::आयुक्त (अपील) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी.द्वारा :-

DIN – 20210364SX0000116491

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIO No.	दिनांक/ Date
	V2/66-69/RAJ/2020	10/11/12/13/D/AC/2020-21	10-06-2020

ख अपील आदेश संख्या(Order-In-Appeal No.):

RAJ-EXCUS-000-APP-008-TO-011-2021

आदेश का दिनांक / Date of Order: **24.03.2021** जारी करने की तारीख / Date of issue: **25.03.2021**

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित/
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपयुक्तलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the **Appellant** & Respondent :-

M/s. Harilal Jechand Hospital Trust, Malviya Nagar, Gondal Road, Rajkot-360004.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो म,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

Harilal Jechand Doshi Hospital Trust, Rajkot (*herein after referred to as* "Appellant") filed Appeal Nos. V2/66-69/Raj/2020 against Order-in-Original No. 10-13/D/AC/2020-21 dated 10.6.2020 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner (in situ), Central GST, Division-I, Rajkot (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was operating a hospital providing health service. The investigation carried out against the Appellant revealed that the Appellant had engaged various doctors and specialists for providing health care services to patients; that the Appellant provided required infrastructure and other facilities as well as administrative support to such visiting doctors/specialists; that the patients' bills were raised and fees and charges were recovered by the Appellant and out of said amount, fees were paid to such visiting doctors/specialists and part of amount collected from patients were retained by the Appellant. It appeared that the income retained by the Appellant for providing their infrastructure and administrative support was liable to service tax under 'Support Service for Business or Commerce'; that with effect from 1.7.2012, all services were taxable under Section 66B of the Finance Act, 1994 (hereinafter referred to as 'Act'), except those services specified in negative list under Section 66D ibid or exempted by way of Notification; that the Appellant failed to pay service tax.

2.1 The Appellant was issued two Show Cause Notices demanding *service* tax covering the period from April, 2007 to September, 2011 and from October, 2011 to March, 2013, respectively, which was confirmed by the then adjudicating authority. The Appellant contested the issue before the then Commissioner (Appeals), Rajkot, which was decided in favour of the Appellant vide Order-in-Appeal No. RAJ-EXCUS-000-APP-257-14-15 dated 30.1.2015 and Order-in-Appeal No. RAJ-EXCUS-000-APP-045-15-16 dated 26.11.2015, respectively. The Department reviewed the said Orders-in-Appeal and filed appeals before the Hon'ble CESTAT, Ahmedabad, but later withdrew the appeals on monetary grounds.

2.2 For the subsequent period, the Appellant was asked to submit details of amount collected as fees from patients and amount paid to visiting doctors in

respect of health care service provided by such visiting doctors, but the Appellant failed to provide such details. Hence, the service tax liability was arrived upon by resorting to best judgement assessment provided under Section 72 of the Act and following four Show Cause Notices were issued to the Appellant for demanding service tax under Section 73(1) of the Act, along with interest under Section 75 and proposing imposition of penalty under Sections 70, 76, 77 and 78 of the Act:

Sl. No.	SCN / Statement of Demand No. & Date	Period covered	Service Tax Amount (Rs.)
1.	IV/15-24/ST/Adj/AC-48/14-15 dated 13.10.2014	April, 2013 to March, 2014	3,67,057/-
2.	VI(a)/6-6/SCN/AC/ST/2015-16 dated 23.7.2015	April, 2014 to March, 2015	4,58,821/-
3.	V.ST/ST-RJT/AR-II/ADC (PV)63/16-17 dated 2.8.2016	April, 2015 to June, 2016	6,58,474/-
4.	V.84(4)-34/MP/D/2018-19 dated 25.3.2019	April, 2016 to June, 2017	11,84,363/-

2.3 The aforesaid Show Cause Notices were adjudicated by the Adjudicating Authority vide the impugned order who confirmed service tax demand totally amounting to Rs. 26,68,715/- under Section 73(1) of the Act, along with interest under Section 75 and imposed penalty of Rs. 26,68,715/- under Section 78 and Rs. 40,000/- under Section 77 and late fee of Rs. 20,000/- per return under Section 70 of the Act.

3. Being aggrieved, the Appellant has filed the present appeals, inter alia, on following grounds:

(i) There is no activity done by them, which amounts to 'business support services', and there is no consideration flowing from the visiting doctors to the trust. Even if for the sake of argument if the allegation of the department is to be believed, then also, there is no promotion of the business of the doctors who are visiting the hospital. It is the doctors who are getting some amount as compensation/ honorarium, for their services provided to the Hospital.

