CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60614 of 2016

[Arising out of Order-in-Appeal No. 73/ST/DLH/2016 dated 30.06.2016 passed by the Commissioner (Appeals-I), Central Excise, Delhi]

Om Savitri Jindal Charitable Society **...Appellant-I**
C/o Jindal Hospital, Model Town,
Hisar, Haryana 125005

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak **.....Respondent**
SCO 6 to 8 & 10, Sector 1, Huda Market,
Rohtak, Haryana 124001

WITH

Service Tax Appeal No. 60573 of 2016

[Arising out of Order-in-Appeal No. 74/ST/DLH/2016 dated 30.06.2016 passed by the Commissioner (Appeals-I), Central Excise, Delhi]

NC Jindal Institute of Medical Care & Research **...Appellant-II**
Model Town, Hisar,
Haryana 125005

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak **.....Respondent**
SCO 6 to 8 & 10, Sector 1, Huda Market,
Rohtak, Haryana 124001

APPEARANCE:

Ms. Krati Singh with Ms. Samiksha Uniyal and Mr. Yashaswi Singh,

Advocates for the Appellants

Mr. Shantanu Kumar Meena, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61695-61696/2025

DATE OF HEARING: 21.07.2025
DATE OF DECISION: 20.11.2025

S. S. GARG :

These two appeals are directed against two different impugned OIAs, both dated 30.06.2016, passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has rejected the appeals of the appellants and upheld the OIOs. Appeal-wise details of SCNs, Impugned OIAs, OIOs, Periods, Issues involved and Demands are given herein below in tabular form:

Particulars	Appeal No. ST/60614/2016	Appeal No. ST/60573/2016
Issue	Demand of Service Tax on Business Support Services provided to Diagnostic Service Providers	Demand of Service Tax on Business Support Services provided to Doctors/ Consultants
Period	01.04.2013 to 31.03.2014	01.04.2008 to 31.03.2014
Impugned OIA	73/ST/DLH/2016 dated 30.06.2016	74/ST/DLH/2016 dated 30.06.2016
OIO	26/ST/ADC/SM/RTK/2014-15 dated 01.01.2015	32-33/ST/ADC/AK/RTK/2014-15 dated 02.03.2015
SCN	73/ST/ADC/HQ/HSR/14-15 dated 21.10.2014	32/ST/ADC/HQ/HSR/13-14 dated 09.10.2013 and 75/ST/ADC/HQ/HSR/14-15 dated 21.10.2014
Demand	Rs.26,56,018/-	Rs.14,32,921/- and Rs. 7,66,714/-
Interest	Under Section 75	Under Section 75
Penalty	Under Sections 76 & 77	Under Sections 76, 77 & 78

2. Briefly stated facts of the present case are that the both the Appellants are registered with the Service Tax Department under 'Health Service' and 'Renting of Immovable Property Service'.

2.1 Transaction between the Appellant-I and Diagnostic Service Providers: M/s Om Savitri Jindal Charitable Society ('the Appellant-I') entered into agreements with Lal Pathlabs Pvt Ltd, Mangalam Lab, 360 Degrees Healthcare Pvt Ltd and Clearview Healthcare Pvt Ltd (collectively known as Diagnostic Service Providers or 'DSPs') for providing the pathology lab and other diagnostic services in the hospital. Further, as per the agreements, the Appellant-I provides basic amenities such as space, water, electricity etc to DSPs for functioning and DSPs install and operate their equipment in the Appellant's premises. DSPs render services to patients within the hospital premises and outside the hospital premises. The Appellant-I raises the invoice on patients for diagnostic services rendered in the hospital and shares for receipts with DSPs in an agreed percentage for which DSPs also raise monthly bill for collection. This amount is paid to DSPs after deducting the administrative and up-keep charges. DSPs also share the revenue earned by rendering services outside the hospital premises to patients referred by the Appellant-I in an agreed percentage.

