



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW0000777DD8

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3289/2023 / 250-5A
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-221/2023-24 and 28.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	04.01.2024
(ङ)	Arising out of Order-In-Original No. 249/WS03/AC/KSZ/2022-23 dated 10.02.2023 passed by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. The Meditour, 8, Malay Society, Nr. Shreyas Cross Road, Ambawadi, Ahmedabad - 382445

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 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 :-

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 :-

(क) 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।

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.

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



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.

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

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

(घ) 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।

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.

(2) 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये 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.

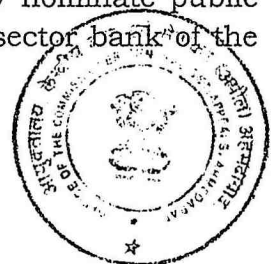
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 अपीलिय 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -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 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 अपीलिय 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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. The Meditour, 8 Malay Society, Nr. Shreyas Cross Road, Ambawadi, Ahmedabad (hereinafter referred to as “the appellant”) against Order-in-Original No. 249/WS08/AC/KSZ/2022-23 dated 10.02.2023 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VIII, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AAFFT9791C. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, 2015-16 and 2016-17, it was noticed that the appellant had earned an income of Rs. 1,01,76,562/- during the FY 2014-15, Rs. 70,75,589/- during the FY 2015-16 and Rs. 14,88,622/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/Div-VIII/O&A/TPD/40/AAFFT9791C/2020-21 dated 21.09.2020 demanding Service Tax amounting to Rs. 23,16,359/- for the period FYs 2014-15 to 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax



amounting to Rs. 23,16,359/- was confirmed 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. Further (i) Penalty of Rs. 23,16,359/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

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

- M/s. The Meditour (hereinafter referred to as "appellant") is engaged in providing healthcare services, having its registered office at 8, Malay Society, Nr. Shreyas Cross Road, Ambawadi, Ahmedabad, Gujarat having PAN AAFFT9791C. Dr. Sanjeev Mehta is a qualified MBBS and MD and partner in a firm M/s. The Meditour. Copy of degree certificate of Doctor of Medicine.
- It must be noted that SCN dated 23.09.2020 was issued mentioning taxable value and demanding service tax thereupon for FY 2014-15, however, period covered in the said SCN was 2014-15 to 2016-17.
- The appellant has received two show cause notices from Ld. Officers for the F.Y. 2014-15, FY. 2015-16 and FY. 2016-17 on the same grounds. The timeline of departmental communications made to appellant is tabulated as under:

Show Cause Notice and Issuance Date	OIO no and date	Demand of Service Tax	Status
CGST/Div VIII/O&A/TPD/A0/AAFFT9791C/2020-21/3451 dated 21.09.2020	249/WS08/ACKSZ/2022-23 dated 10-02-2023	23,16,359/-	Appeal filed by the appellant
V/WS07/O&A/SCN-145/AAFFT97910/2020-21 dated 23.09.2020	CGST/WS07/O&A/O1-O-OS/Third Party/data/MK/DC/2020-21 dated 29-01-2021	12,57,823/-	Entire Demand dropped considering submission for FY



- Although the reply of show cause notice has been duly submitted for both the SCNs, it is alleged by Ld. Assistant Commissioner while passing the impugned OIO dtd 10-02- 2023 that appellant has not given any written submission in reply of show cause notice dated 21.09.2020. After submission of reply to show cause notice by the appellant, one letter for attending personal hearing has been issued by Ld. Assistant Commissioner in which three dates of personal hearing have been given simultaneously. Then after two letters for attending personal hearing have also been issued by Ld. Assistant Commissioner. However, as the order was already passed by the same office of Assistant /Deputy Commissioner in the same matter, there was no additional submission required to be made by the appellant in matter.
- Ld. Assistant Commissioner has alleged that appellant has not come forward to defend the case and did not submit any documents to deny the allegations but has chosen not to participate in the adjudication proceedings. Ld. Assistant Commissioner stated that after ensuring the principle of natural justice, he proceed to decide the case ex-parte on the basis of available records available. Ld. Assistant Commissioner has issued an Order-In-Original (hereinafter referred as 'OIO') on 10.02.2023.
- As referred above, an Order-in-Original dated 29-01-2021 is issued by the same adjudicating authority for considering income of the same financial years of the same taxpayer and dropping the demand of service tax. In Para 19 of the said OIO, Ld. Deputy Commissioner has mentioned that appellant has submitted the written submission on 02.11.2020 and appellant has engaged in healthcare service and not liable to discharge Service Tax on such service. It is also mentioned in the OIO that the case has been decided on the merit without giving opportunity of personal hearing due to the pandemic of the CORONA virus.



- In para 20.5 of the said OIO, it is mentioned by Ld. Deputy Commissioner that it is crystal clear that M/s. The Meditour has been engaged in providing healthcare services and is not taxable under the Service Tax regime. By considering submissions, Ld. Deputy Commissioner has dropped the proceedings.