(ii) That Shri Haresh Himatlal Dhorda, Chief Accountant of the Appellant, has stated in his statement dated 12-7-2012 to the service tax officers that they are a public charitable hospital, engaged in rendering medical services to its patients and also submitted sample copies of the

contracts entered with such doctors / specialists. He also stated that the hospital is not providing any service to the doctors, that the amount retained by them represents consideration received by them from their patients on account of provisions of medical services. No doctor is allowed to see the patients on their own volition. It is only when a certain medical emergency arises, and the in house doctor needs the help of an expert surgeon/doctor, then only the expert doctor/surgeon is called for as visiting doctors.

(iii) There is nothing in the definition of 'Business Support Service' given under Section 65(104)(c) of the Act, related to the charitable activities or even the medical services provided by the doctors. The said definition is only related to the furtherance of business or commerce. In their case, the very first part, i.e. 'business or commerce' itself is missing, because they are a charitable and non-profit organization. In their case, there is no consideration at all. Therefore, the allegation that they are providing business support services, is not at all correct, and therefore, it is not sustainable. The impugned order needs to be dropped on this count alone.

(iv) That Section 65 (105) (zzzq) of the Finance Act, 1994, defines the taxable service provided or to be provided 'in relation to support services of business or commerce' is taxable. But in their case, there is no service provided by the hospital or the trust to the doctors. There is no consideration received from the doctors. There is no 'business or commerce' in the activity carried out by the hospital or the doctors. There is no promotion of the doctors individual profession or their private clinics in the hospital premises, or in any manner. The allegation of the hospital or the trust providing business support services is totally vague and baseless. Such an allegation by misinterpreting the provisions of service tax and also making allegations of suppression and mala fide intention, is itself bad in law.

(v) Since there is no taxable service provided by them, they are not liable to pay any service tax and since, there can be no demand of service tax, proposal for recovery of interest and imposing penalties has to fail.

(vi) That for the previous period, the then Commissioner (Appeals), Rajkot has decided the issue in their favour vide Order-in-Appeal No. RAJ-EXCUS-000-APP-257-14-15 dated 30.1.2015 and Order-in-Appeal No. RAJ-EXCUS-000-APP-045-15-16 dated 26.11.2015. Further, they relied upon Order-in-Appeal No. RAJ-EXCUS-000-188-14-15 dated 16.9.2014 passed in the case of Sterling Addlife India Ltd, Rajkot and Order-in-Appeal No. RAJ-EXCUS-000-APP-200-14-15 dated 26.9.2014 passed in the case of Wockhardt Hospitals, Rajkot.

4. Personal Hearing was conducted in virtual mode through video conferencing on 12.2.2021. Shri R. Subramanya, Advocate, appeared on behalf of the Appellant and reiterated the grounds of appeal memorandum and stated that the demand pertaining to earlier period have been decided by the Commissioner(Appeals) in their favour.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made by the Appellant at the time of personal hearing. The issue to be decided in the present appeal is whether the impugned order confirming service tax demand of Rs. 26,68,715/- under Section 73 and imposing penalty under Sections 77(1), 77(2) and 78 of the Act is correct, legal and proper or not.

6. On going through the records, it is observed that the Appellant was engaged in providing health care services and had engaged various doctors and specialists for providing medical services to their patients. The Appellant provided required infrastructure and other facilities as well as administrative support to such visiting doctors/specialists. The Appellant recovered fees and charges from patients and out of the said amount, fees were paid to such visiting doctors/specialists and part of amount collected from patients were retained by the Appellant. The adjudicating authority confirmed service tax demand on such retained amount on the grounds that the Appellant had provided their infrastructure and administrative support to said doctors/specialist, which is covered under 'Support Service for Business or Commerce' and such service was neither covered under negative list under Section 66D of the Act nor exempted by way of Notification.

6.1 The Appellant has pleaded that there was no activity done by them,

which amounted to 'Business Support Service'. The Appellant further pleaded that there was no 'Business Support Service' provided by them to the doctors and they did not receive any consideration from the doctors. There is no 'business or commerce' in the activity carried out by the hospital or the doctors. There is no promotion of the doctors, individual profession or their private clinics in the hospital premises, or in any manner. Hence, they are not liable to pay any service tax.

