CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41395 of 2016

(Arising out of Order-in-Original No.C.No.V/VCES/30/232/2014-ST,02/2016-(ST-COMMR.), dated 16.03.2016 passed by the Commissioner of Central Excise, No.1, Foulks Compound, Anai Road, Salem 636 001).

S K Hospital **...Appellant**
9 Ram Nagar, Gobichettipalayam
Erode 638 452

Versus

Commissioner of Central Excise and Service Tax **...Respondent**
No.1 Foulks Compound, Anai Road
Salem 636 001

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Shri N. Satyanarayana, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.40503/2026

DATE OF HEARING:13.01.2026
DATE OF DECISION : 17.04.2026

Per Mr. AJAYAN T.V.

SK Hospital, the appellant herein, has preferred this appeal challenging the Order in Order-in-Original No. C.No.V/VCES/30/232/2014-ST,02/2016-(ST-COMMR.), dated 16.03.2016 (the impugned order).

2. Relevant facts are that pursuant to verification conducted by Departmental officers, it was noticed that the appellant who is a service provider registered under the category "Health Checkup and Treatment Services", has not paid service tax on the gross amount charged and received directly from M/s. Star Health and Allied Insurance Company Limited and other insurance companies for the period from 01.07.2010 to 30.04.2011. During the period 01.07.2010 to 30.04.2011, the appellant provided medical treatments to patients covered under various medical insurance schemes including the "Kalaignar Kapitu Thittam".

During the said period, medical services were taxable if the payment was made directly by an insurance companies or business entity to the hospital. On 30.12.2013, the appellant opted for the voluntary Compliance Encouragement Scheme (VCES), declaring a taxable value of Rs.11,78,900/- and paying tax of Rs.1,21,427/-. A discharge certificate (VCES - 3) No.142/2013 dated 30.01.2014 in terms of the subsection (7) of Section 107 of the Chapter VI of the Finance Act 2013 was issued by the designated authority.

3. Subsequently, on verification of hospital records conducted by the department, it was seen that the appellant had actual gross receipts of Rs.44,14,824 for the disputed period. Hence, the department being of the view that the appellant has failed to declare their correct service tax liability in the VCES -1 declaration filed, issued a Show Cause Notice (SCN) invoking the extended period of limitation as per *proviso* to Section 73 (1) of the Finance Act 1994 (Act), read with section 111 (1) and Section 111 (3) of Chapter VI of the Finance Act 2013, demanding the short paid an amount of Rs.3,33,300/-, along with applicable interest and proposing imposition of penalties under Section 76, 77 and 78 of the Act. After due process of law the Adjudicating Authority confirmed a demand of Rs.2,90,990/- appropriated the amount of Rs.1,21,427/- and Rs.1,59,945/- paid by the appellant against the said demand. The order also demanded interest and appropriated an amount of Rs.4,421/- paid against such interest demand and further imposed an equivalent penalty of Rs.2,90,990/- under Sec.78 of the Act as well as a penalty of Rs.10,000/- under Section 77 (2) of the Act. An amount of Rs.10,000/- paid towards the above penalty was also appropriated vide the said order. Aggrieved, the appellant has preferred this appeal.

4. Shri M.N. Bharathi, Ld. Advocate appearing for the appellant contended that the new levy on medical services in terms of sub-clause (zzzzo) of section 65 (105) has been exempted vide notification No. 30/2011-S.T., dated April 25, 2011. It was therefore argued that the earlier levy on certain services provided by hospitals imposed in the previous year, having been substituted by the new entry, will not be applicable anymore.

Reliance was placed on the letter D.O.F. No.334/3/2011 -TRU dated 25.04.2011.

5. Without prejudice, the Ld. counsel contended that the Hon'ble High Court of Madras in its decision in ***M/s Arvinth Hospital vs. The Additional Commissioner Central Excise, 2016 (11) TMI 238 – Madras High Court*** has held that the nature of the transaction under the Kalignar Kapitu Thittam (KKT) must be examined before levying the tax. The Hon'ble High Court held that the primordial question would be whether while implementing the Welfare Scheme propounded by the State Govt. if the work is entrusted to STAR, would that by itself make it an insurance policy. Thus the Hon'ble High Court expressed the view that such an exercise is required to be done before coming to the conclusion as to what is the nature of service rendered and whether it is a insurance policy or it is a welfare scheme. The Ld. counsel submits that the said decision was applied in the case of ***Ganga Medical Centre and Hospital vs. Commissioner of Central Excise, 2018 (1) TMI 168***, which was affirmed by the Hon'ble Madras High Court in ***CCE and ST, Coimbatore v. M/s. Ganga Medical Centre and Hospitals (P) Ltd. Coimbatore, 2019 (1) TMI 76 – Madras High Court***.

