

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

ST/92/2009-DB; ST/100/2009-DB & ST/101/2009-DB

[Arising out of:

- (i) Order-in-Appeal No.175/2008 dated 18.11.2008;
- (ii) Order-in-Appeal No.179/2008 dated 18.11.2008; &
- (iii) Order-in-Appeal No.176/2008 dated 18.11.2008

All orders passed by the Commissioner of Central Excise,
Customs and Service Tax (Appeals), Cochin.]

**The Commissioner of Central Excise
Cochin Commissionerate**

C R BUILDING, I S PRESS ROAD,
ERNAKULAM,
COCHIN – 682 018.
KERALA

Appellant(s)

Versus

**M/s. COCONUT LAGOON
KUMARAKOM**

(UNIT OF HOTEL & ALLIED TRADES PVT
LTD., WILLINGTON ISLAND COCHIN)
KUMARAKOM, KOTTAYAM.

M/s. KERALEEYAM AYURVEDIC RESORT
THATHAMPALLY,
ALLEPPEY – 688 006.

Respondent(s)

**M/s. YENKAY COMPLEX PVT. LTD.
KADAVU RESORTS**
VP-1/189, P.O. AZHINHILAM,
MALAPPURAM DISTRICT – 673 632.
KERALA

Appearance:

Mrs. Kavitha Podwal, AR

For the Appellant

**Mr. N. Vijayakumar, Consultant
G. JOSEPH & ASSOCIATES**
37/2038, Muttathil Lane,
Kadavanthra, Cochin – 682 020.

For the Respondent

Date of Hearing: 26.07.2018/
27.07.2018

Date of Decision:31.07.2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER No. 21063 – 21065 / 2018

ORDER PER: P. ANJANI KUMAR

Appeal Nos. ST/100/2009 and ST/92/2009 were held on 26.7.2018 and Appeal No.ST/101/2009 was heard on 27.7.2018. All the three departmental appeals are against the orders of the Commissioner (A) and the issue involved in all the cases is one and the same. Therefore, the same are taken together for final disposal. The details of the appeals are as under:

Sl. No.	Appeal No.	Assessee-Respondent	Order-in-Appeal
1.	ST/92/2009	M/s. Coconut Lagoon Kumarakom	No.175/2008 dated 18.11.2008
2.	ST/100/2009	M/s. Keraleeyam Ayurvedic Resort	No.179/2008 dated 18.11.2008
3.	ST/101/2009	M/s. Yenkey Complex Pvt. Ltd., Kadavu Resorts.	No.176/2008 dated 18.11.2008

2. The respondents are engaged in running resorts wherein they are providing services which the department claimed to fall under "health club and fitness centre" under

Section 65(52) of the Finance Act, 1994. In all the cases, show-cause notices were issued by the department and were confirmed by the respective original adjudicating authorities. On appeals filed by the respondents, the learned Commissioner (A) has allowed the appeals of the respondents. The Department has preferred appeals against the same.

3. The learned counsel for the respondents contended that they are operating ayurvedic treatment centres at the respective resorts. They have licenses issued by the Department to operate the said ayurvedic centre as private hospital establishment; they operate the ayurvedic centre with full time qualified ayurvedic doctors and qualified staff for giving the treatment.

3.1 The Government of Kerala has issued Green Leaf certification centre for maintaining their standards in facilities, equipment, personnel, medicines and health programmes and is issued after inspection by team of Director - Indian Systems of Medicine and Professor of Kayachikitsa. The District Medical Officer has certified that the medical treatment provided by the respondent is ayurvedic method of treatment which is a

traditional system of medicine approved by the Centre Council for Indian System of Medicines.

3.2 The respondents maintained detailed records of case sheets of the patients registered for treatment which goes to prove that the treatments are provided as per well accepted ayurvedic treatment methods. The specialized treatments given by them include treatments for ailments such as obesity, trauma, rheumatoid arthritis, paralysis, menstrual irregularities, metabolic disorders, bronchial disorders, etc. In addition, Panchakarma Therapy is also given to the patient for other illnesses. The Panchakarma treatment includes Nasyam, Virechanam, Vamanam and Vasthy. All the treatments given are as per the standard ayurvedic medical texts like Astangahrudaya, Sahasrayoga, Charakasamhitha, Susruthasamhitha, etc. The type of treatment and duration will be decided by a qualified and registered medical practitioner after conducting the diagnosis (Dashavidha Pareeksha) of the disease.

