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

सत्यमेव जयते

NATION TAX MARKET

DIN: 20231164SW0000559305

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3567/2023 /7827-31

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-151/2023-24**
दिनाँक Date : 26-10-2023 जारी करने की तारीख Date of Issue 02.11.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)

ग Arising out of OIO No. 130/WSO3/AC/CSM/2022-23 दिनाँक: 03.02.2023 passed by Assistant Commissioner, CGST, Division III, Ahmedabad South.

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Innovative Healing Systems (India) Pvt. Ltd.,
11, Shashi Colony,
Opp. Suvidha Shopping Centre,
Paldi, Ahmedabad-380007.

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:

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

1ण 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:

(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 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. Innovative Healing Systems (India) Pvt. Ltd., 11, Shashi Colony, Opp. Suvidha Shopping Centre, Paldi, Ahmedabad 380 007 (hereinafter referred to as "the Appellant") against Order-in-Original No. 130/WS03/AC/CSM/2022-23 dated 03.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-III, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AACCI4736NSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the gross value declared by them in their Income Tax Return (ITR)/TDS Returns. Accordingly, it appeared that the appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1. Subsequently, the appellant were issued Show Cause Notice No. V/WS07/V/O&A/SCN-980/2015-16/REG/2020 dated 24.12.2020 wherein it was proposed to:

a) Demand and recover an amount of Rs. 25,36,599/- for F.Y. 2015-16 under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 along with interest under section 75 of the Finance Act 1994 (hereinafter referred to as 'the Act').

b) Impose penalty under the provisions of Section 77 (1) (c), 77(2) and 78 of the Act.

3. The SCN was adjudicated ex-parte vide the impugned order wherein:

a) The demand of service tax amounting to Rs. 25,36,599/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from FY 2015-16.

b) Penalty amounting to Rs. 25,36,599/- was imposed under section 78 of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under section 77(1) of the Act.

d) Penalty amounting to Rs. 5,000/- was imposed under section 77(2) of the Act for not submitting the documents in the department when called for.

e) Penalty amounting to Rs. 20,000/- was imposed under section 70 of the Act for non filing/late filing of ST-3.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- SCN needs to be based on the principal of natural justice. The OIO has not taken into consideration that the SCN has been issued merely based on the data from the income tax Department. No further investigation has been done by the Service Tax department and no opportunity was provided before the issuance of SCN. In support reliance is placed in the case of case law of Uma Nath Pandey Vs State of UP reported at 2009 (237) ELT 241 (S.C.) explaining meaning of natural

justice. It was held in that order that hearing should be given to each assessee.

- No. investigation was done by the department and OIO is passed based on the basis of SCN which is issued merely based on third party data of Income tax Department.
- The OIO issued is erroneous and ambiguous when compared to SCN. The SCN is pertaining to the F.Y. 2015-16 however the OIO pertains to the F.Y. 2016-17.
- Personal hearing letter issued by the department were not received by the appellant. Therefore OIO has been issued without providing the appellant the opportunity of being heard and the same is in violation of principal of natural justice.
- The Service provided by the appellant is in the nature of healthcare Service which are exempted and hence are not shown in out ST-3 Return.
- Service Tax for the period October 2015 to June 2017 as per the Audit Report is NIL. The department issued the FAR ST-873/Service Tax/2020-21 dated 19.02.2021.
- Demand is barred by limitation and hence extended period is not invocable. It is necessary that there must be suppression of facts or willful mis-statement with intend to evade payment of tax for invoking extended period of limitation. The department has failed to substantiate the intention to evade payment of tax at the end of appellant so extended period cannot be invoked. In support the appellant relied on the case of case laws of Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur 2013(288) E.L.T. 161(S.C.) and the case laws of Anand Nishikawa Co. Ltd. Vs. CCE, Meerut, 2005 (188) E.L.T,. 149 (S.C.)
- No positive action shown by the department relating to intention to evade payment of taxes at the end of Appellant. The Appellant places reliance on the following decisions: 1. Continental Foundation Jt. Venture V. CCE, Chandigarh-I,

2007 (2160E.L.T. 177 (S.C.) 2. CCE, Mumbai IV Vs. Damnet Chemicals Pvt. Ltd. 20074 (216) E.L.T. 3 (S.C.)

