

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO.III**

**Service Tax Appeal No.55276 of 2023**

[(Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-13-2023-24 dated 20.04.2023 passed by the Commissioner (Appeals), Customs, Central Goods and Service Tax and Central Excise, Indore (M.P.)]

**M/s.Life Care Hospital Ltd.,**  
2, Scheme No.78, Part-II,  
Vijay Nagar,  
Indore (M.P.).

**Appellant**

VERSUS

**Commissioner of CGST and Central Excise,**  
Manik Bagh Palace,  
Indore-452 001.

**Respondent**

**APPEARANCE:**

Ms. Priyanka Goel, Advocate for the appellant  
Shri Rohit Issar, Authorised Representative for the respondent

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**FINAL ORDER NO.58508/2024**

**DATE OF HEARING: 28.08.2024**  
**DATE OF DECISION: 05.09.2024**

**BINU TAMTA:**

1. M/s. Life Care Hospital Ltd.<sup>1</sup> aggrieved by the Order-in-Appeal No.IND-EXCUS-000-APP-13-2023-24 dated 20.04.2023, whereby the demand of service tax has been confirmed under the

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<sup>1</sup> The Appellant

category of "Business Auxiliary Service" while rendering "health care service".

2. The appellant is engaged in providing the taxable service namely, Health Club & Fitness Service, Renting of Immovable Property Service and Health Care Service. The Department on the basis of Form 26AS ascertained that the appellant had collected amount from Life Care Medicos, i.e. in-house Medical store under Section 194H of Income Tax Act, 1961, which pertains to commission or brokerage and had not paid any service tax. The explanation was sought from the appellant vide letter dated 20.12.2017, 23.05.2018, 06.06.2018 and 21.08.2018 on receipts from Life Care Medicos. The appellant failed to appear and only submitted its response vide letter dated 06.09.2018.

3. Show cause notice dated 8.9.2020 was issued on the ground that during the period 2015-2016 to June 2017 the appellant had not paid the service tax of Rs.9,23,665/- on the amount of commission received from M/s Life Care Medicos and failed to declare the said amount in their service tax returns. On adjudication, the demand under the SCN was confirmed and the appeal filed by the appellant was dismissed by the impugned order. Hence the instant appeal has been filed before this Tribunal.

4. Heard Ms. Priyanka Goel, Advocate for the appellant and Shri Rohit Issar, Authorised Representative for the respondent.

5. The learned Counsel for the appellant has taken the preliminary issue challenging invocation of the extended period of limitation, however, I feel that it is appropriate to first consider the issue on merits. The submission on merits are as under:-

- A. The appellant is running a hospital and providing various medical services to the patient. Predominantly service of the appellant is medical and health care service. Therefore, processing charges received towards Mediclaim is the ancillary service and classifiable under medical service itself and exempted from service tax.
- B. The appellant is providing medical/health care service and process of lodging the medi-claim of the patient is part and parcel of such medical service. Hence, processing charges received towards Mediclaim is also exempted from service tax.
- C. The appellant prepare the claim of the patient in respect of such medical treatment which consist of hospital room charges, Doctor fees, nursing care charges, medicine charges, etc. since the said claim also consists of medicine charges in respect of the medicine provided by M/s. Life Care Medicos to the patient, therefore, while filing the mediclaim, the medicine charges are also claimed in the Mediclaim filed with respective insurance company. That after receipt of the mediclaim

amount the appellant transfer the charges of medicine received from insurance company to M/s. Life Care Medicos after deducting their nominal service charges. Therefore, the amount received from M/s. Life Care Medicos is nothing but service charges related to preparation and collecting the mediclaim of patient including claim of medicine charges of M/s. Life Care Medicos.

The learned Counsel relied on the definition of "Clinical Establishment" as per Section 2(j) and "health care service" under Section 2(f) of the Notification No.25/2012 and also referred to the decision in the case of **Sir Ganga Ram Hospital Vs. Commissioner of Central Excise, Delhi-I**<sup>2</sup>.

6. The learned Authorised Representative for the Revenue reiterated the findings of the authorities below and distinguished the decision in the case of **Sir Ganga Ram Hospital** as it related to the collection charges, facilitation fee concerning the doctors.

7. The question involved is whether the service charges taken by the appellant from the medical shop is covered under the "health care services", which are exempted as claimed by the appellant or as per the revenue the same is actually collected as 'Commission' and falls under the category of "Business Auxiliary Service".

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<sup>2</sup> 2018(11)GSTL 427 (Tri.-Del.)

8. The appellant is running the hospital and is rendering health care services. The nature of the services involved is relating to the in-house patients, who have cashless medical insurance facility. The appellant having provided the medical treatment, process the medical claim of the patient through the insurance company. Such medi-claim includes hospital room charges, doctor fees, nursing care charges and also the medicine charges. Once the claim is settled and the amount is reimbursed by the insurance company including the value of medicines supplied by the Medical store for the treatment of the patient, the appellant retains some part from the reimbursed amount on account of 'service charges' and after deducting the said amount the remaining amount due to the medical store is paid. The claim of the appellant is that for preparing the Mediclaim considerable time of the staff is consumed for which they are taking the service charges from the medical store from whom the medicines were received. The contention of the appellant is that these charges are nothing but part and parcel of the healthcare services which is their primary function.

