CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 51362 of 2014

[Arising out of Order-in-Original No. 104/LDH/2013 dated 11.12.2013 passed by the Commissioner of Central Excise & Service Tax, Ludhiana]

S J S Healthcare Limited **……Appellant**
NH-1, Satguru Partap Singh Apollo Hospitals,
Sherpur Chowk, G.T. Road,
Ludhiana, Punjab

VERSUS

Commissioner of Central Excise & Service Tax, Ludhiana **……Respondent**
Central Excise House, F Block,
Rishi Nagar, Ludhiana,
Punjab 141001

APPEARANCE:

Present for the Appellant: Sh. Sumit Wadhva, Advocate with
Sh. Bharat Bhushan, Advocate

Present for the Respondent: Sh. Pawan Kumar (Asst. Commr.), AR

CORAM:

HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Sh. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60166/2024

DATE OF HEARING: 19.12.2023
DATE OF DECISION: 05.04.2024

PER : S. S. GARG

The present appeal is directed against the impugned order dated 11.12.2013 passed by the Commissioner of Central Excise & Service Tax, Ludhiana, whereby the learned Commissioner has confirmed the demand of service tax amounting to Rs.90,96,590/-

under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') by invoking extended period along with demand of interest under Section 75 of the Act and imposed penalty under Section 76, penalty of Rs.5000/- under Section 77 and also equivalent penalty under Section 78 of the Act.

2.1 Briefly stated facts of the present case are that the appellant is engaged in operation of a hospital, namely Satguru Partap Singh Apollo Hospitals at Ludhiana, Punjab and is registered with the Service Tax Department. The appellant provides healthcare services to the patients who come at its hospital. The appellant provides these services either by employee doctors employed at payrolls of the appellant or by associating with various specialist visiting doctors vide an agreement stipulating the terms and conditions of their appointment. The appellant has privity of contract with the patients, and not the visiting doctors; and it is the appellant who allocates a specific visiting doctor to the patients. It is the appellant who raises the bill for medical/healthcare services to the patients, and not the doctors. The visiting doctors are not allowed to undertake their independent practice/profession by using its infrastructure. The Revenue entertained the view that the appellant is engaged in the rendering of "Business Support Services" to the visiting doctors in terms of Section 65(104c) read with Section 65(105)(zzzq) of the Act. On these allegations, a show cause notice was issued to the appellant demanding service tax under the category of "Business Support Services". The appellant filed detailed reply to the show

cause notice and also furnished all the documents as desired by the Department. After following the due process, the learned Commissioner adjudicated the show cause notice by the impugned order and confirmed the demand of service tax amounting to Rs.90,96,590/- under Section 73(1) of the Act along with interest under Section 75 of the Act and imposed penalties under Section 76, 77 and 78 of the Act. Aggrieved by the said impugned order, the appellant has preferred the present appeal.

3. Heard both the parties and perused the records.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law; and binding judicial precedents on the identical issue.

4.2 He further submits that the impugned order has been passed mechanically without appreciating the terms and conditions of the agreement. He submits that the true intention and purpose of entering into arrangements with the visiting doctors is to avail the services of such visiting doctors to render treatment and healthcare services to the patients who come to the appellant’s hospital for medical treatment.

4.3 He further submits that the appellant has not leased out any property in particular or in general to visiting doctors and the property in entire infrastructure remains with the appellant and such visiting doctors are being paid in proportionate to the actual work

done by them, subject to the minimum fee assurance provided by the appellant.

4.4 He further submits that patients, IPD/OPD have privity of contract only with the appellant's hospital and not with the visiting doctors who treat them as such in the name and on behalf of the appellant's hospital only. It is the appellant's hospital that allocates a specific visiting doctor to the patient and patient's medical records are maintained and retained by the appellant's hospital and such visiting doctors are not allowed to take them out of the premises thereof as there is no agreement/contract/financial dealing between such doctors and the patients. Further, the bills for treatment are raised by the appellant's hospital and not by the visiting doctors and the payments thereof are also collected by the appellant's hospital.

4.5 He also submits that the visiting doctors are entitled to professional fee as per the terms and conditions stipulated in the agreement and they are not allowed to undertake their independent practice/profession by availing the appellant hospital's infrastructure.