- The OIO has erred in imposing Interest U/s 75 and Penalty U/s 70, 77(1), 77(2) and 78 of the Finance Act, 1994. As the Appellant is not liable to pay Service Tax they are liable to pay Interest and Penalty. The Appellant relied on the case of Pratibha Processor V. Union of India [196(88) ELT 12 (S.C.) wherein the Hon'ble Supreme Court held that in tax matters, Interest is not liable to be paid if there is not liability to pay tax itself. Penalty Under Section 78 of the Act cannot be imposed subject to the condition of fraud, suppression of facts, willful mis-statement, etc. with an intention to evade service tax. Penalty U/s 78 of the Act. Can be proposed only when any assessee commits any positive act for evading service tax. mere failure to disclose or declare would not amount to 'suppression'. Reliance in this regard is placed on the case of Anand Nishikawa Co. Ltd. V. Commission of Central Excise, Meerut (Supra). It is submitted by the Appellant that they did not commit any positive act for evading service tax. Therefore Penalty under Section 78 of the Act is not imposable.

5. Personal hearing in the case was held on 10.10.2023. Sh. Nitesh Jain, C.A. and Sh. Praveen Maheshwari, C.A., appeared on behalf of the appellant for personal hearing and reiterated the submission in the appeal. He requested to allow the appeal.

6. The Appellant have submitted documents viz. Audited Balance Sheet and P & L Account for F.Y. 2015-16, Income ledgers for the concerned Hospitals i.e. Hiranandani Hospital, KEM Hospital Pune, Fortis Hospital, vouchers entry for revenue booked in books of accounts, and sample Invoices in the name of Hospitals and sample copies of Remittance Certificate in their submission dated 27.09.2023.

7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing 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 demand of service tax 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.

8. It is observed that the Appellant are registered with the department and were filing ST-3 returns. However, the present demand has been raised based on ITR data provided by Income Tax Department. The SCN alleges that the Appellant had not discharged the service tax liability on the differential income noticed on reconciliation of ITR and ST-3 Returns. No other detail for raising demand is available in the SCN.

9. It is observed that the demand of service tax was raised against the Appellant on the basis of the data received from Income Tax department. It is nowhere specified in the SCN as to what service is provided by the Appellant, which is liable to service tax under the Act. No cogent reason or justification is forthcoming for raising the demand against the Appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising the demand of service tax.

9.1 I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

> *"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

9.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

10. The Appellant submitted that Service Tax Commissionerate, Ahmedabad has already conducted audit under EA-2000 for the period October 2015 to June 2017 and no objection was raised by the audit officers vide the issued Final Audit Report ST-873/Service Tax/2020-21 dated 19.02.2021. Looking to the above contention of the Appellant, I have the considered view that the invocation of extended period is not legal and hence the impugned demand and recovery of service tax along with interest and penalty is not sustainable.

11. Coming to the merit of the case I find that the main contention of the Appellant are that whether the Appellant are liable to pay service tax on differential income arrived due to reconciliation of Income declared by the Appellant in Service Tax Returns and ITR data provided by Income Tax Department, in context of which the Appellant have held that the present demand on differential Income of Rs. 1,74,93,793/- pertains to Healthcare Service and Export of Service which are exempted under Notification No. 25/2012-ST dated 20.06.2012 under Entry No. 2 (i) and under Rule 6A of the Service Tax Rule, 1994 and hence they were not showing the same in ST-3 Returns. For clarification extract of Rule 6A and extract of

Entry No. 2 of Notification No. 25/2012-Service Tax dated 20.06.2012 is reproduced as under:

> *RULE 6A. (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -*
> *(a) the provider of service is located in the taxable territory ,*
> *(b) the recipient of service is located outside India,*
> *(c) the service is not a service specified in the section 66D of the Act, (d) the place of provision of the service is outside India,*
> *(e) the payment for such service has been received by the provider of Service in convertible foreign exchange, and*
> *(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of 2|Explanation 3] of clause (44) of section 65B of the Act*
>
> *(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.]*
>
> ***Extract of Entry No. 2 of Notification No. 25/2012-Service Tax Dated 20.06.2012 is re-produced below:***
>
> *2. (i) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above;]*

