

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD.**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 30170 of 2019

(Arising out of order-in-original No. HYD-EXCUS-003-COM-005-18-19 dated 12.09.2018 passed by the Commissioner, Central Tax & Central Excise, Secunderabad).

M/s Sreyas Holistic Remedies Pvt. Ltd., Appellant

359 to 363, 3rd Floor, Centre Point Building
SP Road, US Consulate Road
Begumpet, Hyderabad-16.

VERSUS

**Commissioner of Central Tax and
Central Excise,** GST Bhavan

LB Stadium Road, Basheerbagh
Hyderabad-500004.

Respondent

AND

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Appellant

VERSUS

M/s Sreyas Holistic Remedies Pvt. Ltd., Respondent

359 to 363, 3rd Floor, Centre Point Building
SP Road, US Consulate Road
Begumpet, Hyderabad-16.

APPEARANCE:

Sh. Anil Kumar Kathuria, Advocate for the assessee

Sh. A. Ranga Dhaam, Authorised Representative for the Department-Revenue

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. A/30128-30129/2022

DATE OF HEARING: 12.09.2022

DATE OF DECISION: 23.12.2022

ANIL CHOUDHARY:

These cross appeals have been filed by the assessee and Revenue against order-in-original whereby the Commissioner have dropped part of the demand and confirmed part of the demand alongwith penalty.

2. Brief facts of the case are that the appellant –assessee runs chain of healthcare clinical services under their brand name 'Oliva Clinics' in the States – Telangana, Tamil Nadu and Karnataka. The appellant is registered with the Service Tax Department having centralised registration. The appellant have a team of Doctors alongwith supporting staff for treatment for various ailments and or skin conditions for issues like Warts, Acrochordons (skin tags), Hair Transplantation, Acne Vulgaris, Hirsutism, Hypertrichosis treatment, TAN, Melasma, Scar Revision treatments, Anti-aging treatments, Obesity/ Weight Loss treatment, Birth Mark treatment and Alopecia/ Hair Loss treatments (includes hair laser comb treatment). Some of the services of the appellant fall under health care service and some of the services fall under cosmetic treatment/ service.

3. The appellant had submitted a letter No.SHRPL/F&A/SRVT/ 2012-13/01 dated 09.07.2012 to the Range Superintendent of Service Tax about the category of services offered by them and as to taxable and non-taxable nature of the particular service. The appellant was guided by the opinion as to taxability of the particular service by the legal opinion circulated by 'Indian Association of Dermatologists, Venereologists & Leprologists". The appellant was regularly filing their

returns and paying the admitted taxes till the period October, 2012. However, thereafter the person looking after the tax matters had left and no other person could be immediately engaged, as such some of the returns were in arrears.

4. The Officers of DGCEI initiated investigations / enquiry from November, 2013 and also searched the premises of the appellant being the registered office at Secunderabad and various Oliva Clinics Hair located at Hyderabad and Secunderabad. During the course of enquiry, the appellant filed upto date returns and also deposited the admitted tax. On completion of investigation, show cause notice dated 29.08.2017 was issued invoking the extended period of limitation for the period 01.07.2012 to 31.03.2016, as it appeared to Revenue that some of the services which the appellant was treating as non-taxable are taxable, proposing to demand service tax of Rs.5,61,25,053/- with proposal to appropriate the amount of Rs.1,36,07,711/- deposited as per the ST-3 returns with further proposal to demand interest and impose penalty under Section 76, 77 and 78 of the Act. Penalty was also proposed on Sh. Soma Prasanth, Medical Director of the assessee company. The appellant contested the show cause notice by filing detailed reply to the show cause notice and annexing the copy of guidelines on taxability of various service circulated by 'Indian Association of Plastic Surgeons'. The appellant also provided the break-up of taxability and non-taxability of services as supported by the opinion circulated by their Association. The appellant also submitted additional submission on 09.07.2017 with reference to text book of Dermatology.