4.6 He further submits that in fact, it is the visiting doctors who are service providers to the appellant's hospital as the appellant's hospital is availing the services of such visiting doctors, for which they are paid by the said hospital as per the agreement and not the *vice versa*. Further, the appellant's hospital, being a service recipient, is deducting TDS in terms of Section 194 of the Income Tax Act, 1961 from the remuneration paid to the visiting doctors.

4.7 He further submits that the appellant has not suppressed any information from the Department and has been filing regular Service Tax Returns and disclosing all the documents to the Department and the no *mens rea* has been established against the appellant to invoke extended period of limitation.

4.8 He further submits that this issue is no more *res integra* and has been settled by various decisions of the Tribunal in favour of the assessee. In support of his submission, he relies on the following case-laws:

a) ***Sir Ganga Hospital vs. CCE, Delhi-I – [MANU/CE/0985/2017]***
b) ***CCE & ST, Panchkula vs. Alchemist Hospital Limited – [MANU/CJ/0008/2019]***
c) ***Fortis Healthcare (India) Ltd vs. CCE & ST, Chandigarh-I – [MANU/CJ/0047/2019]***
d) ***Jaipur Golden Hospital vs. Commissioner of ST, Delhi-III – [MANU/CE/0119/2023]***
e) ***Sir Ganga Hospital vs. Commissioner of ST – [MANU/CE/0143/2020]***

4.9 He also submits that the Department on the identical grounds raised two other show cause notices for the subsequent period; the first one dated 21.05.2014 pertaining to the Financial Year 2012-13 and 2013-14 for alleged service tax liability of Rs.48,75,842/- and another one dated 12.04.2016 pertaining to the Financial Year 2014-15 for alleged service tax liability of Rs.30,12,880/- alleging therein that the appellant had been providing "Business Support Services" to the visiting doctors. Further the demand in both the show cause notices was confirmed by Order-in-Original dated 27.02.2017, but the

said Order-in-Original was set aside in appeal by the Commissioner (Appeals), Ludhiana vide ***Order-in-Appeal No. LUD-EXCUS-001-APP-790-18 dated 26.03.2018*** by relying on the decision in the case of ***Sir Ganga Hospital vs. CCE, Delhi-I*** (cited supra).

4.10 The learned Counsel also submits that extended period of limitation is not invocable in the facts and circumstances of the present case. In this regard, he relies on the following decisions:

a) ***Collector of CE vs. H.M.M. Limited – [MANU/SC/1196/1995]***
b) ***Cosmic Dye Chemical vs. Collector of CE, Bombay – [MANU/SC/0791/1995]***
c) ***Easland Combines Coimbatore vs. Collector of CE, Coimbatore – [MANU/SC/0016/2003]***
d) ***Uniworth Textiles Ltd vs. Commissioner of CE, Raipur – [MANU/SC/0060/2013]***

In the case of ***Easland Combines Coibatore*** (cited supra) it has been held by the Hon'ble Apex Court that for invoking the extended period of limitation, duty should not have been paid short levied or short paid or erroneously refunded because of either fraud, collusion, wilful mis-statement or suppression of facts or contravention of any of the provisions/rules. The Hon'ble Apex Court has held that these ingredients postulate a positive act and therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful mis-statement or suppression of facts or contravention of any provision is not sufficient to attract the extended period of limitation.

4.11 Further, he submits that the question of demand of interest and imposition of penalty does not arise because the demand of service tax itself is not sustainable.

5. On the other hand, the learned AR for the Revenue reiterated the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record and also the judgments cited by both the sides. The only issue in the present case is whether the appellant is liable to pay service tax under the category of "Business Support Services" in terms of Section 65(104c) read with Section 65(105)(zzzq) of the Act on account of the fact that the appellant has provided infrastructure and administrative facilities to the visiting doctors. As per the Revenue, infrastructural and other support services provided by the appellant to the visiting doctors fall in the gamut of "Business Support Services"; whereas, as per the appellant, the true intention and purpose of entering into the agreement with the visiting doctors is to avail the services of such visiting doctors to render treatment and healthcare services to the patients who come to the appellant's hospital for medical treatment.

7. We also find that as per the terms and conditions stipulated in the agreements between the appellant and the visiting doctors, such visiting doctors are being paid in proportionate to the actual work done by them, subject to the minimum fee assurance provided by the appellant. Further, it is the appellant's hospital that allocates a

specific visiting doctor to the patients and patient's medical records are maintained and retained by the appellant's hospital. Also, the bills for treatment are raised by the appellant's hospital and not by the visiting doctors and the payments thereof are also collected by the appellant's hospital. Further, the visiting doctors are not allowed to undertake their independent practice/profession by availing the appellant hospital's infrastructure.

