

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60375 of 2017**

[Arising out of Order-in-Appeal No. 134-135/ST/DLH/2016 dated 10.02.2017  
passed by the Commissioner (Appeals-I), Central Excise, Delhi]

**M/s Dhawan Hospital**

Plot No. 1, Sector 7,  
Panchkula, Haryana 134109

**...Appellant**

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Panchkula**

SCO 407-408, Sector 8.  
Panchkula, Haryana 134119

**...Respondent**

**WITH**

**Service Tax Appeal No. 60376 of 2017**

[Arising out of Order-in-Appeal No. 134-135/ST/DLH/2016 dated 10.02.2017  
passed by the Commissioner (Appeals-I), Central Excise, Delhi]

**M/s Dhawan Hospital**

Plot No. 1, Sector 7,  
Panchkula, Haryana 134109

**...Appellant**

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Panchkula**

SCO 407-408, Sector 8.  
Panchkula, Haryana 134119

**...Respondent**

**APPEARANCE:**

Mr. Vikrant Kackria, Advocate for the Appellant

Mr. Anurag Kumar and Mr. Yashpal Singh, Authorized Representatives for  
the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 61747-61748/2025**

DATE OF HEARING: 09.12.2025  
DATE OF DECISION: 09.12.2025

**S. S. GARG :**

These two appeals are directed against a common impugned OIA dated 10.02.2017 passed by the Commissioner (Appeals), vide which the learned Commissioner (Appeals) has confirmed the demand of service tax in respect of show cause notice dated 24.04.2014, along with interest and also imposed penalties under Sections 77 & 78 of the Finance Act, 1994. Further, in respect of show cause notice dated 30.03.2015, the learned Commissioner (Appeals) has confirmed the demand of service tax for normal period along with interest and penalties and dropped the demand for extended period. Since the issue involved in both the appeals is identical and there is a common impugned order, therefore, both the appeals are taken up together for the purpose of discussion and decision.

2. Briefly stated facts of the present case are that the Appellant run a hospital which provides health services to the patients on its own and also by engaging various diagnostic agencies and doctors/consultants from outside on contract basis. Based on information that the Appellant were engaged in providing Business Support Services and were not paying service tax thereon, an investigation was initiated against the Appellant. During the course of investigation, it was found that the Appellant had oral agreements with various doctors/consultants on revenue sharing basis in relation to OPD and IPD patients, whereby a part of fee charged from patient treated/operated by independent doctor/consultant is retained by them in lieu of providing administrative support and operational support like clinical, mechanical and paramedics etc to them. As per

the department, the services provided by the Appellant are not 'Health Care Services' but are 'Business Support Services' provided to doctors/consultants and therefore, the Appellant are liable to pay service tax under the category of 'Business Support Services'. On these allegations, two show cause notices for the different periods were issued to the Appellant, which were adjudicated by the Additional Commissioner vide the Order-in-Original dated 14.08.2015 whereby the learned Additional Commissioner confirmed the demands by invoking the extended period. Being aggrieved by the said Order-in-Original, the Appellant filed appeals before the Commissioner (Appeals) and the learned Commissioner (Appeals) vide the impugned order has confirmed the demand in respect of show cause notice dated 24.04.2014 along with interest and penalties; but in respect of show cause notice dated 30.03.2015, demand for extended period was dropped and demand for normal period was confirmed along with interest and penalty. Hence, the Appellant have preferred the present appeals before us.

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

4. 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.

4.1 The learned Counsel further submits that the issue involved in both the appeals is whether the Appellant are liable to pay service tax under the category of 'Business Support Services' for the services provided by them to the doctors/consultants working in their hospital.

He further submits that the doctors/consultants work with the Appellant on revenue sharing model in which certain amount is retained by the hospital and certain amount is paid to the visiting doctors. He further submits that the department wrongly took the view that the services provided by the Appellant are not 'Health Care Services', but are 'Business Support Services' provided to the visiting doctors. He further submits that this issue is no more *res integra* and has been settled by the Tribunal in various decisions wherein it has been consistently held that the services provided by the hospitals are 'Health Care Services' and are not 'Business Support Services'. In this regard, he relies on the following decisions:

- **M/s Sir Ganga Ram Hospital vs. CST – 2018 (11) GSTL 427 (Tri. Del.)**
- **M/s Sir Ganga Ram Hospital vs. CST – 2020 (43) GSTL 390 (Tri. Del.)**
- **CCE & ST, Panchkula/Delhi-IV vs. Alchemist Hospital Ltd, Artemis Medicare Services Ltd (vice versa) – 2019 (3) TMI 1331 CESTAT Chandigarh**
- **M/s Fortis Healthcare India Ltd vs. CCE – 2019 (9) TMI 462 CESTAT Chandigarh**
- **M/s Gujarmal Modi Hospital & Research Centre for Medical Sciences vs. CST – 2019 (1) TMI 378 CESTAT New Delhi**
- **M/s Ivy Health & Life Sciences P Ltd vs. CCE – 2019 (4) TMI 178 CESTAT Chandigarh**
- **Om Savitri Jindal Charitable Society [Final Order No. 60819/2021 dated 25.03.2021 – CESTAT Chandigarh]**
- **Om Savitri Jindal Charitable Society and NC Jindal Institute of Medical Care & Research [Final Order No. 61695-61696/2025 dated 20.11.2025 – CESTAT Chandigarh]**

He further submits that it has been consistently held that said services for providing Health Care Services do not come under the

category of Business Support Services and would be covered under Health Care Services only, which are exempt from the payment of service tax.