5. Learned Commissioner was pleased to decide the taxability of various services under dispute as follows:-

| Sl. No. | Name of the service | Remarks |
|---------|--|-----------|
| 1 | Treatment of Melasma and pigment disorders | Confirmed |
| 2 | Hypertrichosis treatment | Confirmed |
| 3 | Birth Mark treatment | Confirmed |
| 4 | Hair Laser Comb treatment | Confirmed |
| 5 | Treatment of Scars (keiloids and atrophic) | Dropped |
| 6 | Treatment of Viral warts, Molluscum Contagiosum, benign skin tumours | Dropped |
| 7 | ACP (Nodulo Cystic Acne treatment | Dropped |
| 8 | Hirsutism treatment | Dropped |
| 9 | Subcision, biopsy, skin, hair and diet consultation and counselling | Dropped |

6. Thus, the amount of Rs.2,65,39,383/- was confirmed and the balance demand of Rs.2,95,85,672/- was dropped. Further, the amount already deposited was appropriated – Rs.1,49,60,014/- (Rs.1,36,07,711/- + Rs. 13,52,303/-). Further, amount of Rs.6,75,655/- deposited towards interest was confirmed and appropriated. Further, the penalty of Rs.18,27,709/- was imposed under Section 78. Penalty of Rs. 10,000/- was imposed under Section 77. The proposed penalty on the Medical Director Sh. Soma Prasanth was dropped.

7. Learned Counsel appearing for the appellant-assessee urges that the appellant as per legal opinion ‘circulated by their Association’, was discharging service tax on services like hair transplantation, TAN, anti ageing treatment and Obesity – weight loss treatment. Ld. Counsel has referred to the following legal provisions which are relevant for deciding the appeal. Section 65(105)(zzzzk)

taxable service means – to any person, by any other person, in relating 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. Sub-section (zzzzz) provides, to any person,-

- (i) by a clinical establishment; or
- (ii) by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine;

7.1 Further Notification No. 30/2011-ST dated 25.04.2011 provides exemption for services referred to under Section 65(105)(zzzzz) from the whole of service tax.

7.2 With effect from 01.07.2012 under Section 65B (44), “service” means any activity carried out by a person for another for consideration, and includes a declared service, subject to exception provided therein.

7.3 Further taxable service have been defined under Section 65B(51) means any service on which service tax is leviable under Section 66B.

7.4 The mega exemption Notification No. 25/2012 (as amended) at Sl. No. 2 provides “health care services by a ‘clinical establishment’, an authorised medical practitioner(s) or paramedics.

7.5 Further health care service have been defined in clause (t) as – “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,

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. Clinical establishment has been defined in clause (j) of the said Notification No. 25/2012 as follows:-

(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 recognized system of medicine in India or a place, establishment as an independent entity or a part of a establishment who carry out diagnostic or investigative services of diseases.

8.1 It is further urged that the Adjudicating Authority have not disputed the fact that the appellant is a clinical establishment. Further, while admitting the exemption from service tax in respect of services viz-

- (i) treatment of scars (keiloids and atrophic);
- (ii) Treatment of viral warts, Molluscum Contagiosum, benign skin tumours;
- (iii) ACP (Nodulo Cystic Acne) treatment;
- (iv) Hirsutism treatment;

(v) Subcision, biopsy, skin, hair and diet consultation and counselling

has held that in respect of these services, the appellant has provided investigation, diagnosis and treatment of underlying diseases/ disorder by medicine, steroid, laser treatment, etc. in their clinic and as such these services are exempted under health care service. Also held, resultant enhancement of appearance is a consequence of the treatment of underlying diseases / disorder. Ld. Counsel also states that as regards hypertrichosis treatment the same is not being contested and the appellant concedes in respect of this service. Thus, the demand of Rs. 9,30,333/- is not contested under this head.

8.2 As regards service for Melasma, it is urged that melasma is an acquired symmetrical hyper melanic disorder of the face and is seen more commonly in women with particularly skin type. The most common areas for melasma to appear is on face and also on other areas of the body especially those exposed to lot of sunlight. Further reference to Rook's text book of Dermatology, wherein it is stated that melasma may be caused due to Oral Contraceptives, Pregnancy/UV-radiation /Drugs such as phenytoin. Due to malfunction of melasma, the colour making cell in the skin, causing them to produce too much colour. Thus, melasma is a skin disorder which requires detailed investigation and treatment. The treatment may include use of topical creams, nomelan phenol peels and also Q-switch Nd-YAG lasers treatment. Thus, melasma is a disease / disorder treated by the doctors in the clinical establishment of the appellant.