2.2 Transaction between the Appellant-II and Doctors/Consultants: M/s NC Jindal Institute of Medical Care & Research ('the Appellant-II') hires Doctors/Consultants as employees or on retainership basis for providing healthcare services to patients. The Appellant-II raises the invoice on patients for consultancy, surgery etc by the doctors and

shares the receipts with doctors as per the terms and conditions agreed under the contract.

2.3 The department entertained the view that the Appellants are providing Business Support Services ('BSS') to DSPs as well as to Doctors/Consultants; the Appellants are liable to pay the service tax under BSS. An investigation was conducted against the Appellants and after completion of the investigation, show cause notices were issued to the Appellants proposing the demand of service tax along with interest and penalty as mentioned in the table above. It was alleged by the department that the amounts retained are the charges in lieu of infrastructural and administrative support services which are taxable under BSS under Section 65(104c) read with Section 65(105)(zzzq) of the Finance Act till 30.06.2012, provided by the Appellants to DSPs and Doctors/Consultants; post 01.07.2012, the services are not listed in negative list under Section 66D of the Act. The extended period was invoked for proposing the demand for the period 2008-09 to 2012-13 against the Appellant-II. After following the due process, the Adjudicating Authority, vide OIOs dated 01.01.2015 and 02.03.2015, confirmed the demand of service tax amounting to Rs.26,56,018/- against the Appellant-I and Rs.21,99,635/- against the Appellant-II, along with interest and penalty, after giving the cum-tax benefit. Aggrieved by both the impugned OIOs, the Appellants filed appeals before the learned Commissioner (Appeals), who rejected their appeals and upheld the OIOs; hence, the Appellants have preferred the present appeals before us.

3. Heard both the sides and perused the material on records.

4. The learned Counsel for the Appellants has filed common written submission in both the appeals which have been taken on record.

4.1 The learned Counsel further submits that the issues involved in both the appeals, have already been decided in the Appellants' favour at the Appellate Authority level as well as the Tribunal level, for the previous as well as subsequent periods. In this regard, she provides the following chart of the Orders passed by the Tribunal and the Appellate Authority in Appellants' favour on the issues involved:

Order	**Party's name**	**Period**	**Issue**
Final Order No. 60579/2024 dated 16.10.2024 passed by the Tribunal = **2024 (10) TMI 824 CESTAT Chandigarh**	OP Jindal institute of Cancer & Research	2008-09 to 2012-13	Service Tax on services provided to DSPs
Final Order No. 60819/2021 dated 25.03.2021 passed by the Tribunal	Om Savitri Jindal Charitable Society	2013-14	Service Tax on services provided to Doctors
Order-in-Appeal No. Appl/PKL/ST/249-250/ 2018-19 dated 27.02.2019 passed by the Commissioner (Appeals)	OP Jindal institute of Cancer & Research	2015-16 to 2017-18 (till June 2017)	Service Tax on services provided to DSPs and Doctors
Order-in-Appeal No. Appl/PKL/ST/248/2018-19 dated 26.02.2019 passed by the Commissioner (Appeals)	NC Jindal Charitable Trust	2015-16 to 2017-18 (till June 2017)	

She further submits that the department has not filed any appeal against the above-mentioned Orders, therefore, the said Orders have attained finality as the department has accepted that no service tax is

leviable on the transactions involved in the case. She further submits that the department deviated from its stand while passing the impugned orders confirming the demands on the same issues against the Appellants. She also submits that it is a settled law that the department cannot take contrary stands on the same issue for the same assessee. For this, she places reliance on the following decisions:

- **CCE, Pune-II vs. S S Engineers – 2023 (386) ELT 192 (SC)**
- **Rosmerta Technologies Ltd vs. CCE – 2020-TIOL-916-CESTAT-CHD affirmed by Hon'ble Supreme Court – 2021-TIOL-24-SC-ST-LB**

She submits that in view of the fact that the issues are no longer *res integra*, the impugned orders are liable to be set aside.

