CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 52193 of 2016

(Arising out of Order-in-Original No. DLI/SVTAX/003/COM/45/15-16 dated 31.03.2016 passed by the Commissioner of Service Tax, New Delhi)

M/s. Maharaja Agrasen Hospital Charitable Trust ..... Appellant

VERSUS

Commissioner of Service Tax, Delhi-III .....Respondent

APPEARANCE:
Shri Ruchir Bhatia, Advocate for the Appellant
Shri Ravi Kapoor, Authorised Representative of the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/ Decision: January 02, 2023

FINAL ORDER NO. 50017/2023

JUSTICE DILIP GUPTA

This appeal assails the order dated March 31, 2016 passed by the Commissioner whereby the show cause notice dated April 22, 2013 issued for the period of April 01, 2007 to March 31, 2013 and the show cause notice dated May 22, 2013 issued for the period April 01, 2012 to March 31, 2013, have been adjudicated upon. The Commissioner has confirmed the demand of service tax under "business auxiliary service" and "renting of immovable property service" with penalty and interest.

2. The appellant is running a hospital since the year 1988. It claims to have a facility of 410 beds, doctors with specialization in different fields. According to the appellant, it engages doctors as

consultants, resident doctors , senior resident doctors and doctors on internship basis and whenever medical services are provided to a patient, the appellant raises a bill towards room charges, medicines, diagnostics charges for radiology and laboratories and doctor fees. The doctors so engaged are paid their share of fees.

3. However, two show cause notices, were issued to the appellant, on the premise that the appellant was providing "business support service" to doctors by providing facilities and administrative support to them. The relevant portion of the show cause notice dated April 22, 2013 is reproduced below:

> "2. **An intelligence was gathered by the officers of Anti-Evasion Branch of Service Tax Commissionerate, Delhi that the Hospital is engaged in providing "Business Support Service", "Business Auxiliary Services" and "Renting of Immovable Property Services" and is not paying service tax properly.**
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> xxxx xxxx xxxx
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> Further, during the course of investigation, assessee provided copies of ST-3 returns and Financial statements for the period 2007-08 to 2011-12. Vide this office letter dated 11/3/2013, the assessee was asked to provide information regarding total fees collected, amount given to doctor and amount retained by the hospital. In response to the letter, assessee replied vide their letters dated 1/4/2013 and 16/4/2013 to the effect that they are not retaining any amount from the fee collected from patients. **However the appointment order of doctors clearly indicates that considerable amount is being retained by the hospital. Which appears to be taxable under the category of Business Support Services**."
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> **(emphasis supplied)**

4. A similar show cause notice dated May 22, 2014 was issued to the appellant.

5. The appellant filed a reply to the aforesaid show cause notices and denied the allegations. However, the Commissioner,

by the order dated March 31, 2016, confirmed the demand of service tax with penalty and interest for the following reasons:

> "40. **I find after the perusal of the above mentioned agreement that, at entry numbers 11 & 12 of the agreement, it has been clearly stated that out of the total fees collected from the patients, 22% of the total fees would be retained by the hospital (after the deduction of TDS) and balance 78% of the total fees collected from the patient would be disbursed to the doctors**. This rate may be changed from time to time. Also it has been expressly stated that no direct collection would be allowed and that the patients would be billed in strict compliance of stipulated charges in the list. **That these services are basically infrastructural support services to the doctors, which include secretarial support, consultation chamber and other facilities. Therefore, to say that the hospital is not providing any services to the doctors is only a figment of imagination of the Notice**.
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> xxxx xxxx xxxx
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> 50. On the basis of above discussion and findings, **I am of the considered view that money retained by the Noticee is towards services rendered by them for providing all the related facilities which are necessary and without which the doctors cannot perform their activities and the same falls under Infrastructure Support Services' and hence I am of the view that such services are classifiable under Section 65 (105) (zzzq) read with Section 65 (104c)**. I am further of the view that, it is pertinent to be noted here that, why the Notice was retaining 22% of the amount to be paid to the doctors? The only reason according to me for retaining this amount is on account of the facilities provided by the Noticee hospital to the doctor in the form of OT Room, the necessary medical machineries, necessary medical attendants and supporting stall, secretarial supports, administration facilities and other facilities. **It is necessary to be mention here that, without the above mentioned facilities provided by the Notice, the doctors cannot complete their healthcare activities and due to this the Noticee is retaining certain percentage of the amount and the department has raised the demand of Service tax only on this portion of the amount retained by the Noticee, which according to me is legal and correct**.
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> 51. I am further of the view that, there is no doubt that the entire activity of organizing infrastructural facilities for the doctors are done on a commercial basis and funds are retained. Without the infrastructural support of the Noticee, it would not have been

