

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11288 of 2013

(Arising out of OIA-33-2013-STC-SKS-COMMR-A-AHD dated 26/02/2013 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Dr Sanjiv Arunchandra Vasa

.....Appellant

D/904 Asawari Towers Behind Old Wide Angle Cinema Off S G Highway Satellite
Ahmedabad, Gujarat

VERSUS

C.S.T.-SERVICE TAX – AHMEDABAD

.....Respondent

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

WITH

Service Tax Appeal No.13137 of 2014

(Arising out of OIA-AHM-SVTAX-000-APP-043-14-15 dated 19/05/2014 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Dr Sanjiv Aruchandra Vasa

.....Appellant

4, Kailas Society,
Opp Bata Show Room, Ashram Road, Ahmedabad, Gujarat

VERSUS

C.S.T.-SERVICE TAX – AHMEDABAD

.....Respondent

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

AND

Service Tax Appeal No.10141 of 2016

(Arising out of OIA-AHM-SVTAX-000-APP-056-15-16 dated 18/08/2015 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Dr Sanjiv Aruchandra Vasa

.....Appellant

4, Kailas Society,
Opp Bata Show Room, Ashram Road, Ahmedabad, Gujarat

VERSUS

C.S.T.-SERVICE TAX – AHMEDABAD

.....Respondent

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE:

Shri Rajesh Shah, Chartered Accountant for the Appellant

Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/10863-10865 /2023

DATE OF HEARING: 02.03.2023

DATE OF DECISION: 12.04.2023

C L MAHAR

The appellant is a medical practitioner doing 'Hair Transplantation' work and was registered during the period under consideration as a Service Provider under the Category - 'COSMETIC AND PLASTIC SURGERY SERVICES' from 1-9-2009. The appellant has been regularly been filing the Service Tax Return in Form No. ST-3 and paying the service tax from 1-9-2009 but 'Under Protest'. The appellant Vide letter dated 25.04.2011 through their counsel contended that their services "Hair Transplantation" were not taxable and requested to refund the service tax already paid by them. A show cause notice dated 12.10.2011 was issued to the appellant to show cause as to why;

- (i) The amount of Rs.82,47,127/- received for the year 2010-11, as consideration for providing hair transplant surgery service under the category of 'Cosmetic Surgery and Plastic Surgery' service as defined under sub-clause (zzzzk) of clause(105) of Section 65 of the Finance Act, 1994 should not be considered as taxable value under the same category;
- (ii) The Service Tax amounting to Rs.8,49,454/- (Rupees Eight Lakh Forty-Nine Thousand Four Hundred Fifty four only) leviable for the year 2010-11, paid by the assessee Under Protest should not be confirmed and appropriated against the demand of Service Tax from them under Sub-Section (1) of Section 73 of the Finance Act, 1994 as amended.

After due process of law, adjudication order dated 15.05.2012 was passed confirming the tax liability of Rs.8,49,454/- and appropriating this amount of Rs.8,49,454/- already paid by the appellant under the taxable category of 'Cosmetic Surgery and Plastic Surgery' service as defined under sub-clause(zzzzk) of clause(105) of Section 65 of the Finance Act, 1994 and

vacating the protest of the appellant. An appeal filed by the appellant to the Commissioner (Appeals) has been rejected by the impugned order dated 26.02.2013. Now the appellant is before us against the impugned order.

02. Learned Counsel for the appellant has vehemently argued that the impugned service activity of the appellant i.e. "Hair Transplantation" is not taxable under the category of 'COSMETIC AND PLASTIC SURGERY SERVICES' as it fell within the exception of surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma' of the definition of 'Cosmetic And Plastic Surgery Services' provided under sub-clause(zzzzk) of clause(105) of Section 65 of the Finance Act, 1994. The Taxable Service as defined under clause (zzzzk) of clause no. 105 of Section 65 reads as under:-

"Taxable Service means any service provided or to be provided to any person, by any other person, in relation to Cosmetic Surgery or Plastic Surgery, but does not include any surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma."

2.1 He argued that the Additional Commissioner has failed to produce any material to disprove the contentions of the appellant and has simply referred to question and Answer no. 10 of the CBEC's letter F.No. 354/157/2009-TRU dated 19-11-2009 which simply incorporates the view of the Mr. Samar Nanda, TO (Tax Research Unit) without any supporting evidences for his such opinion and, therefore, the same tantamount to a simple Self-serving Statement having no binding effect on the assesseees as well as the appellate authorities. The Taxable Service as defined under clause (zzzzk) of clause no. 105 of Section 65 reads as under:-

"Taxable Service means any service provided or to be provided to any person, by any other person, in relation to Cosmetic Surgery or Plastic Surgery, but does not include any surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma."