7. On careful examination of the facts of the case, I find that the Appellant had engaged doctors and specialists for providing healthcare services to patients. The Appellant raised bills and recovered fees/charges from such patients. The Appellant retained some portion of such fees / charges and made payment of remaining amounts to visiting doctors and specialists. Thus, the Appellant had provided health care service to patients and not to doctors/specialists. Further, there was no provision of service by the Appellant to the doctors/ specialists. On the contrary, said doctors/specialists had provided service to the Appellant by attending/treating patients and for such service, the Appellant had paid consideration to said doctors/specialists and not the other way around. I rely on the Order No. A/85982-85998/2019 dated 29.05.2019 passed by the Hon'ble CESTAT, Mumbai, in the case of National Health and Education Society, wherein it has been held that,

> "11. In order to arrive at a definitive conclusion on the taxability of service, the main ingredients which need to be necessarily present, as per this statute, are the service, service provider, service receiver and the consideration for the service. In the instant case, the alleged service provider is undoubtedly the hospitals/ institutions; the service rendered is to the patients; remuneration is received by the hospitals/institutions and is paid by the patients. Understandably, the services rendered by the hospitals/institutions are at best medical services to the patients and by no stretch of imagination 'Business Support Services'. It is immaterial that the hospitals are paying a portion of the remuneration received to the doctors for the services rendered by them to the hospitals. It is the case of the department that the hospitals/institutions are rendering 'Business Support Services' to the doctors. In such a case, the hospitals should have charged the doctors for the services rendered to them. One cannot take a long drown conclusion that a portion of the doctors' fee paid by patients is retained by the hospitals/institutions and such retention should be treated as consideration paid to the hospitals. We have noticed that none of the agreements indicate any such arrangements between the hospitals and doctors. Counsels for the appellants submitted that wherever the Hospitals are providing infrastructural services per se to the doctors, i.e. without any reference to the patients admitted to the Hospitals, they are paying applicable service tax. Under the circumstances, it cannot be alleged that the hospitals are providing 'Business Supports Services' to the doctors."

8. I further find that health care services rendered by clinical establishments

were exempted from payment of service tax by virtue of Entry No. 2 of Notification No. 25/2012-ST dated 20.6.2012, which reads as *"Health care services by a clinical establishment, an authorised medical practitioner or para-medics"*. Further, the definition of terms 'clinical establishment' and 'health care service' defined under said Notification are reproduced as under:

> "Clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised 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;"
>
> "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised 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 hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma"

8.1 I find that the Appellant, being a hospital, is covered under the term 'clinical establishment' defined above. Further, health care services provided by the Appellant to patients are also covered under the term 'health care service'. Thus, the health care services provided by the Appellant to the patients were exempted from payment of service tax, in terms of Notification No. 25/2012-ST dated 20.6.2012, as amended.

8.2 I find that identical issue has been decided by the Hon'ble CESTAT, New Delhi in the case of Sir Ganga Ram Hospitals reported as 2018 (11) G.S.T.L. 427 (Tri. - Del), wherein it has been held that,

> "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 appellants 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 and 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 appellants 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 services. 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 arrangement.

... ...

... ...

9. Under negative list regime w.e.f. 1-7-2012, 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 1-7-2010 to 1-5-2011. With effect from 1-5-2011, health care services were exempt from service tax under Notification No. 30/2011-S.T. After introduction of negative list tax regime, Notification No. 25/2011-S.T. 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 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.

13. In view of above discussion and analysis, we hold that the impugned orders against which appellant hospitals filed appeal are devoid of merit, the same are set-aside. Upholding the order dated 1-2-2016 of Commissioner,

Service Tax, New Delhi, we dismiss the appeal by the Revenue. All the 7 appeals are disposed of in these terms."

8.3 In view of the above, I hold that the Appellant is eligible for exemption under Notification No. 25/2012-ST dated 20.6.2012, as amended, in respect of health care service provided by them.

9. The Appellant has contended that the adjudicating authority erred in not following the judicial discipline as two appeals of the appellant involving same dispute for prior period was decided in their favour by the then Commissioner (Appeals), Rajkot and therefore, the adjudicating authority was bound to follow the said decisions rendered by the Commissioner (Appeals), Rajkot. I find that the Appellant had relied upon Orders-in-Appeal dated 30.1.2015 and dated 26.11.2015 passed by the then Commissioner (Appeals), Rajkot in their own case for previous period during adjudication proceedings. However, the adjudicating authority discarded their contention by observing at para 10 of the impugned order that the Department had filed appeals against said Orders-in-Appeal before the Hon'ble CESTAT, but the same were withdrawn from the CESTAT by the Department on monetary grounds and that no order on merit was passed by the CESTAT.