9. To further appreciate the controversy the scheme of the statutory provisions applicable is required to be considered. During the period 1.7.2010 to 1.5.2011, the health care services were only taxed for specified category of hospitals and for specified patients. With effect from 1.5.2011, health care services were exempt from

service tax under Notification No.30/2011-ST. After introduction of negative list regime, w.e.f. 1.7.2012, the health care services are exempt from service tax under Notification No.25/2012-ST. The "health care service" provided by a "clinical establishment" is exempted from service tax as per Section 2(i) of the Mega Exemption Notification. The term "clinical establishment" is defined under Section 2(j) of the Notification No. 25/2012 as under:

**"Section 2(j)** means hospital, nursing home, clinic, sanatorium or any other institution by whatever name called, that offer 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."

10. The term "health care service" as defined under Section 2 (t) reads as under:

**"Section 2(t):** means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized systems of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include their transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of both affected due to congenital defects, developmental abnormalities, injury or trauma."

11. The two definitions of "clinical establishment" and "healthcare service" clearly shows that they have been worded very broadly so as to include the various services, which are connected with the

healthcare service and are inbuilt in it. The appellant who is running the hospital is squarely covered by the definition of "clinical establishment", which at the outset says the clinical establishment means hospital and is rendering the healthcare services as defined therein. The definition of "healthcare service" when it uses the term diagnosis or treatment or care for illness, etc. by any recognised system of medicines, denotes that the provision for medicines to the patients is directly connected to the health care services. In other words, the provision for medicines is inbuilt in health care service and the treatment.

12. Medical aid to the patients who are admitted in the hospital, most of the time requires urgent care and treatment without any loss of time and that is the reason for having a medical store within the vicinity of the hospital. The moment a patient is admitted, with the immediate diagnosis is required to be normalised by commencing the treatment with the medicines and thereafter their continuous stay in the hospital requires constant administering of the medicines. Therefore, the in-house patients are largely dependent on the medicine shop in the hospital. In this scenario the hospital which is providing the multifarious services under the health care services owes greater responsibility that the medicines which is the most important input in any treatment are available to the patients urgently on time and simultaneously the payment thereof to the medicine shop is also made, for which the hospital is

required to assimilate the claim in respect of all the services rendered to the patients and forward them to the insurance company. The matter does not ends here, as the hospital has still to satisfy the insurance company on all counts and pursue the clearance of the claim. On receipt of the reimbursed amount the responsibility of the hospital is to ensure that respective payments are made to the doctors, lab assistants, for food, medicines etc. In order to have smooth functioning for disbursing the amounts, the staff of the hospital has to be utilized and involved for which they are deducting some amount. Hence the allegation raised by the revenue that this amount is actually the commission which the hospital is charging from the medicine store is not correct.

13. For understanding the concept of the term 'treatment' , it is necessary to keep in mind that the drug therapy is an important and integral part of treatment. The medicines are used to treat or cure illness along with that the intended use of the medicines is in the diagnosis, mitigation or prevention of disease. According to the **Britanica**, medication is a substance used in treating a disease or relieving pain. Keeping that in view, the attempt of the Revenue to categorise the amount retained by the appellant as services under the heading of 'Business Auxiliary Service" would amount to narrowing down the definition of "health care service" with a view to bring within the tax net, which is contrary to the intention of the legislature to exempt the "heath care service".

14. In the case of **Sir Ganga Ram Hospital (supra)**, the Revenue had alleged that the "collection charges/facilitation fee" retained by the hospital are liable to service tax under the category of "business support services". The claim of the Revenue was that the hospital had provided infrastructural services to various doctors and the amount retained by the hospital out of the total charges collected from the patients should be considered as an amount for providing infrastructure like rooms and certain other secretarial facilities to the doctors to attend to their work in the appellant's hospitals was rejected by the Tribunal observing that the appellant's hospitals are engaged in providing health care services, which can be done by appointing the required professionals directly as employees and same also can be done by having contractual arrangements. In such arrangements, the doctors of required qualifications are engaged or contractually appointed to provide health care services. The Tribunal took the view that it is a mutually beneficial arrangement of having the revenue sharing model, where the doctors are attending to the patients for treatment using his professional skills and knowledge and the hospitals are managing the patients from the time they enter the hospital till they leave the premises. The appellant hospitals also manages follow-up procedures and provide for further health care services in the manner as required by the patients. The appellant hospitals are availing the professional services of the doctors for providing health

care services, for which they are paying the doctors. However, the retained money out of the money charged from the patients is also for such health care services. Noting the definition of the "Clinical Establishments" and "Health Care Services", as defined in the Notification No.25/2012-ST, the Tribunal observed as under:-

**"11.** These two provisions available in Notification No. 25/2012 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."

15. The decision of the Tribunal was subsequently followed in their own case as reported in **2020 (43)GSTL 390**, where on the basis of the communication dated August 20, 2018, it was noted that the Department has accepted the decision. Thus in view of the discussion above and particularly in the light of the decision of the Tribunal in the case of **Sir Ganga Ram (supra)**, the Authorities

below were not justified in confirming the demand of service tax under "business auxiliary service".

16. Having decided the issue on merits in favour of the appellant, I do not find any necessity to decide the issue of invocation of extended period of limitation or imposition of interest and penalty on the appellant.

17. Accordingly, the demand proceedings against the Appellant hospital are hereby dropped.

18. The impugned order is, therefore, liable to be set aside and accordingly the appeal is allowed.

[Order pronounced on 5<sup>th</sup> September, 2024 ]

**(Binu Tamta)**  
**Member (Judicial)**

Ckp.