3.3 The counsel for the respondent has also submitted that they are not taxable under the head "health club and fitness

services” and the CBEC Circular No.B11/1/2002-TRU dated 1.8.2002 excludes therapeutic massages. In view of the definition of ‘health and fitness service’ under Section 65(51) of the Finance Act, 1994 and in the Board Circular, only if the massage is performed without any medical supervision or advice, the massage can be qualified for general well-being. Such a situation does not arise in respect of the respondents as the treatments processes commence only after the consultation with the ayurvedic doctor and the treatment is carried by expert masseurs under the supervision of the doctor.

3.4 Webster’s Dictionary has defined “therapeutic” as “of or relating to the treatment of disease or disorders by remedial agents or methods” and “providing or assisting in a cure”. Medical dictionaries have defined it as “pertaining to treatment of disease”.

3.5 Going by the above facts, evidenced by the maintenance of case sheets and treatment register is amply proved that the centres take effective steps to analyze the ailments of the patients, treatment necessary for the ailment and

various treatments that are given to the patients, the services offered by them are beyond the scope of service tax. It is a Government of Indian Policy to promote medical tourism. Patients who do not wish to be treated in a drab and distressing hospital rooms prefer more convenient, neat and refreshing surroundings where medical attention is received and treatment is coupled with hospitality.

3.6 They also submitted that show-cause notices are barred by limitation as there was no suppression, etc., with intent to evade payment of duty.

4. The learned Departmental Representative (DR) has reiterated the submissions and submitted that the respondents are basically running resorts. The main purpose of resorts is to entertain people who come for holidaying and pleasure trips. Treatment for curing basic disease cannot be provided on the basis of predetermined packages as the method and duration of treatment would differ from patient to patient depending upon the nature of the disease and body conditions. Treatment to cure diseases is generally offered in hospitals and dispensaries with

specified facilities and not in resorts and hotels. The respondents are providing ayurvedic rejuvenation and therapeutic health packages and the payments are higher during certain period. The cost of treatment should depend on the nature of illness and the condition of the patient and cannot be fixed in advance. The resorts have certificates issued by Department of Tourism which shows that the purpose of centre is to promote tourism, therefore, the ayurvedic rejuvenation and therapeutic packages provided by the respondents come under the category of 'Health Club and Fitness Centre' and therefore are liable to service tax.

5. Heard both sides and perused the records available. The precise issue to be decided in these cases is as to whether the treatment given by the ayurvedic centres run by these resorts would come under therapeutic massages, etc.

5.1 We find that the CBEC vide Circular cited above, has clarified as follows:

"2. As per clause (42), "health and fitness service" means physical well being service such as, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding

therapeutic massage) or any other like service. As per clause (90)(zw), the taxable service is any service provided to any person, by a health club and fitness centre in relation to health and fitness service. "Health club and fitness centre" means any establishment including a hotel or a resort providing health and fitness service.

3. Health and fitness services are provided by clubs, fitness centers, health saloons, hotels, gymnasium and massage centers. The services which fall under this category might be for weight reduction and slimming, physical fitness exercise, gyms, aerobics, yoga, meditation, reiki, sauna and steam bath, Turkish bath, sun bath and massage for general well being. However therapeutic massage does not come in the ambit of taxable service. Therapeutic massage basically means a massage provided by qualified professionals under medical supervision for curing diseases such as arthritis, chronic low back pain and sciatica etc. Ayurvedic massages, acupuncture therapy, etc. given by qualified professionals under medical supervision for curing diseases/disorders will come under the category of therapeutic massages. If the massage is performed without any medical supervision or advice but for the general physical well being of a person, such massages do not come under the purview of therapeutic massages and they would be liable to service tax'.

5.2 On going through the records of the case, it is found that the different ayurvedic centres have the following common credentials:

- (i) They are run under the supervision of a qualified ayurvedic doctors.
- (ii) Having a license from Municipal Council or Gram Panchayat to run such ayurvedic hospitals
- (iii) They have certificates given by the Department of Tourism also.