9.1 I do not agree with the findings of the adjudicating authority. Once the Department withdrew the appeals from the Hon'ble CESTAT, the Orders-in-Appeal dated 30.1.2015 and dated 26.11.2015 attained finality. Even though the appeals were withdrawn by the Department from the CESTAT on monetary limit, as observed by the adjudicating authority, fact remains that said Orders-in-Appeal have not been reversed or stayed by higher appellate authority and consequently said Orders-in-Appeal are binding upon the adjudicating authority. The judicial discipline required the adjudicating authority to have followed the said Orders-in-Appeal, in letter and spirit. It is pertinent to mention that when any appeal is withdrawn on monetary limit, the Department may agitate the issue in appropriate case in other appeal proceedings, but it is not open for the adjudicating authority to pass order on merit disregarding binding precedent. The adjudicating authority may distinguish relied upon decision, if there is change in facts or change in legal position. However, the adjudicating authority has not brought on record as to how the said relied upon Orders-in-Appeal are not applicable to the facts of the present case.

9.2 My views are supported by the Order passed by the Hon'ble CESTAT, New Delhi in the case of RGL Converters reported as 2015 (315) E.L.T. 309 (Tri. - Del.), wherein it has been held that,

> "10. It is axiomatic that judgments of this Tribunal have precedential authority and are binding on all quasi-judicial authorities (Primary or Appellate), administering the provisions of the Act, 1944. If an adjudicating authority is unaware of this basic principle, the authority must be inferred to be inadequately equipped to deliver the quasi-judicial functions entrusted to his case. If the authority is aware of the hierarchical judicial discipline (of precedents) but chooses to transgress the discipline, the conduct amounts to judicial misconduct, liable in appropriate cases for disciplinary action.
>
> 11. It is a trite principle that a final order of this Tribunal, enunciating a ratio decidendi, is an operative judgment per se; not contingent on ratification by any higher forum, for its vitality or precedential authority. The fact that Revenue's appeal against the judgment of this Tribunal was rejected only on the ground of bar of limitation and not in affirmation of the conclusions recorded on merits, does not derogate from the principle that a judgment of this Tribunal is per se of binding precedential vitality qua adjudicating authorities lower in the hierarchy, such as a primary adjudicating authority or a Commissioner (Appeals). This is too well settled to justify elaborate analyses and exposition, of this protean principle.
>
> 12. Nevertheless, the primary and the lower appellate authorities in this case, despite adverting to the judgment of this Tribunal and without concluding that the judgment had suffered either a temporal or plenary eclipse (on account of suspension or reversal of its ratio by any higher judicial authority), have chosen to ignore judicial discipline and have recorded conclusions diametrically contrary to the judgment of this Tribunal. This is either illustrative of gross incompetence or clear irresponsible conduct and a serious transgression of quasi-judicial norms by the primary and the lower appellate authorities, in this case. Such perverse orders further clog the appellate docket of this Tribunal, already burdened with a huge pendency, apart from accentuating the faith deficit of the citizen/assessee, in departmental adjudication."

9.3 I rely on the decision rendered by the Hon'ble Gujarat High Court in the case of Claris Lifesciences Ltd. reported as 2013 (298) E.L.T. 45 (Guj.), wherein it has been held that,

> "8. The adjudicating officer acts as a quasi judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction. If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944.
>
> 9. Counsel for the petitioners brought to our notice the decision of the Apex Court in the case of *Union of India* v. *Kamlakshi Finance Corporation Ltd.* reported in 1991 (55) E.L.T. 433 (S.C.) in which while approving the criticism of the High Court of the Revenue Authorities not following the binding precedent, the Apex Court observed that :-

"6...It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The more fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35D confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs (Direct Taxes) comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

9.4 I also rely on the decision rendered by the Hon'ble Madras High Court in the case of Industrial Mineral Company (IMC) reported as 2018 (18) G.S.T.L. 396 (Mad.), wherein it has been held that,

"8. This Court is of the view that when the order passed by the Tribunal has not been stayed or set aside by the Hon'ble Supreme Court, it is the bounden duty of the Adjudicating Authority to follow the law laid down by the Tribunal. Since a binding decision has not been followed by the Adjudicating Authority in this case, this Court can interfere straightaway without relegating the assessee to

file an appeal."

10. In view of above discussion, I hold that confirmation of service tax demand totally amounting to Rs. 26,68,715/- is not sustainable and required to be set aside and I do so. Since, demand is set aside, recovery of interest and penalty imposed under Sections 70, 77 and 78 are also set aside.

11. In view of above, I set aside the impugned order and allow the appeals.

12. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeals filed by the Appellant stand disposed off in above terms.

(Akhilesh Kumar)
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By RPAD

To, Harilal Jechand Doshi Hospital Trust, Malviya Nagar, Gondal Road, Rajkot.	सेवा में, हरीलाल जेचन्द दोषी हॉस्पिटल ट्रस्ट, मालवीय नगर, गोंडल रोड, राजकोट।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-1 मण्डल, को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।