4.2 The learned Counsel further submits that the Commissioner (Appeals), vide the impugned orders, has confirmed the demand of service tax on the revenue retained by the Appellants out the amount received from patients in respect of services rendered by DSPs and Doctors as a consideration towards infrastructural and administrative support services provided to DSPs and Doctors. In this regard, she submits that the Appellants are not providing any service to DSPs and Doctors/Consultants as there is revenue sharing agreement between the parties, which are on record; as per the agreements, the parties have agreed for a revenue sharing model on principal-to-principal basis out of the revenue generated from the diagnostic services provided by DSPs and healthcare services provided by Doctors/Consultants with the help of infrastructure and other facilities

provided by the Appellants in an agreed percentage. She also submits that the entire amount received by the Appellant-I in respect of the services rendered by DSPs is booked under the laboratory charges and share of DSPs is debited after DSPs raise the monthly bill as per agreed rates; similarly, the Appellant-II books the amount received from the patients against services provided by the Doctors under various ledgers like charges for admission fee, anaesthesia fee, laboratory charges etc; later on, this ledger is debited with the amount to be shared with the Doctors as per the agreed percentage. She also refers the **Circular No. 109/03/2009-ST dated 23.02.2009** which clarifies that when two contracting parties enter into revenue sharing arrangement then both the parties act on principal-to-principal basis and there is no provision of service amongst the parties. She further submits that in fact the Appellants have entered into a joint venture with DSPs/Doctors with an intention to do business for mutual gain. She further submits that this issue is also no more *res integra* as has been settled by the Tribunal/Courts in various cases wherein it has been held that there is no provision of service or payment for services in the revenue sharing arrangements and therefore such transactions are not exigible to service tax. For this, she places reliance on the following cases:

- **Mormugao Port Trust vs. CCE -2017 (48) STR 69 (Tri. Mum.) – Affirmed by Hon'ble Supreme Court – 2018 (19) GSTL J118 (SC)**
- **M/s Sikri Multiplex Cinema P Ltd vs. CGST – 2024 (6) TMI 582 CESTAT Chandigarh LB**
- **OP Jindal Institute of Cancer & Research vs. CCE – 2024 (10) TMI 824 CESTAT Chandigarh**

- **SJS Healthcare Ltd vs. CCE – 2024 (4) TMI 300 CESTAT Chandigarh**
- **Aashlok Nursing Home Pvt Ltd vs. CCE – 2024 (5) TMI 888 CESTAT New Delhi**
- **Apollo Hospitals International Ltd vs. CCE – 2023 (12) TMI 953 CESTAT Ahmedabad**
- **M/s Sir Ganga Ram Hospital vs. CST – 2020 (43) GSTL 390 (Tri. Del.)**

4.3 The learned Counsel further submits that the services, if any, rendered by the Appellants are not BSS, the same qualify as healthcare services which are not subject to service tax, the Appellants are not liable to pay service tax under BSS till 30.06.2012 and further, service tax is not liable to be paid on these transactions post 01.07.2012 also. She further submits that in the case of **OP Jindal Institute of Cancer & Research vs. CCE, Rohtak – 2024 (10) TMI 824 CESTAT Chandigarh**, this Tribunal has itself held that the Appellant is not providing services under BSS. She also relies on the following decisions wherein also similar placed transactions have been held to be not exigible to service tax under BSS:

- **M/s Fortis Healthcare India Ltd vs. CCE – 2019 (9) TMI 462 CESTAT Chandigarh**
- **M/s Ivy Health & Life Sciences P Ltd vs. CCE – 2019 (4) TMI 178 CESTAT Chandigarh**
- **CCE & ST, Panchkula/Delhi-IV vs. Alchemist Hospital Ltd, Artemis Medicare Services Ltd (vice versa) – 2019 (3) TMI 1331 CESTAT Chandigarh**
- **SJS Healthcare Ltd vs. CCE – 2024 (4) TMI 300 CESTAT Chandigarh**
- **Aashlok Nursing Home Pvt Ltd vs. CCE – 2024 (5) TMI 888 CESTAT New Delhi**
- **M/s Diabetic Association of India vs. CST – 2025 (6) TMI 1964 CESTAT Mumbai**