> possible for the doctors to provide the medical services to the patients. According to my view, the payments retained are for services rendered in connection with infrastructural support services provided by the Notice and the present demand is only in respect of Payments retained by the Notice as a percentage of the amount to be paid to doctors. Therefore, in my view, Service tax has been rightly demanded from the appellant.
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> 52. On the basis of the above discussion and findings, I am constrained to hold that the entire submission made by the Notice is without considering and without taking on record the contract or the agreement between the two parties showing the terms and conditions of payments and the purpose of Payment. **There is force in the allegation made by the department that the demand is only in respect of 22% of the amount retained by the Notice as provided in para 11 and 12 of the agreement**. Considering the factual scenario as above, I considered it proper to confirm the amount of service tax alleged to be paid by the Noticee under "Business Support Services"."
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> **(emphasis supplied)**

6. The Commissioner also confirmed the demand of service tax under the head "renting of immovable property" services.

7. This appeal has been filed only to contest the confirmation of demand under the head of "business support service", as according to the learned counsel for the appellant, service tax for renting of immovable property has already been deposited.

8. Shri Ruchir Bhatia, learned counsel appearing for the appellant placed reliance upon the decision of this Tribunal in **Sir Ganga Ram Hospital and Ors. vs. CCE, Delhi-I and Ors.**[1] as also a subsequent decision of the Tribunal in **M/s. Sir Ganga Ram Hospital vs. Commissioner of Service Tax, New Delhi**[2] to contend that demand of service tax could not have been confirmed under the head of "business support service".

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1. 2018 (11) G.S.T.L.427
2. 2020 (11) TMI 536-CESTAT NEW DELHI

9. Shri Ravi Kapoor, learned authorized representative appearing for the department supported the impugned order.

10. The submission advanced by the learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

11. In order to appreciate the contentions, it would be appropriate at this stage to refer to the agreement that was entered into between the hospital and the doctors, which agreement has been reproduced in paragraph 39 of the impugned order, and it is as follows:

> "Reference your application for empanelment as Honorary Consultant, Plastic Surgery in this Hospital, you are hereby informed that you have been empanelled as an Honorary Consultant- Plastic Surgery we.f 3rd December 2008 on the following terms and conditions:
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> 1. Your attachment to this hospital will be till 3 1st March 2009.
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> 2. You will be attached to Dr Richie Gupta, Senior Consultant Plastic Surgery- III.
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> 3. Your attachment to the hospital may be discontinued on one month's notice on either side without any obligation.
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> 4. You will attend the General OPD and paid clinics on the days allotted to you.
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> 5. You will be required to follow Code of Conduct, discipline, Rules & Regulations of the Hospital as laid down from time to time.
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> 6. You will practice in your specialty ethically, for which you are attached to this hospital. Practising in other specialties for which other consultants are available in this hospital shall amount to breach to conduct.
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> 7. In addition to the professional work, you will be expected to help administration in running the hospital through your participation in committee spectrum of Management.
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> 8. You will be required to attend OPD punctually and regularly (80% attendance will be compulsory). Any absence is to be informed earlier.

9. You will be required to explain the nature of illness, diagnosis or operative procedures and the nature of treatment and prognosis personally to patients and to responsible relative.

10. You will be required to explain the charges to the patients before being admitted to the private ward.

11. Patients will be billed in strict compliance of charges stipulated in the charge list. NO DIRECT COLLECTION will be allowed.