5.3 The department has attempted to contradict the claims of the respondents by saying that these resorts are only for pleasure and holidaying and massages are optional and invariably are of general well-being than treatment of a particular disease. However, ongoing through the records maintained by these ayurvedic centres, it is seen that they are maintaining case-sheets/treatment files and the treatment process schedule which is a normally done by hospitals also. By the mere fact that the ayurvedic centres are located in the premises of the resorts, it cannot be said that they cease to be ayurvedic centres coming to ayurvedic treatment *per se*.

5.4 We find that the learned Commissioner (A) has given a clear finding that the District Medical Officer of Kerala Government have certified that the ayurvedic kriyas (procedures) imparted by the respondents are based on ayurvedic method of treatment which is a system of medicine approved by Central Government of Indian Systems of Medicine. From the huge bunch of reports containing patient symptoms or diagnostic report and frequency and duration of treatment, prescription, it is seen that the duration is one week to four weeks and in some cases, patients return back for a repeat of the treatment; specific ailments mentioned in the Order-in-Original like back pain, shoulder pain, knee pain, frozen shoulder, blood pressure, blood circulation problems, etc. have been cured successfully as per the certificates of the patients. The ayurvedic doctors attached, supervise the treatment, prescribes food restrictions and the type of oil that should be used. The prescribed treatments are contained in Ayurvedic Pharmacopeia like Astanga Hridayam, Charaka Samhita and Susrutha Samhita, etc. It is therefore seen that these centres provide a holistic ayurvedic treatment which includes massages given by qualified professors under medical supervision for curing diseases. In the literature meant for

therapies, it is also mentioned that the therapies at the centre are ayurvedic massages like Dhara, Pizhichil for curing all kinds of ailments are offered. It is also mentioned that the therapies at the centre are under the guidance of an expert Vaidyan (Physician) who may be consulted for fuller understanding of symptoms and treatment.

5.5 In view of the clear findings of the Commissioner (A) and the documentary findings produced by the respondents, it is seen that the ayurvedic centres are providing therapeutic treatment under ayurvedic system. Going by the mere fact that the centres are located in the resorts and sometimes the duration of treatment is for one or two days, it cannot be concluded that the massages or treatments offered by these centres are only for general well-being and not for any therapeutic value. The Order-in-Original also refers to the ambience and the fees charged in the packages and finds that these cannot be equated to treatment. We fail to understand as to how the cost of treatment and the ambience of the treatment would render such treatments to be non-therapeutic and only for well-being. For that matter, the duration of treatment is also no criteria. In case of

consultations by psychiatrists, the sessions may last even one day, for that reason one cannot conclude that the psychiatrists ceases to be a doctor. The duration and the type of treatment depends on the diseases, the conditions of the patient, and the expertise of the doctor. It is not always necessary that the treatment should be only in the dull / dreary atmosphere of hospitals alone. If some well to do patients prefer to have treatment in a better circumstances and are willing to pay for the same, such treatments cannot be 'for that sole reason', held to be no treatment. It is common knowledge that a good number of foreign tourists visit Kerala during a particular season for pleasure as well as medical reasons. Not all the people who stay in the resort may take the treatment. What is important is whether such treatments are given by a qualified Doctor/Doctors and whether the procedures are prescribed under therapeutic tests. It is not the department's contention that the massages and panchakarma and other treatments provided by the respondents are not mentioned in ayurvedic texts. The learned counsel for the respondents have clearly brought out that these processes/treatments are emanating from the ayurvedic texts like Astangahrudaya, Sahasrayoga, Charakasamhitha,

Susruthasamhitha, etc. Supervision of such treatments are being given by or given under the guidance of professional ayurvedic doctors. Such ayurvedic centres are licensed to function as ayurvedic centres by the respective authorities. Therefore, we find that all the required conditions for such treatments to be treated as therapeutic are specified and will fall under the exclusion provided by the Board Circular cited above.

6. In view of the above, we find no reason to interfere with the orders of the learned Commissioner (A). The appeals filed by the department are disallowed.

(Order was pronounced in Open Court on **31.07.2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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