8. We also find that even in the show cause notice, it is mentioned that "*consultants/doctors are required to work for the hospital*" which clearly indicates that the doctors are working with the appellant's hospital and it is the visiting doctors who, in fact, are service providers to the appellant's hospital as the appellant's hospital is availing the services of such visiting doctors, for which they are paid by the said hospital as per the agreement and not the *vice versa*. Further, the appellant's hospital, being a service recipient, is deducting TDS in terms of Section 194 of the Income Tax Act, 1961 from the remuneration paid to the visiting doctors.

9. We find that this issue is no more *res integra* and has been settled in favour of the assessee by various decisions (cited supra). In the case of ***Sir Ganga Hospital vs. CCE, Delhi-I*** (cited supra), it was observed by the Tribunal as under:

> ***"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.

7. *The inference made by the Revenue that the retained amount by the hospital is to compensate the infrastructural support provided to the doctors can be examined in another angle also. Reading the statutory provisions for BSS, we note that the services mentioned therein are "provided in relation to business or commerce." As such, to bring in a tax liability on the appellant hospital, it should be held that they are providing infrastructural support services in relation to business or commerce. That means, the doctors are in business or commerce and are provided with infrastructural support. This apparently is the view of the Revenue. We are not in agreement with such proposition. Doctors are engaged in medical profession. As examined by Hon'ble Gujarat High Court in Dr. K.K. Shah (supra), though in an income-tax case, we note that there is a discernable difference between "business" and*

"profession". The Gujarat High Court referred to decision of Hon'ble Supreme Court in Dr. Devender Surtis - AIR 1962 SC 63. The Supreme Court observed as below :

> *"There is a fundamental distinction between a professional activity and an activity of a commercial character" : "...a "profession"... involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, of surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities" "...a professional activity must be an activity carried on by an individual by his personal skill and intelligence…… and unless the profession carried on by (a person) also partakes of the character of a commercial nature" the professional activity cannot be said to be an activity of a commercial character."*

8. *Applying the above ratio and examining the scope of the tax entry for BSS, we are of the considered view that there is no taxable activity identifiable in the present arrangement for tax liability of the appellant hospitals."*

The decision of ***Sir Ganga Hospital***'s case was followed in the case of ***CCE & ST, Panchkula vs. Alchemist Hospital Limited*** (cited supra) and it was held by the Tribunal that "*respondent-assessee were not provided any Business Support Service to the consultants/doctors or patient, therefore, no service tax is payable by respondent-assessee under the category of Business Support Service*" and in the result, the appeal filed by the Revenue was dismissed and the appeal filed by the assessee was allowed. Further, in the case of ***Fortis Healthcare (India) Ltd vs. CCE & ST, Chandigarh-I*** (cited supra), the Tribunal after relying upon the decision of ***Sir Ganga Hospital***'s case, has held that "*the appellant had not provided any Business Support Service to the consultants/doctors or patient, therefore, no service tax is payable by appellant under the category*

of Business Support Service" and in the result, the impugned order was set aside and the appeal of the appellant was allowed with consequential relief. The same view has also been taken in the cases of ***M/s Gujarmal Modi Hospital & Research Centre for Medical Science vs. Commissioner of S.T., Delhi – 2019 (1) TMI 378 CESTAT NEW DELHI*** and ***M/s Ivy Health & Life Science Pvt Ltd vs. CCE, Chandigarh-II – 2019 (4) TMI 178 CESTAT CHANDIGARH***.

10. Further, we also find that on the same allegations, two more show cause notices, issued to the appellant for the subsequent period, were dropped by the Commissioner (Appeals) vide ***Order-in-Appeal No. LUD-EXCUS-001-APP-790-18 dated 26.03.2018*** after relying upon the decision of ***Sir Ganga Hospital***'s case and the Revenue has not filed the appeal against the same and in fact, accepted it.

11. Further, coming to the question of extended period of limitation, we find that in the present case, there is no suppression on the part of the appellant to invoke the extended period of limitation and the Revenue has failed to establish ingredients of fraud, collusion, wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules with an intent to evade the payment of tax as provided in Section 11A(4) of the Central Excise Act, 1944 as applicable to the service tax also.

12. In view of our discussion above and by following the ratios of the decisions cited supra, we are of the considered opinion that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the court on 05.04.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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