4.2 The learned Counsel further submits that the other objection of the department is that the Appellant had surrendered an amount aggregating to Rs. 2.35 crores before the Income Tax Authorities and the said amount also pertains to the above mentioned Business Support Services provided by the Appellant. In this regard, he submits that even if the said amount pertains to the above mentioned services, then also the same is not taxable as the issue already stands settled in above cited decisions. He also submits that the Appellant had clarified before Income Tax Authorities that the said cash has been generated from the medical profession over the years and the same is not liable to service tax. He further submits that it has consistently been held by the various courts that the service tax cannot be demanded merely on the basis of amount surrendered to the Income Tax Department and the onus is on the department to prove as to whether any taxable services have been provided. For this, he places reliance on the following decisions:

- **Commissioner of Central Excise, Ludhiana vs. Mayfair Resorts - 2011 (22) STR 263 (P&H)**
- **Arisudana Industries Limited vs. Commissioner of Central Excise, Ludhiana - 2016 (339) ELT 258 (Tri. Chan.)**
- **Commissioner of Central Excise, Ludhiana vs. Zoloto Industries - 2013 (294) ELT 455 (Tri. Del.)**

4.3 Further, the learned Counsel also submits that demand has been confirmed by invoking the extended period of limitation. He also submits that the issue involved in the present case was pan India and

Show Cause Notices were issued to the Hospitals across the country. He further submits that this issue has already been decided in favour of the assessee/appellants, therefore, there is no reason for invocation of extended period of limitation and hence the demand merits to be dropped on that account. He also submits that the department has not been able to establish any proof on record to show that there was any fraud suppression or willful misstatement on the part of the Appellant which would warrant invocation of the extended period of limitation.

4.4 The learned Counsel also submits that if the extended period of limitation is not invocable then the department cannot demand even the tax for the normal period of limitation because the Show Cause Notice had invoked the longer period of limitation. For this, he places reliance on the following decisions:

- **Collector of Central Excise, Jaipur vs. Alcobex Metals - 2003 (153) ELT 241 (SC)**
- **Infinity Infotech Parks Ltd. vs. Union of India - 2014 (36) STR 37 (Cal.)**
- **Shyam Spectra Pvt. Ltd. vs. Commr of ST, Delhi-II [Final Order No. 56196/2024 dated 31.07.2024 in Service Tax Appeal No. 50583 of 2017]**
- **M/s R.S. Financial Services vs. Commissioner of Central Excise, Chandigarh-II [Final Order No. 60489/2024 dated 27.08.2024 in Service Tax Appeal No. 1448 of 2011]**

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

6. We have considered the submissions made by both the parties and perused the material on record. We find that the issue involved in the present appeals is no longer *res integra* as has been decided by

the Tribunal in various cases as cited supra wherein it has been consistently held that the services rendered by the hospitals do not fall under the category of 'Business Support Services' rather the said services fall under the category of 'Health Care Services' which are exempt from the payment of service tax. We find that the issue relating to revenue sharing arrangement between the Appellants and the Doctors, has been considered by this Tribunal in the case of **Om Savitri Jindal Charitable Society** vide **Final Order No. 60819/2021 dated 25.03.2021**, wherein the Tribunal has 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. As regards the invocation of extended period of limitation is concerned, we find that the issue involved in the present case was relating to interpretation of statutory provision, therefore, the extended period cannot be invoked as the issue was pan India and the Tribunal/Courts in various decisions have held that the services provided by the Hospitals are not 'Business Support Services' rather these services are 'Health Care Services' which are not subject to service tax. Further, we find that the department has not been able to establish any of the ingredients which are required for invoking the extended period of limitation. Further, we also find that when the demand for extended period fails, the demand for normal period will

also go as held by the Hon'ble Calcutta High Court in the case of **Infinity Infotech Parks Ltd** (supra) wherein the Hon'ble High Court has held as under:

"**92.** When a notice is issued in support of transactions spread over a period of time and it is found that the extended period of invocation has been invoked, the notice cannot be treated as within limitation for some of the same transaction, once it is found that the extended period of limitation is not invocable. This proposition find support from the judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Alcobex Metals reported in (2003) 4 SCC 630 = 2003 (153) E.L.T. 241 (S.C.)."

Further, the Principal Bench of the Tribunal, in the case of **Shyam Spectra Private Limited** (supra) has also followed the ratio of the judgment of Hon'ble Calcutta High Court in **Infinity Infotech Parks Ltd** (supra)'s case.

8. In view of our discussion above and by following the ratios of above cited decisions (supra), we are of the considered view that the impugned order is not sustainable in law and is liable to be set aside and we do so by allowing both the appeals of the Appellant.

(Operative part of the order pronounced in the open court)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**