8.3 Birth Mark treatment – Learned Counsel urges that the Adjudicating Authority in para 40.1 of the impugned order has observed that birth mark treatment are treated by way of surgical removal and medicinal treatment. Further, referring to the text book of Dermatology urges that birthmark also affects the sclera in the eye as well as the skin adjacent to the eye. Nevus of Ota is an extensive, bluish, patchy, dermal melanocytosis. It affects the sclera in the eye as well as the skin adjacent to the eye. If untreated it may turn into melanoma or other skin cancer. With the passage of time it may grow darker. Most lesions are present at birth or develop in the first year of life. Lesions may also appear at puberty. These may also cause melanocytes. Melanoma skin cancer is the fifth most common cancer. Pursuant to diagnosis the qualified Dermatologist treats them by using Q-switched Nd-YAG Laser. Strong laser rays are used to treat the root cause of the disorder from the whole of the skin. Multiple sitting treatment spread over few weeks is required for satisfactory result. Thus, birth mark cannot be considered as cosmetic treatment.

9. So far 'Hair laser comb treatment' is concerned; the same is needed for skin disorder resulting in loss of hair especially of the crown of the head. The Adjudicating Authority have erred in holding that this treatment is taxable being cosmetic in nature, because the treatment provided by the appellant results in enhancement of the look. It is urged that loss of hair is a common complaint due to multiple causes which are sometimes difficult to pinpoint. The loss of hair also gives mental trauma to the person who is suffering due to loss of look. The treatment inter alia includes diagnosis whether

permanent damage to the follicles or can be restored. The main reason for occurring of hair loss is when immune system attacks hair follicles and may be brought on by severe stress. Hence, Dermatologist has to make a detail investigation for diagnosis which may include pathological test of the blood, scalp biopsy. Based on the investigation reports and history, appropriate treatment/ management is done which includes topical minoxidil, steroids, immunomodular like tacrolimus, oral medications like finasteride, iron and vitamin supplementation and procedures like PRP and light therapy. This can be done by qualified medical practitioner supported by para-medical staff in the clinical establishment. Thus, all these aforementioned services are exempt being health care services under clause 2 of Notification No. 25/2012. Learned Counsel further urges that the issue involved is wholly interpretational in nature. The appellant have maintained proper records and also informed the Revenue as early as on 09.07.2018, giving details of the services provided by them and also the services they are treating taxable or non-taxable supported by legal opinion. Thus, extended period of limitation is not invocable.

9.1. It is also urged that there was delay in filing of return for the period after October, 2013, which was due to non-availability of the concerned staff. The appellant have been paying service tax on the taxable services falling under the head Cosmetic and Plastic Surgery. Further, admittedly on the services under dispute the appellant has not collected any service tax. So far the appeal of the Revenue is concerned, the appellant relies on the findings in the

impugned order, so far the services in dispute which have been held to be non-taxable.

10. Opposing the appeal, learned Authorised Representative (AR) for Revenue relies on the impugned order. At the same time, Id. AR in support of Revenue's appeal opposes the part of the impugned order wherein the services in dispute have been held to be non-taxable. Relying on the definition of cosmetic and plastic surgery services under Section 65(105)(zzzzk), states that the services in relation to cosmetic and plastic surgery are taxable subject to the exclusion of surgery etc. undertaken to restore or reconstruct anatomy or function of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma.

11. Learned AR further relies on the statement of Ms. Sandhya, Manager of M/s Oliva Clinic wherein she inter-alia stated that they provide treatment package, which is inclusive of service tax amount. He further relies on the statement of Dr. Rekha Singh, senior Doctor who had explained that they do not undertake any accident, trauma cases in Secunderabad Clinic and they are not equipped with any critical care unit. It is also stated that the appellant does not treat cases relating to abnormality, deformity or congenital nature. Further relies on the statement of Dr. Komsani Meghana, Consultant Dermatologist of Oliva who inter-alia stated that the appellant clinic provides only cosmetic concern issues and that they do not treat any trauma or ill patient. Further reliance is placed on the statement of Ms. Sohana Selvaraj, Area Operations Incharge of Bangaluru Oliva Clinic, who has inter-alia stated that they do look enhancing treatment and

cannot be called as life saving treatment and that they are not offering any treatment for trauma, burns, illness.