To elaborate the nature of procedures undertaken by the appellant he explained that to have hair on the entire head is but natural and normal and, therefore, a bald person is certainly 'sub-normal'. It is proven by the medical science that baldness occurs due to defective genes in presence of

androgens. This genetic deformity is present at birth. Every human is born with hair on head and this is one of the parts of the body. Due to 'Androgenetic Alopecia', one begins to lose hair after adolescence when androgen levels rise. Any human being when he or she loses any part of the body like eye, finger or hair; he or she would obviously look ugly and/or below normal. The hair transplantation is a procedure in which hair from the back and side of the head or other parts of the body are harvested and reimplanted over the required bald areas and an attempt is made to ensure growth of hair on the bald area of the head. The hair Transplantation procedure is mainly carried out for the condition called "Androgenetic Alopecia" (Male or Female pattern baldness) which is the most common cause of hair loss. Therefore, the whole idea is to enable the person to look like a normal person. By Hair Transplantation, an attempt is made to re-establish normalcy of a human being by reconstructing the part of the body lost due to genetic birth defect and bringing the look from ugly (sub-normal) to normalcy. It not only helps in restoring the missing organ but also helps in restoring the confidence of an individual and improves his interaction socially and professionally. Thus the appellant has not been making normal organ or normal Hair more beautiful by changing its size, shape, colour, surface, texture, consistency or appearance but is totally reconstructing the missing organ of the body by harvesting hair from the back and side of the head or other parts of the body and replanting the same over the bald areas and an attempt is made to restore the normalcy and ensure the normal growth of hair on the bald area of the head and, therefore, it is incorrect to say that a bald person is made more beautiful due to Hair Transplantation. In fact, no physical form or function is changed and hair grows like any other normal hair. Therefore, in medical parlance, Hair Transplantation is not known as a 'cosmetic' surgery but is known as a 'restorative' surgery. He also relied upon Tribunal's decision in the case of M/S Mohak Tech Speciality Hospital Vs. C.C & S.T., Indore [2021(45) G.S.T.L. 149 (Tri.-Del)].

03. On the other hand, Learned Authorised Representative of the Revenue has re-iterated the findings of the order-in-original and the impugned order and argued that the activity or service of Hair Transplantation rendered by the appellant is beyond doubt 'Cosmetic surgery' and the Hair Transplantation is not the surgery to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma. It is mainly performed as per the wish of client for restoration of makeup of his

appearance and cosmetic purpose. He further relied upon CBEC's letter F.No:354/ 157/2009-TRU dated 19.11.2009, wherein it is clarified at point No. 10 that

"Hair Transplantation is generally undertaken as a means for preservation or enhancement of an individual's physical appearance or beauty. It is not a congenital defect that is present at birth. In view of the same, Hair Transplantation being a procedure that is done to preserve/ enhance one's physical appearance, is covered in the scope of Service Tax. "

04. We have carefully gone through the rival arguments. We are not inclined to accept the view of the Ld. Counsel for the appellant that the expression "surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma" could be applied to procedure performed on persons who gradually go through a hair loss at some later stage of life. Hair loss is a normal process which affects almost every person at some stage of life sooner or later. We can understand that genes play a role in preserving hair to humans and when a person loses hair at some stage of life it can be a combination of genes, life style and environmental processes. In fact, every disease in a body which is not due to injury or trauma can be due to faulty genes. In our view, the test before us is to examine whether Hair Transplant is a medical procedure which fits into exclusion categories of definition of cosmetic and plastic surgery. The definition is given under clause (zzzzk) of Clause 105 of Section 65 of Finance Act, 1994 reads as follows:-

"Taxable Service means any service provided or to be provided to any person, by any other person, in relation to Cosmetic Surgery or Plastic Surgery, but does not include any surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma."

4.1 It can be seen that Hair Transplant is neither undertaken to restore or reconstruct anatomy or its functions, nor the procedure of hair transplant restores developmental abnormalities, degenerative diseases, injury or trauma. We find that hair transplant is a medical procedure to improve outer look of the body for time being and it does in any way contribute to the anatomy or functions of human body.

4.2 Secondly, we also find that the medical procedure undertaken by the appellant is a process which is not opted by every person affected with hair loss, it is only a few affluent or self physical appearance conscious persons who undertake such surgery, the other persons affected by hair loss also live a normal life without any 'sub-normal' condition as claimed by learned Chartered Accountant. It is also normally seen that the Hospitals who undertake procedure of Hair Transplantation advertise/ display their activity not as a disease to be cured but they claim that the procedure taken by them enhances physical appearance. So in our view, only diseases such as 'Congenital atrichia' or 'hypotrichosis' which are unique conditions of hair loss which exhibit at birth or early stages during childhood could only be considered congenital defects for the purpose of exemption. We do not find case law of M/S Mohak Tech Speciality Hospital Vs. C.C & S.T., Indore [2021(45) G.S.T.L. 149 (Tri.-Del)] which is not on hair transplantation as relevant to the facts of the case.

05. In view of entire above discussion, we hold that the Hair Transplant is a cosmetic surgery and liable to the service tax levy. Accordingly, we uphold the impugned order and accordingly appeals are dismissed.

(Pronounced in the open court on 12.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Mehul