Order passed by Ld. Assistant Commissioner considered as void as for the same matter and period favorable order has already been passed:

- Ld. Assistant Commissioner has issued first SCN on 21.09.2020 and second SCN . 23.09.2020. Order related to SCN dated 23.09.2020 has already been issued on 29.01.2021 and Ld. Deputy Commissioner has dropped the proceeding against the demand raised on appellant. Now, Ld. Assistant Commissioner has issued an OIO on 10.02.2023 by referring to the SCN dated 21.09.2020. Extract of the final para of both the orders are attached herewith for your reference as below:

Final Para of 010 issued on 29.01.2021:

19. The said income tax payer filed their written submission on 02.11.2020 wherein they made the following submissions which are reproduced herein below:....

20.5 In view of the above discussion, it is crystal clear that "The Meditour" has been engaged in providing "Health Service" and the said service is not falling under the covered under the Service Tax Net and does not taxable under Service Tax regime since the 1day of July'2012. I view of the above discussion and findings I find that the charged framed in the Show Cause Notice is not sustainable and deserve to vacate.

20.6 Accordingly, I passed the following Order.

ORDER:

*I order to drop the proceeding initiated vide Show Cause Notice issued from F.No. V/WS07/O&A/SCN-145/AAFFT9791C/2020-21
Date: 23.09.2020.*

- First of all, issuance of orders on the same ground for the same financial years is not valid. As one Ld. Deputy Commissioner has already issued an

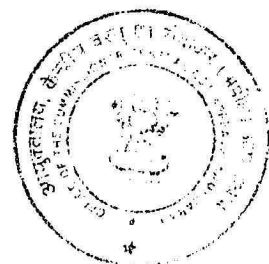


order and dropped the proceeding, then other Ld. Assistant Commissioner cannot issue the order on the same ground for the same financial years.

- In the case of M/s. Prince Gutka Ltd (2017) 52 STR 83 (SC), CESTAT has held that there could not have been second show cause notice on the same cause of action on which adjudicating authority had dropped the earlier demand. Supreme court has held that issue of second SCN on same cause of action is not permissible and that there was no error on Tribunal's order setting aside demand under second SCN.
- Various courts have in catena of judgments held that two show cause notice as well as two orders cannot be issued in relation to same period. Reliance can be placed on the following case laws
 - i. SIMPLEX INFRASTRUCTURES LTD. VERSUS COMMISSIONER OF SERVICE TAX, KOLKATA
 - ii. AVERY INDIA LTD. VERSUS UNION OF INDIA
- It is deduced from the above-mentioned discussion that Ld. Assistant Commissioner cannot issue SCN for the same period and similar grounds on assessee. Further, once order for the one of the SCN has already been passed in favor of appellant; another order for the same matter and period cannot be passed by Ld. Assistant Commissioner. Hence, the said order passed by Ld. Assistant Commissioner where already appellant is already having favorable order which is passed by another Ld. Assistant Commissioner cannot be acceptable and needs to be quashed.

Service provided by Appellant is exempted under Service Tax:

- The appellant is an authorized medical practitioner, and he is a partner of M/s. Meditour, which is clinical establishment, and the healthcare service has been provided by him. Thus, the service provided by appellant has been exempted as per the Sr. No. 2 of the Notification No. 25/2012-Service Tax dated 20.06.2012. Hence, appellant has not liable to obtain Service Tax registration under Section 69 of the Finance Act, 1994 and



not required to file Service Tax return as prescribed under Section 70 of the Finance Act, 1994.

- Appellant has engaged in providing healthcare services which is exempt under Sr. No.2 {i} of Notification No. 25/2012 - Service Tax dated 20.06.2012. The relevant extract of such notification is as below:

2. (i) *Health care services by a clinical establishment., an authorised 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.*

- The meaning of the terms 'Healthcare Services', 'Clinical Establishment' and 'Authorised Medical Practitioner' have been given under the definition part of the above-mentioned notification which is as under:

(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.*

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 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.*

(d) *"authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by Jaw in India and includes a medical professional having the requisite qualification to practice in*



any recognised system of medicines in India as per any Jaw for the time being in force.

Extended Period of limitation cannot be invoked in the absence of fulfilment of the conditions under sub-section (1) to Section 73

- It is submitted that the appellant has never suppressed any details which were asked by the departmental officers and has duly submitted relevant documents demanded by departmental officers, the allegation 'suppression of facts' is incorrect. Hence it can be said that in such facts and circumstances, the invocation of the extended period may not be in accordance with the law and hence the SCN in question is required to be vacated.
- Relevant extract of Section 75 of Finance Act, 1994 is reproduced as below: 75.

"Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed].

- It is a settled principle of law that in cases where the original demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of imposing interest does not arise. Hence, the demand of interest by the impugned Order is liable to be dropped.
- According to Section 80, no penalty under Section 76, 77 or 78 can be imposed if the appellant proves that there was a reasonable cause for default or failure under these sections.