6. Ld. Counsel further argued without prejudice to the above submissions that service tax can be levied only on the consideration for service and any expenditure incurred by the service provider which is reimbursed by the recipient cannot be included in the taxable value placing reliance on the decision in ***Union of India v. Intercontinental Consultants and Technocrafts Pvt. Ltd. 2018 (3) TMI 357 (SC)***.

7. The Ld. counsel also argued that the demand is barred by limitation. It is submitted that extended period was invoked on the allegation when the VCES -1 declaration was substantially false or made with the intent to evade tax. It is contented that the category of health checkup treatment services was new and controversial levy, introduced as per Notification dated 22.06.2010 which was withdrawn shortly through the notification 30/2011 dated 25.4.2011. Since the service was taxable for the limited period and there was a considerable confusion as to whether the service rendered under a scheme by the Government fall under the category of

health services for levy of service tax or for welfare scheme, the issues were debatable and involved interpretation of legal provisions. Hence he prayed that the appeal may be allowed by way of remand.

8. Shri N. Satyanarayana, Ld. Authorised Representative appearing for the Respondent reiterated the findings in the impugned order. Heard both sides, perused the appeal records and the case laws submitted.

9. We find that sub-clause (zzzzo) of clause 105 of Section 65, as it was originally enacted read as under:

"(zzzzo) by any hospital, nursing home or multi-speciality clinic, --

(i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or

(ii) To a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic;

10. Section 65(105)(zzzzo) was substituted by s.74 of the Finance Act 2011 (8 of 2011), with effect from 01-05-2011 and the substituted section read as under:

"(zzzzo) 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;

11. We find that on an earlier occasion this Tribunal when seized of a matter involving identical facts and circumstances, in the decision in ***M/s. Ganga medical Centre and Hospitals Pvt Ltd v. CCE, Coimbatore, 2018(1) TMI 168-CESTAT CHENNAI***, has, after setting aside the penalties imposed, remanded the matter for denovo adjudication. Relevant portion of the order is as under:

"7. The appellants had rendered the services as per the Kalaignar Kapeetu Thittam floated by the Tamil Nadu Government. GO (Ms.)49 dated 4.2.2009. The scheme has to be operated through approved insurance company. The entire reimbursement has to be paid by the Government to the insurance company on behalf of beneficiaries. Under this scheme, each beneficiary family will be insured for availing free medical treatment upto Rs. One lakh in a block period of four years. Families who are given identity cards under different welfare schemes such as agricultural labourer scheme, manual workers welfare board, construction workers welfare board etc. are to be included as eligible beneficiaries under the scheme. In addition, any family whose annual income is less than ₹ 24,000/- will be covered under the scheme as members. Star Health and Allied Insurance Company was recognized for implementation of the scheme. The appellant thus vide agreement dated 28.7.2009 had empanelled for providing the treatment under the said scheme. The foremost argument put forward on merits by the ld. consultant is that the treatment rendered under Kalaignar Kapeetu Thittam floated by the Government would not be covered by the definition of 'Health Services'. The said issue was agitated before the Hon'ble jurisdictional High Court in the case of M/s. Arvinth Hospitals (supra). The Hon'ble High Court has observed as under:-

> "10. However, one fundamental error which has crept in the impugned proceedings is that the authority while adjudicating the show cause notice did not examine the scope of the transaction between the petitioner and the Government/STAR. In fact that should have been the first endeavour of the adjudicating authority, since the petitioner raised a preliminary objection by stating that KKT is a Welfare Scheme and not an Insurance policy, no approval was obtained from IRDA and therefore, they will not fall within the definition of Health Check-up and 'Treatment Services'. Thus, the primordial question would be whether while implementing the Welfare Scheme propounded by the State Government, if the work is entrusted to STAR would that by itself make it an Insurance Policy. The second aspect which has to be seen as to who is the insured, the specific case of the petitioner is that the recipient is the public, who are below the poverty line and there is no policy drawn between the beneficiary and STAR or the petitioner. Therefore, unless and until the Scheme has been examined in full, the respondent cannot come to a conclusion that the nature of transaction done by the petitioner would fall within the definition of Section 65(105)(zzzzo) of the Finance Act. Therefore, this Court is of the view that such an exercise is required to be done before coming to the conclusion as to what is the nature of service rendered and whether it is an Insurance Policy or it is a Welfare Scheme. Thus, without examining the Government orders, the Scheme propounded by the Government arrangement with STAR, the petitioner and the Government, conclusion could not have been arrived at and the case laws referred to could not have been made applicable without going into the facts and the terms of the subject schemes which may be distinct and different from those considered in the decision relied on by the respondent.
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> 11. In the light of the above, this Court is of the view that the matter should be reconsidered by the respondent as indicated in the preceding paragraphs and such exercise should be done.
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> 12. For all the above reasons, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondents to reconsider the

