

No Service Tax on health care services provided by the clinical establishments by engaging consultant doctors

The CESTAT, New Delhi in the matter of *M/s. Maharaja Agrasen Hospital Charitable Trust v. the Commissioner of Service Tax, New Delhi – III [Service Tax Appeal No. 52193 of 2016 dated January 2, 2023]* set aside the demand order passed by the Revenue Department confirming the demand of service tax under the head business support services. Held that, there is no legal justification to tax the share of clinical establishments on the ground that they have supported the commerce or business of doctors by providing infrastructure and such assertion is neither factually nor legally sustainable. Further held that, clinical establishments providing health care services are exempted from the levy of Service Tax (“ST”).

Facts:

M/s. Maharaja Agrasen Hospital Charitable Trust (“**the Appellant**”) is running a hospital, where it engages doctors as consultants, resident doctors, senior resident doctors and doctors on internship basis and it raises a bill towards room charges, medicines, diagnostic charges and doctor fees. The doctors are paid 78% of the share of fees and the Appellant retains the remaining 22%.

The Appellant has filed this appeal against the order dated March 31, 2016 (“**the Impugned Order**”) passed by the Commissioner of Service Tax, New Delhi – III (“**the Respondent**”) wherein the Respondent confirmed the demand of ST under ‘business support services’ along with penalty and interest, on the grounds that the Appellant is providing infrastructural support services like secretarial support, consultation chambers and other facilities to the doctors and it was retaining the amount mentioned above for rendering these services.

Issue:

Whether the Respondent was justified in confirming the demand ST under the head 'business support services'?

Held:

The CESTAT, New Delhi in ***Service Tax Appeal No. 52193 of 2016*** held as under:

- Relied on the judgment of the Tribunal in the matter of ***Sir Ganga Ram Hospital and Ors. v. CCE, Delhi-I and Ors [2018 (11) GSTL 427]*** which was considered in the subsequent decision rendered in ***M/S Sir Ganga Ram Hospital v. Commissioner of Service Tax, New Delhi [2020 (43) G. S. T. L. 390 (Tri. - Del.)]*** wherein, it was held that the arrangement between the hospital and doctors is a revenue sharing model for the joint benefit of both the parties with shared responsibilities and obligations and, therefore, no service was provided by the hospital to the doctors. Further, where the agreements do not specify the specific facilities that can be considered as infrastructure support for doctors, there is no legal basis for taxing the hospital's share on the grounds that they have supported the business of doctors by providing infrastructure. Furthermore, it was noted that clinical establishments providing healthcare services are exempted from the levy of ST vide ***Notification No. 25/2012-Service Tax, dated June 20, 2012*** ("the Mega Exemption Notification").
- Opined that, in spite of such exemption available to health care services, taxing a part of the consideration will defeat the exemption provided to the health care services by clinical establishments. There is no legal justification to tax the share of clinical establishments on the ground that they have supported the commerce or business of doctors by providing infrastructure. Thus, such assertion is neither factually nor legally sustainable.
- Held that, the Respondent was not justified in making the demand of ST under the head 'business support services.', therefore, the Impugned Order cannot be sustained.

- Set aside the Impugned Order.

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