12. Out of the total fees (after the deduction of TDS) on the basis of terms & conditions settled at the time of your appointment, which in this case will be 78% of the total fees collected from the patient. This rate may be changed from time to time.

13. Patients admitted in the General Ward would be called for follow up in General O.P.D. and in no case at the private clinic, no charges be taken from him/ her.

14. Patient seen in the hospital will be admitted to this hospital only.

15. You will be required to achieve the target of admission as may be allotted to you.

16. In case a second opinion/ consultation in the specialty is required, it is mandatory that the consultants on regular panel shall be called. If a consultant from outside is called, this has to be done with prior permission of the Chief Executive Officer. However in emergency this can be done subsequently.

17. You are required to visit all your patients whether General or Private daily by 12.00 noon and attend all the emergency calls immediately.

18. You will not be permitted to have any other attachment. You will be admitting all your patients to this Hospital only.

19. You will be required to attend at least 80% of the clinical meetings, get-together and participate in the hospital functions/ programmes.

20. You will be required to follow amended Rules, Office Orders may be circulated from time to time.

21. You will be expected to apply at least one month before the expiry of your contract for its renewal.

22. You will be required to attend free of charge all hospital employees, their dependents, the General Ward patients and those given concession by the hospital.

23. You and your dependents will be entitled to medical benefits, as provided in the Medical Benefit Rules of the Hospital in force from time to time.

> 24. You will be required to have your professional indemnity insurance done before joining the hospital and get it renewed before its expiry. The hospital will not be liable for any claims or damages on account of medical negligence."

12. A perusal of the aforesaid agreement indicates that patients will be billed according to the charges stipulated in the chargelist and out of the total fees (after the deduction of TDS) settled at the time of appointment, 78% would be paid to the doctors and the remaining 22% will be retained by the Hospital.

13. The Commissioner has found that the amount retained by the Hospital is towards the services rendered by the Hospital to the doctors for providing all the necessary facilities which are necessary and without which the doctors cannot perform their activities and therefore, the said service would be classifiable under section 65 (104) (c) as "support services of business and commerce" and taxable under section 65 (105) (zzzq) of the Finance Act 1994.

14. This precise issue had come up for consideration before two Benches of the Tribunal in **Ganga Ram Hospital**. The first decision rendered on December 06, 2017 was considered in the subsequent decision rendered on September 02, 2020.

15. Paragraphs 5, 6, 9 and 11 of the first decision rendered by the Tribunal on December 06, 2017 relate to the period before and after July 01, 2012. The Tribunal, after a consideration of the conditions prescribed in the agreement held that the arrangement was for joint benefit of both the parties with shared obligations, responsibilities and benefits and, therefore, no service was provided by the hospital to the doctors. The relevant portion of the decision is reproduced below:

"5. **The claim of the Revenue is that the appellants have provided infrastructural support service to various doctors. As a consideration for such support, they have retained a part of the amount collected from visiting patients**. We have perused some of the agreements/appointment arrangements entered into between the appellants hospitals and the individual doctors. Typically, the arrangement contains details like duration of time for consultation, the obligations on the part of the doctors, fee to be paid, procedure for termination of agreement, etc. The agreements generally talk about appointment of consultants to provide services to the patients who will visit or admitted in the appellants hospital. The doctors will receive a percentage of share of the collection from the patients in case of consultation, procedures and surgeries done by them. In some cases, there is a provision for treating patients from low economic background without any financial benefits. **On careful consideration of various terms and conditions and the scope of arrangement, we are of the considered view that such arrangement are for joint benefit of both the parties with shared obligations, responsibilities and benefits. The agreements do not specify the specific nature or list of facilities which can be categorized as infrastructural support to the doctors**. The revenue model, as agreed upon between the contracting parties also, did not refer to any consideration attributable to such infrastructural support service.