- The appellant requests the authority to consider the submission G made and grant such relief as may be appropriate.

4. Personal hearing in the case was held on 19.04.2023. Shri Amrin Alwani and Foram Dhruv, CA, Authorized persons, appeared on behalf of the appellant for personal hearing. They stated that same period (2014-15) is covered in previous OIO where the adjudicating authority dropped the demand as the services are healthcare service. However, in the current adjudicating confirmed the demand for three year including the year (2014-15) that no submission made by the appellant. They stated that the client is providing healthcare services, hence not to liable to pay service tax. Therefore request to allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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 FY's 2014-15, 2015-16 and 2016-17.

6.2 The appellant contended that they have provide healthcare service which is exempted as per the Sr. No. 2 of the Notification No. 25/2012-Service Tax dated 20.06.2012 and the same period (2014-15) was covered in previous OIO where the adjudicating authority dropped the demand as the services are healthcare service.

7. It is observed from the case records that the appellant is engaged in providing healthcare services, having its registered office at 8, Malay Society, Nr. Shreyas Cross Road, Ambawadi, Ahmedabad, Gujarat having PAN AAFFT9791C. Dr. Sanjeev Mehta is a qualified MBBS and MD and partner in a firm M/s. The Meditour. Copy of degree certificate of Doctor of Medicine.



8. As regards the exemption claimed by the appellant, it is observed that as per Sr. No. 2 of the Notification No. 25/2012-ST dated 20.06.2012, Health Care Services provided by a clinical establishment or an authorized medical practitioner or para-medics, are exempted taxable services from the whole of the service tax leviable thereon under section 66B of the said Act.

8.1 As per definition of Health Care Services given in Para 2(t) of the Notification No. 25/2012-ST dated 20.06.2012, "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 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.

8.2 Further, as per definition of Authorised Medical Practitioner given in Para 2(d) of the Notification No. 25/2012-ST dated 20.06.2012, "Authorised Medical Practitioner" means a medical practitioner registered with any of the councils of the recognized 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.

8.3 Further, as per definition of Clinical Establishment given in per Para 2(j) of the Notification No. 25/2012-ST dated 20.06.2012, "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.



8.4 In view of the above, I find that the Health Care Services provided by a clinical establishment, an authorized medical practitioner or para-medics, are exempted from the whole of the service tax leviable thereon under section 66B of the said Act. Thus, I find that during the FYs 2014-15, 2015-16 and 2016-17, the appellant had received total income of Rs. 1,87,40,773/- from providing services of in relation to "Health Care Service", which is covered under the definition of Clinical Establishment as defined under Para 2(j) of the Notification No. 25/2012-ST dated 20.06.2012.

8 Further, I also find that the appellant has received vide Show Cause Notice No. V/SW07/O&A/SCN-145/AAFFT9791C/2020-21 dated 23.09.2020 which is covered the same period (2014-15) and the same was dropped by the adjudicating authority vide Order in Original No.CGST/WS07/O&A/OIO-05/Third Party data/MK/DC/2020-21 dated 29.01.2021 as *"The Meditour has been engaged in providing "Health Service" and the said service is not falling under the covered under the Service tax and does not taxable under Service Tax regime since 1st day of July, 2012. I view of the avove discussion and findings I find that the charged framed in the Show Cause Notice is not sustainable and deserve to vacate."*

8.5 In view of the above, I am of considered opinion that the appellant during the FY's 2014-15, 2016-17 and 2016-17 were engaged in providing Health Care Services, which are exempted from levy of the service tax thereon under Section 66B of the Finance Act, 1994 in terms of Sr. No. 2 of Notification No. 25/2012-ST dated 20.06.2012. Thus, the income received by them during the FY's 2014-15, 2015-16 and 2016-17 is not liable for Service Tax as demanded under the instant Show Cause Notice. The impugned order is not legally sustainable on merits and is liable to be set aside.

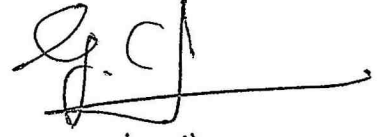
9. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of natural justice raised by the appellant. When the demand fails, there does not arise any question of charging interest or imposing penalty in the case.



10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. अपील कर्ता 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.



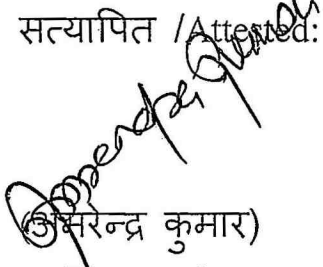
(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Dated: 28th December, 2023



सत्यापित / Attested:



(ओमरेंद्र कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST

To,
M/s. The Meditour,
8 Malay Society, Nr. Shreyas Cross Road,
Ambawadi, Ahmedabad.

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- 4) The supdt(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 6) PA file