12. Learned AR further relies on the definition of healthcare services as given in para 2(t) of Notification No. 25/2012-ST wherein healthcare 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.

12.1. Learned AR further urges that the procedure undertaken in the clinic of the appellant are basically to improve the aesthetical look of the person and for correcting any medical disorder. The clinic of the appellant are not for betterment of health condition which occur due to illness, trauma or medical treatment or does not include any surgery undertaken to restore or reconstruct anatomy or function of the body affected due to congenital defect, developmental abnormalities, generative diseases, injury or trauma, but for the sake of aesthetic looks only. Hence, the services provided by the appellant –assessee are not covered under the exemption Notification No. 25/2012-ST.

12.2 Learned AR further urges that the Commissioner has rightly held as taxable services –

- (i) Treatment of Melasma and pigment disorders

- (ii) Hypertrichosis treatment
- (iii) Birth Mark treatment
- (iv) Hair Laser Comb treatment.

12.3 Learned AR further relies on the ruling of Hon'ble Supreme Court in the case of **Dalip Kumar** wherein it has been held that exemption notification is to be strictly interpreted. In case of any ambiguity the benefit must be in favour of Revenue. He further relying on the ruling of Division bench of this Tribunal in **New Look Cosmetic Laser Centre vs. Commissioner of Customs (I), Mumbai -2006 (200) ELT 336 (Tri. – Mum.)** wherein the issue of classification of "Suby Star Surgical Laser" was an issue for the purpose of benefit of Notification No. 20/90-Cus.

13. Having considered the rival contentions we observe that the taxability of service in dispute provided by the appellant –assessee depends, whether the same is predominantly for healthcare or predominantly cosmetic in nature. The appellant undertakes diagnosis, which is an art and act of diagnosing disease by symptoms and thereafter prescribing the necessary remedial treatment, diagnosis is not a simple guesswork. The appellant clinics employs qualified doctors who have completed post graduation in Dermatology. The appellant first undertakes a diagnosis of a new patient, which is done by the qualified Dermatologist for which they collect consultation charges. Pursuant to diagnosis, treatment is prescribed, the appellant clinic also prescribed the preventive measure and/or post treatment precaution. Preventive care means a measure taken to prevent disease from occurring or recurring rather than curing it. The

appellant clinics are 'clinical establishment' involved in Alopathy treatment, which is a recognised system of medicine in India. The appellant have been held to be clinical establishment by the Court below. We further find that the services provided by the appellant, save and except for 'hypertrichosis treatments' and 'hair laser comb treatment' fall under healthcare services and are accordingly exempt under Notification No. 25/2012-ST.

14. So far the ground of limitation is concerned, we find that the appellant had maintained proper records of the transaction and has taken registration under the provisions of Service Tax and were making regular compliances. Few returns were pending for which plausible explanation has been given being non-availability of the concerned staff. The appellant has regularly deposited their admitted taxes and have also paid tax and filed pending ST-3 returns during the course of investigation. We further find that the demand has been raised by the Revenue based on the accounts and records maintained by them. Accordingly, we hold that the extended period of limitation is not invocable in the facts and circumstances.

15. To sum up-

- i) Revenue's appeal is dismissed being devoid of merits as discussed above;
- ii) Services rendered by the appellant assessee in respect of Melasma, Birth Mark Treatment are held falling Health Care Services under clause 2(t) of the notification No. 25/2012 as amended. Hence the said activities are not taxable under the

cosmetic and plastic surgery and are exempted from payment of service tax both before and after 01.07.2012;

iii) Services rendered by the appellant assessee in respect of Hypertrichosis Treatments and Hair Laser Comb Treatment are held taxable under "Cosmetic and Plastic Surgery" service;

iv) The extended period of limitation is not invocable due to the reasons recorded above;

v) The appellant assessee has to pay service tax in respect of Hypertrichosis Treatment and Hair Laser Comb Treatment for normal period as applicable at the relevant time with interest;

vi) As there is no suppression of facts with malafide intention to evade payment of service tax, penalty under Section 78 is set aside;

vii) The penalty of Rs. 10,000/- (Rupees ten thousand only) imposed under Section 77 of the Finance Act, 1994 for filing ST-3 late, is upheld.

16. Both the appeals are disposed of as above, modifying the impugned order.

(Order pronounced on 23.12.2022).

(Anil Choudhary)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)