12. Reading the aforesaid provision and documents submitted by the Appellant it is very much clear that the service value for the amount of Rs. 96,11,429/- out of total income Rs. 1,74,93,793/- as per their Books of Account provided by the Appellant is exempted in terms of the entry No. 2(i) under Notification no. 25/2012-ST dated

20.06.2012 and the remaining service tax value of Rs. 78,82,364/- is exempted for being export of service in view of Rule 6A of the Service Tax Rule, 1994. On verification of documents submitted by the Appellant and demand raised vide the Order-in-Original by the adjudication authority, I find the amount shown in Income Tax Return for F.Y. 2015-16 over which demand of service tax of Rs. 25,36,599/- was raised is nothing but income collected by rending health service and export of service. The details of amount collected from different Hospitals as well as amount collected from the export of service rendered by the Appellant is shown in table as under:

(A) OPD Income-Fortis Hospital		48,91,492/-	Exempted under Not. No. 25/2012-ST dated 20.06.2012 under entry no. 2(i)
(B) OPD Income-Hiranandani Hospital		36,85,297/-	Exempted under Not. No. 25/2012-ST dated 20.06.2012 under entry no. 2 (i)
(C) OPD Income –KEM Pune		10,34,640/-	Exempted under Not. No. 25/2012-ST dated 20.06.2012 under entry no. 2(i)
(D) Woundcare MD Project		78,82,364/-	The said export of service provided is not taxable as per 3rd condition state in Rule 6A of Service Tax Rules. Exempted under Not. No. 25/2012-ST dated 20.06.2012 under entry no. 2
3	Total Income as per Books of Account (A+B+C+D)	1,74,93,793	

13. The Appellant submitted agreement copies held between Fortis Hospital, Hiranandani Hospital and Kem Hospital and the Appellant, as well as submitted sample invoice in respect of health service provided to Fortis Hospital, Hiranandani Hospital and Kem Hospital. I have carefully gone through all the said documents supplied by the Appellant and found that the Appellant were provided a space in the said hospitals to install Monoplace Hyperbolic Oxygen Chambers and wound care chairs to run a high end HBOT Centre in the said hospital for providing advance wound care and hyperbaric therapy at the said Hospitals. Going though the

agreements it is abundantly clear that the Appellant were providing health service in the said hospitals. Thus I am of the considered view that the amount of Rs. 96,11,429/- out of Rs. 1,74,93,793/- in F.Y. 2015-16 is only the consideration received against the health service rendered by the Appellant, which is exempted in view of Entry No. 2 of Notification No. 25/2012-Service Tax Dated 20.06.2012 and demand raised accordingly is legally wrong and not sustainable.

14. As regard to the amount of 78,82,364/- collected out of Rs. 1,74,93,793/- over which the demand was raised by the adjudicating authority the Appellant submitted sample invoice copy regarding service rendered outside the territory of India. I find that the said amount was collected against the service in respect of software development and other charges to the Recipient Woundcare MD HER, INC, USA. Looking to the evidences in support of their submission provided by the Appellant I find that the Appellant, which are located in Taxable Territory are providing service, which are not specified in 66D of the Act to the recipient of service located outside India and for the service rendered by the Appellant they were collecting payment in convertible foreign exchange. Thus I am of the considered view that the said amount of Rs. 78,82,364/- out of Rs. 1,74,93,793/- in F.Y. 2015-16 is only the consideration received on account of export of service rendered by the Appellant and demand accordingly is legally wrong and not sustainable. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

15. Accordingly, in view of my foregoing discussions and finding, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the Appellant.

16. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

26.10.23

ज्ञानचंद जैन
आयुक्त (अपील)
Date : 26.10.2023

Attested

(अजेंद्र कुमार)
अधीक्षक (अपील)
सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s. Innovative Healing Systims (India) Pvt. Ltd., — Appellant
11, Shashi Colony,
Opp. Suvidha Shopping Centre,
Paldi, Ahmedabad-380 007.

The Assistant Commissioner, — Respondent
CGST, Division-III, (Vatva-II)
Ahmedabad South

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South
3. The Assistant Commissioner, CGST, Division III (Vatva-II), Ahmedabad South
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
5. Guard File
6. PA file