6. The proceedings by the Revenue, initiated against the appellant hospitals, are mainly on the inference drawn to the effect that the retained amount by the hospitals out of total charges collected from the patients should be considered as an amount for providing the infrastructure like room and certain other secretarial facilities to the doctors to attend to their work in the appellants hospitals. We find this is only an inference and not coming out manifestly from the terms of the agreement. Here, it is very relevant to note that the appellant hospitals are engaged in providing health care services. This can be done by appointing the required professionals directly as employees. The same can also be done by having contractual arrangements like the present ones. In such arrangement, the doctors of required qualification are engaged/contractually appointed to provide health care services. It is a mutually beneficial arrangement. **There is a revenue sharing model. The doctor is attending to the patient for treatment using his professional skill and knowledge. The appellants hospitals are managing the patients from the time they enter the hospital till they leave the premises**. ID cards are provided, records are maintained, all the supporting assistance are also provided when the patients are in the appellant hospital

premises. The appellant hospital also manages the follow-up procedures and provide for further health service in the manner as required by the patients. As can be seen that the appellants hospitals are actually availing the professional services of the doctors for providing health care service. For this, they are paying the doctors. The retained money out of the amount charged from the patients is necessarily also for such health care services. The patient paid the full amount to the appellant hospitals and received health care services. For providing such services, the appellants entered into an agreement, as discussed above, with various consulting doctors. **We do not find any business support services in such arrangement**.

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9. **Under negative list regime w.e.f. 01.07.2012, the health care services are exempt from service tax**. Earlier the health care services were only taxed for specified category of hospitals and for specified patients during the period 01.07.2010 to 01.05.2011. With effect from 01.05.2011, health care services were exempt from service tax under Notification No. 30/2011 ST :MANU/DSTX/0055/2011 After introduction of negative list tax regime, Notification No. 25/2011-ST: MANU/DSTX/0065/2012 exempted levy of service tax on health care services rendered by clinical establishments. We have examined the scope of the terms 'clinical establishments' and 'health care services'. The notification defines these terms. The term 'clinical establishments' is defined as below:

> "Clinical establishment" means hospital, nursing home, clinic, sanatorium or any other institution by whatever name called, that offers services or facilities requiring diagnosis or treatment of care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases."

Xxxx xxxx xxxx

11. **These two provisions available in Notification No. 25/2012: MANU/DSTX/0065/2012 will show that a clinical establishment providing health care services are exempted from service tax. The view of the Revenue that in spite of such exemption available to health care services, a part of the consideration received for such health care services from the patients shall be taxed as business support service/taxable service is not tenable**. In effect this will defeat the exemption provided to the health care services by clinical

> establishments. Admittedly, the health care services are provided by the clinical establishments by engaging consultant doctors in terms of the arrangement as discussed above. For such services, amount is collected from the patients. The same is shared by the clinical establishment with the doctors. There is no legal justification to tax the share of clinical establishment on the ground that they have supported the commerce or business of doctors by providing infrastructure. We find that such assertion is neither factually nor legally sustainable."
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> **(emphasis supplied)**

16. The aforesaid decision of the Tribunal was accepted by the Department. The subsequent decision of the Tribunal rendered on September 02, 2020 followed the earlier decision.

17. It also needs to be noted that the same view has been taken by the Tribunal in the following cases:

(i) **M/s. Gujarmal Modi Hospital & Research Centre for Medical Science** Versus **CST, Delhi-II**[3].

(ii) **M/s. Fortis Healthcare (India) Limited** versus **CCE & ST-Chandigarh-I**[4].

(iii) **M/s. Ivy Health & Life Science Pvt. Ltd.** Versus **CCE, Chandigarh-II/Ludhiana**[5].

(iv) **CCE & ST, Panchkula, Delhi-IV** versus **Alchemist Hospital Limited, Artemis Medicare Services Limited**[6].

18. Thus, in view of the aforesaid decisions of the Tribunal, it has to be held that the Commissioner was not justified in confirming the demand of service tax under the head "business support services".

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3. 2019(1) TMI 378-CESTAT NEW DELHI
4. 2019 (9) TMI 462-CESTAT CHANDIGARH
5. 2019 (4) TMI 178- CESTAT CHANDIGARH
6. 2019 (3) TMI 1331- CESTAT CHANDIGARH

19. The order dated March 31, 2016 passed by the Commissioner, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

Archana