- **CCE & ST, Goa vs. M/s Goa Golf Club Pvt Ltd – 2023 (5) TMI 1026 CESTAT Mumbai**
- **M/s Gujarmal Modi Hospital & Research Centre for Medical Sciences vs. CST – 2019 (1) TMI 378 CESTAT New Delhi**

4.4 The learned Counsel further submits that the demand proposed by the show cause notice dated 09.10.2013 is partially time barred because the said show cause notice has invoked the extended period of limitation to raise demand for the period 2008-09 to 2012-13 against the Appellant-II. She also submits that the department has not brought anything on record to establish that the Appellant-II had suppressed the material facts from the department. For this, she relies on the following decisions:

- **OP Jindal Institute of Cancer & Research vs. CCE – 2024 (10) TMI 824 CESTAT Chandigarh**
- **Taj GVK Hotels & Resorts Ltd vs. CCE – 2025 (7) TMI 930 CESTAT Chandigarh**

She also submits that the present case involves interpretation of complex legal provisions; the issue of taxability of the amount retained by the hospital out of the receipts from healthcare services provided by the Doctors, is an industry wide issue which is being decided recently by the judicial forums across the country and therefore, extended period of limitation cannot be invoked for such interpretational issues. In this regard, she relies on the following decision:

- **M/s Clix Capital Services Pvt Ltd vs. CCE – 2025 (5) TMI 1830 CESTAT Chandigarh**

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned orders. The

learned Authorized Representative has also filed written submission, which have been taken on record. As per the learned Authorized Representative, the agreement entered into by the Appellants with the DSPs and the Doctors for sharing the revenue, amounts to rendering BSS by the Appellants to DSPs and Doctors, for which the Appellants are liable to pay service tax.

6. We have considered the submissions made by both the parties and perused the material on record.

6.1 We find that the issue involved in the first appeal, relating to revenue sharing arrangements between the Appellant-I and the DSPs, is no longer *res integra* as the Tribunal as well as the departmental Appellate Authority, for the earlier and the subsequent periods, have decided the issue in favour the Appellants vide the Orders as cited in table (*in para 4.1 above*) by holding that revenue sharing arrangements are not subject to service tax under the BSS. Further, we note that the department has not filed any appeal against the above-mentioned Orders, therefore, the said Orders have attained finality and therefore, the department cannot take contrary view on the same issue for the same assessee as held in the case of **CCE, Pune-II vs. S S Engineers** (supra). Further, we find that this Tribunal in the case of **OP Jindal Institute of Cancer & Research** (supra) vide **Final Order No. 60579/2024 dated 16.10.2024**, has considered the identical issue along with the agreements entered into by the Appellant with the DSPs and has held that revenue sharing arrangements between the Appellant and the DSPs are not subject to

service tax; the relevant findings of the Tribunal are reproduced herein below:

> **"6.** We have considered the submissions made by both the parties and perused the material on record; and have also gone through the various judgments relied upon by the appellant. We find that the only issue involved in the present case is whether the appellant is liable to pay service tax under the category of 'Support Service of Business or Commerce' as defined under Section 65(104c) read with Section 65(105)(zzzq) of the Finance Act, 1994 to the DSPs by providing them infrastructure, equipments, facilities and administrative support. For deciding this issue, it is essential to reproduce the definition of 'Support Service of Business or Commerce', which is reproduced herein below:
>
> > **"Section 65(104c)** : "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, [Operational or administrative assistance in any manner], formulation of customer service and pricing policies, infrastructural support services and other transaction processing.
> >
> > [*Explanation* — For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]
> >
> > **Section 65(105)(zzzq)** : to any person, by any other person, in relation to support services of business or commerce, in any manner;"
>
> **7.** Further, we have also seen the terms and conditions of various agreements entered into by the appellant and the various DSPs, which are produced on record. All the

agreements provide in details the revenue sharing between the parties out of the total receipts collected from the patients for all the tests conducted by the DSPs. The department entertained the view that the infrastructural support service provided by the appellant to various DSPs is tantamount to the service under "Support Service of Business or Commerce" and therefore, the appellant is liable to pay service tax on that. Further, perusal of the agreements between the parties clearly shows that the contracts between the appellant and various DSPs are on principal-to-principal basis and are in the nature of sharing-revenue. As per the contracts, the appellant is required to provide infrastructure and DSPs are required to install their equipments; and the revenue earned from the patients is shared between the appellant and the DSPs and no taxable service is being provided by the appellant to DSPs. Here, it is pertinent to extract the relevant clauses of such agreements with regard to sharing of revenue. The relevant clauses of one of the contracts with one of DSPs, Dr. Lal Pathlabs Pvt Ltd ('LPL'), is reproduced herein below:

