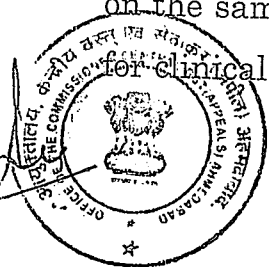
“ “ health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment , but does not 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;”

8.3 Further, 'clinical establishment' has been defined in Para 2 (j) of the said Notification as :

“ “ 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;”

8.4 I proceed to examine the claim of the appellant for exemption in terms of the above provisions of the said Notification. From a plain reading of the definition of 'health care services', it is evident that to be covered under the ambit of health care services, the service provided has to be by way of diagnosis or treatment or care for illness, injury, deformity etc. by, among others, a clinical establishment. In the instant case, it is not disputed by the department that the appellant are operating a Pathology Laboratory. Further, the Partner of the appellant is a qualified medical practitioner. It is also an undisputed fact that the appellant are providing diagnostic and investigative services through their Pathology Laboratory. Accordingly, the appellant squarely fall within the ambit of 'clinical establishment' defined in the said Notification.

8.5 As regards the issue of whether the services provided by the appellant fall under the definition of 'health care services', it is observed that health care services has been defined under the said Notification to include, among others, services by way of diagnosis. From the materials available on record, it is observed that the appellant are providing the services of testing of the blood, stool or urine samples of the volunteers for clinical trials sent by the CROs/Pharmaceutical company. The appellant carry out the tests sought by the CROs and forward the test reports. The tests carried out by the appellant on the samples are diagnostic tests to determine the fitness of the volunteers for clinical trials. Since the services provided by the appellant to the CROs are



in the nature of diagnostic tests, the same fall within the definition of 'health care services' as defined in the said Notification.

8.6 It is an admitted fact that the appellant are also providing services to walk in customers, annual checkup of employees of companies and also medical checkup of persons for insurance purpose. The taxability of the services provided by the appellant to these category of persons is not a subject matter of the SCN issued to them and neither is the department disputing the issue. The department has sought to demand service tax by classification of the service provided by the appellant to the CROs as technical testing and analysis service only on the grounds that the service recipients are CROs. However, merely because the same diagnostic services are provided to CROs, the nature of the services would not change and neither can it be said that the same are not diagnostic services but Technical Testing and Analysis service. This, in my considered view, is not a legally tenable proposition. Further, with introduction of Negative List regime of service tax, the classification of service under any particular head of service prevailing under pre-negative list regime of service tax is not legally tenable.

9. The adjudicating authority has, at Para 8.6 of the impugned order, held that the services provided by the appellant are Technical Testing or Analysis services which are exempted vide Serial No.7 of the said Notification, the text of which is reproduced below :

“Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;”

9.1 The adjudicating authority denied the benefit of exemption under Serial No.7 on the grounds that the appellant were not registered with the Drug Controller General of India as a Clinical Research Organisation. The said Serial No. 7 was omitted w.e.f. 11.07.2014 by Notification No.6/2014-ST dated 11.07.2014. It is an undisputed fact that the appellant are not a Clinical Research Organisation and neither are they engaged in carrying under any technical testing or analysis of newly developed drugs on human participants. It is also observed from the materials on record that the appellant have never claimed exemption under Serial No. 7 of the said Notification, which is



applicable to CROs. It is the department, which has in the impugned SCN, brought in the issue of the non eligibility of the appellant to exemption in terms of Serial No. 7 of the said Notification. Therefore, the issue of whether the appellant are eligible for exemption in terms of Serial No. 7 of the said Notification is extraneous to the issue.

10. In view of the above facts, I am of the considered view that the adjudicating authority has erred in holding that the services provided by the appellant are not Health Care Services but Technical Testing and Analysis services and also erred in denying the benefit of exemption in terms of Serial No.2 of Notification No. 25/2012-ST dated 20.06.2012. In view thereof, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

Akhil Kumar
31 January, 2023
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 31.01.2023.

Attested:

(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),
CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

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Appellant

The Assistant Commissioner,
CGST, Division- VI,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

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