> entire issues afresh, without in any manner being influenced by the findings recorded in the impugned order dated 29-4-2016. For the purpose of taking a holistic view of the entire matter, the petitioner should be directed to produce all the documents concerning the Scheme and if the petitioner is unable to produce certain documents, it will be open to the first respondent to call for the same from the competent authority of the State Government and thereafter, make a thorough examination of the factual aspects and after affording an effective opportunity of personal hearing to the petitioner, pass fresh orders on merits and in accordance with law. The petitioner is directed to co-operate in the adjudication and the first respondent shall endeavour to complete the entire exercise, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

8. As seen from the judgment, the case of M/s. Arvinth Hospitals was remanded to the adjudicating authority to analylze the issue whether the services would fall under taxable category of health services. The facts presented in this case before us are identical and the submissions made are similar. We are of the view that the issue, whether the services rendered by the appellant would fall under taxable category of health service, has to be given reconsideration in line with the observations and directions of the Hon'ble High Court rendered in the case of M/s. Arvinth Hospital. We deem it fit to remand the matter to the adjudicating authority who will reconsider the issue whether the services are taxable or not.

9. The ld. consultant has also argued on the ground of limitation. As the main issue is remanded to the adjudicating authority, we leave this issue open with a direction to the adjudicating authority to decide the issue of limitation also in the denovo adjudication. However, we make it clear, that the issue being an interpretational one, also since the services were taxable for a limited period and as there was considerable confusion as to whether the services rendered under a scheme floated by the Government would fall within the category of Health Services for levy of service tax, we find that the appellant has put forward reasonable cause for not discharging service tax on the entire value raised in the Bill. It is a fit case to invoke section 80 of the Finance Act, as it stood then. The adjudicating authority has failed to do so. As discussed, in the instant case the penalty imposed is unwarranted. Further, the appellant has paid to the Government the service tax collected from the insurance company. Taking these facts into consideration, we are of the opinion that invoking section 80, the penalty requires to be set aside, which we hereby order.

10. In the result, the impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority to decide afresh on merits as well as on limitation basing upon the Hon'ble High Court's decision in the case of M/s. Arvinth Hospitals cited supra. The issue of limitation is also left open. The adjudicating authority shall give reasonable opportunity of hearing to both sides. The penalty imposed under sections 78 and 77 are set aside in toto under section 80 of the Finance Act, 1994.

11. In the result, the appeal is disposed of in the above terms."

12. We notice that the Revenue's challenge to the aforesaid order of this Tribunal in setting aside the penalties invoking section 80 was dismissed by the Honourable Madras High Court vide its Judgement in ***CCE and***

ST, Coimbatore v. M/s. Ganga Medical Centre and Hospitals (P) Ltd. Coimbatore, 2019 (1) TMI 76 – Madras High Court.

13. In these circumstances, we find merits in the appellant's submissions that since the service as originally introduced was taxable in that manner only for a limited period and there was a considerable confusion as to whether the service rendered under a scheme by the Government fell under the category of health services for levy of service tax or for welfare scheme and that as such the issues were debatable and involved interpretation of legal provisions. Therefore, respectfully following the aforesaid decision of this Tribunal, in the instant case we too find it a fit case to invoke Section 80 of the Act as was prevailing then, and the penalties imposed are liable to be set aside. In the aforesaid facts and circumstances, we are also of the view that extended period of limitation cannot be invoked.

14. Resultantly, respectfully following the aforesaid decision in ***M/s. Ganga medical Centre and Hospitals Pvt Ltd v. CCE, Coimbatore, 2018(1) TMI 168-CESTAT CHENNAI***, the impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority to decide afresh on merits in line with the Hon'ble High Court's decision in the case of ***M/s. Arvinth Hospitals, reported in 2016 (11) TIMI 238-MADRAS HIGH COURT***, however, confining such *denovo* adjudication only for the period, if any, within the normal period. The adjudicating authority shall give reasonable opportunity of hearing to the appellant who is allowed to adduce evidence as necessary in support of all contentions that the appellant seeks to advance. The penalty imposed under sections 77 and 78 of the Act are set aside in toto under section 80 of the Finance Act, 1994.

The appeal is allowed by way of remand as sought, in the above terms.

(Order pronounced in open court on 17.04.2026)

(AJAYAN T.V.)	**(M. AJIT KUMAR)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

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