"<u>Revenue Sharing</u>:-

- "The Hospital" and LPL will share the net revenue as below. Net Revenues for this purpose means all revenues earned out of pathology tests of the hospital subject to discounts, rebates etc.

- In respect of the work referred by the Hospital and are carried out at the lab in the hospital itself as per the attached Annexure C, LPL and the Hospital will share revenue in the proportion of 50:50.

- In respect of the work referred by the Hospital and are carried out at any other Lab of LPL (Annexure E) LPL and the Hospital will share revenue in the proportion of 75:25.

- In respect of samples collected from corporate, camps, referral doctors, insurance companies, hospitals and any other networking of LPL and performed in the LPL lab inside the Hospital premises, LPL and the Hospital will share revenue in

the proportion of 95:5. This will also be applicable to tests sent outside India.

- The revenue in respect of work referred to by the Hospital shall be collected by the Hospital and LPL will collect revenue for the balance work. The accounts in respect of the Revenues collected by the Hospital will be audited by the LPL at its own cost and the Hospital hereby agrees to make available such audited accounts to LPL for reconciliation to determine the mutual shares. The Revenues shall be shared on a monthly basis.

- As per details given by the Hospital, the yearly net revenues at present is Rs. 1.6 cr. which has been taken as basis for arriving at the above mentioned revenue share. The hospital will help LPL and try to make sure that at least this revenue is generated out of the pathology lab. Any deviation beyond 10% on lower side will attract a revision of the revenue sharing clauses mutually.

- The Hospital will be responsible for all cash collections for the tests referred by the Hospital

- The Hospital will allow LPL to perform tests of samples collected from the network other than the Hospital in the LPL lab situated inside the hospital premises."

The perusal of above clauses reveals that there is absolutely no stipulation of payment of any service charges by the DSPs to the appellant and the contract is purely for sharing of revenue.

8. We also find that the Circular No. 109/03/2009-ST dated 23.02.2009 relied upon by the appellant also recognizes that the transactions between two contracted parties on principal-to-principal basis are not to be treated as service. Though the circular was issued in context of levy of service tax on movie theaters, but the context is applicable in the present case also, because in the present case, the appellant and the DSPs are dealing with each other on principal-to-principal basis.

9. We also find that as per the terms of the contracts, the appellant has allowed the DSPs to install their equipments and machines and operate their respective centers in the hospital. In fact, diagnostic services are provided by the Hospital through the patients using the expertise and machinery of the DSPs. All reports of such diagnostic services are issued under the name of the Hospital. Further, the billing of such services is also done by the appellant's Hospital to the patients directly. Further, the entire revenue from the diagnostic centers is accounted for in the books of account as 'revenue of the appellant' and the appellant pays for the services provided by the DSPs to the appellant after retaining its own percentage. It clearly shows that the service, if any, has been provided by DSPs to the appellant and not by the appellant to DSPs.

10. We also note that it is the appellant who established the Hospital and providing healthcare services to the patients and DSPs are, in fact, a part of the appellant as a joint venture who are providing diagnostic services to the patients; it is the patient, who is ultimate recipient and beneficiary of medical services in the appellant's Hospital. In fact, the Hospital provides the healthcare services to the patients and whenever any diagnostic service is required, the appellant and DSPs jointly provide the same to the patients. The revenue flow from the patients to the appellant which is shared by the appellant with DSPs as per the contract.

11. Further, we are of the view that mere providing of a building along with some basic amenities like electricity, water, sewage etc cannot be qualified as 'support service' for running a business. These facilities are provided to the DSPs to enable them to provide the services to the appellant; and without these facilities, DSPs would not be in the position to provide the service to the appellant. We also note that it is the appellant who is engaged in running the Hospital for providing the healthcare services to public and the diagnostic services provided by the DSPs are an integral part of such

healthcare services provided by the appellant. Healthcare services are fully exempted from the tax w.e.f. 25.04.2011 vide Notification No. 30/2011-ST dated 25.04.2011. This notification was rescinded w.e.f. 01.07.2012, but healthcare services are not liable to service tax in the negative list regime also.

12. We also find that the case-laws relied upon by the appellant regarding the revenue-sharing arrangement clearly held that if there is a revenue-sharing arrangement on principal-to-principal basis to further their mutual interest of providing healthcare services to the patients, then no service tax can be levied.

13. Further, we are of the view that in the present case the service, if any, rendered by the appellant are not 'BSS' and rather qualifies as 'Healthcare Service' which is exempted from service tax.

14. As regards the invocation of extended period of limitation, we are of the view that the appellant has not suppressed any material facts with intent to evade payment of tax and the entire earning of the appellant from the revenue-sharing modal was recorded in the balance-sheet, which is a public document. Moreover, the appellant was under a *bona fide* belief that healthcare services are not liable to service tax and the issue involved is that of interpretation; hence, extended period of limitation cannot be invoked. Therefore, substantial demand raised for the period 2008-09 to September 2011 is barred by limitation. Since the demand itself is not sustainable, therefore, the question of interest and penalty also does not arise.

15. In view of our discussion above, we are of the considered view 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.**"**

6.2 As regards the issue involved in the second appeal, relating to revenue sharing arrangements between the Appellant-II and the Doctors, is concerned, we find that this Tribunal in the case of **Om Savitri Jindal Charitable Society** (supra) vide **Final Order No. 60819/2021 dated 25.03.2021**, has considered the said arrangement and held as under:

> "**4.1** We have considered the impugned order along with the submissions made in the Appeal, during the course of arguments and in written submissions filed by both the sides.
>
> **4.2** We find that the issue involved in the present appeal is squarely covered by the decision of Delhi Bench of CESTAT in the case of Sir Ganga Ram Hospital, supra, referred to by the counsel for appellant:
>
> > *"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 appellant 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 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 appellant 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 service. 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 arrangements.

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 KK 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.

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. After introduction of negative list tax regime, Notification No. 25/2011-ST 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."*

10. The terms "health care services" is defined as below:

> *"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized 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 their transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of both affected due to congenial defects, developmental abnormalities, injury or trauma."*

11. These two provisions available in Notification No. 25/2012 will show that a clinical establishment providing health care services are exempted from services tax. The view of the Revenue that is 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."

4.3 Revenue has in their submissions failed to distinguish the facts in hand from the facts as were considered by the CESTAT, in the case of Sir Ganga Ram Hospitals, supra. We

also find that this decision of CESTAT in case of Sir Ganga Ram Hospital has been accepted by the revenue, as following has been noted by the CESTAT, Delhi Bench in subsequent order (Final Order No 50877/2020 dated 02.09.2020),-

> *"12. The aforesaid decision of the Tribunal has been accepted by the Department as is clear from the communication dated August 20, 2018 sent by the department."*

4.4 The decision of Sir Ganga Ram Hospital has been followed by the CESTAT in a series of decisions referred to by the learned counsel. Revenue has not shown a single decision wherein contrary view has been taken.

4.5 In view of the above in our opinion the issue is squarely on all fours, is identical to the case of Sir Ganga Ram Hospital. Hence following the ratio of that decision we do not find any merits in the impugned order, and set aside the same.

5.1 In view of the discussions as above, appeal is allowed and the impugned order set aside."

7. Since, both the issues are covered by the decisions of this Tribunal in the above cited cases, therefore, by following the ratios of above cited decisions, we are of the considered view that the impugned orders are not sustainable in law and are liable to be set aside and we do so by allowing both the appeals of the Appellants.

(Order pronounced in the open court on 20.11.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

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