



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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan

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DIN- 20230264SX000000A4AB

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/3457/2022	513/SERVICE TAX/DEMAND/2021-22	24-02-2023

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

BHV-EXCUS-000-APP-072-2023

आदेश का दिनांक / Date of Order:	23.02.2023	जारी करने की तारीख / Date of issue:	24.02.2023
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित 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. Dr Hardik Mehta, 701, SANDIDHYA ELEGANCE, OPP. AZAD SOC BUS STOP,,AMBAWADI,AHMEDABAD-380015

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में 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 प्रांते अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित 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, आर० के० 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in 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) नियमवाली, 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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्टार के नाम से किसी भी सार्वजनिक 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। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 duty demand/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, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में 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 मांग, ब्याज की मांग 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 क्रमशः 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 रजिस्टार के नाम से किसी भी सार्वजनिक 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। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than 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/-



:: अपील आदेश / ORDER-IN-APPEAL ::

Dr. Hardik Yogindra Mehta, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 513/SERVICE TAX/DEMAND/2021-22 dated 13.08.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Bhavnagar-1 (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2015-16 of the Appellant. Letter dated 24.07.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15, 2015-16, 2016-17 & 2017-18 (upto June-2017). However, no reply was received from the Appellant.

3. In absence of data/information, a show cause notice dated 09.10.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 3,85,201/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 3,85,201/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 3,85,201/- under Section 78 and penalty of Rs. 5,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on ground that the Show Cause Notice issued based on presumptions and third-party information is not sustainable in terms of Board Circular issued in 2017. The Show Cause Notice has been issued without considering the fact that the service provided may fall under negative list or exempt as per mega exemption Notification No. 25/2012 of may fall under reverse charge mechanism and service receiver may liable to pay Service Tax. They relied on the decision in the case of Commissioner Vs. Sharma Fabricators & Erectors Pvt. Ltd. 2019, Oudh Sugar Mills Ltd. Vs. UOI 1978. The extended period of limitation not applicable in terms of proviso to Section 73(1) of the Act and they relied on the decision in the case of Cosmic Dye Chemical Vs. Collector of Central Excise, Bombay- 1995 (75) ELT 721 (SC). There can be no suppression if assessee was ignorant in Tamilnadu Housing Board Vs. CCE, 1995 Supp(1) SCC. No corroborative evidence produced by the Department to show that they have willfully suppressed the



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fact. The services provided by him are exempt as per Sr. No. 2(i) of mega exemption Notification No. 25/2012 as he is an authorized medical practitioner and provides health care services to various hospitals viz. Shalby Ltd., Tapan Hospital Pvt. Ltd., Medilink Hospital and Research Centre Pvt. Ltd., Atulbhai Ramanlal Patel etc. He is a general physician and an MD, MBBS by qualification and life time member of Indian Medical Association, Society for Emergency Medicine India and Indian Society of Critical Care Medicine.

6. The matter was posted for hearing on 22.02.2022. CA Sachin Dharwal appeared for personal hearing and submitted that the appellant is a doctor and his services are exempt. He submitted that the appellant had moved from his address in Bhavnagar to Ahmedabad and did not receive any letter before the Show Cause Notice or the Show Cause Notice. Even the Order-In-Original was received in person at a much later date after getting a call from the office of the Adjudicating Authority. He requested to set aside the impugned order.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that the issue to be decided in the case on hand is whether the activity carried out by the appellant is liable to Service Tax or otherwise.

8. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department and the Adjudicating Authority has confirmed the demand of Service Tax vide impugned order. It has been held by the Adjudicating Authority that the service provided by the Appellant is a taxable service in absence of information/ documents which were neither submitted by the Appellant nor they had filed any defense submission and not appeared for personal hearing also.

9. The Appellant has contended that he is registered medical practitioner serving in the medical profession as Bachelor of Medicine & Bachelor of Surgery (MBBS) and Doctor of Medicine in Tuberculosis & Chest Diseases branch and provides healthcare service at various hospitals. He further contested that being a Doctor engaged in Medical profession, his case falls under Negative list as per Section 66D of Finance Act, 1994, and referred Notification No.25/2012-Service Tax dated 20.06.2012, according to which services provided by medical professional were not liable to Service Tax. Now, it is to be examined whether the services provided by the her will be covered under the Negative list under Section 66D of Finance Act, 1994 or Notification No.25/2012-Service Tax dated 20.06.2012.



10. In the above context, I find that Health care services by a clinical establishment, an authorized medical practitioner or para-medics are exempted under Notification No.25/2012-S.T. dated 20-06-2012. The relevant portion of the Notification No.25/2012-S.T. dated 20-06-2012 is reproduced as under:

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-

1. -----;
2. *Health care services by a clinical establishment, an authorised medical practitioner or para-medics;"*

11. I find that "Health care services", "a clinical establishment" and "an authorised medical practitioner" are defined at para 2 (t), (j) and (d) respectively of the Notification No.25/2012-S.T. dated 20-06-2012 as under:

(t) "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;

(j) "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 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;

(d) "authorized medical practitioner" means a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force;

12. On going through the degree certificate as well as books of account produced by the Appellant, I find that the Appellant is a medical practitioner having Registration Certificate No. G-12160 and was practicing at various hospitals at Ahmedabad during the relevant period, which was covered under the definition of health care services provided in a clinical establishment by a



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authorized medical practitioner as per para 2(t), (j) and (d) of the Exemption Notification. Further, the services provided by the Appellant as a M.B.B.S./M.D., are covered under the Health care services. Therefore, the services provided by the Appellant as an authorized medical practitioner during the relevant period were not taxable and were exempted under the above said Notification No.25/2012-S.T. dated 20-06-2012. Accordingly, I find that demand of Service Tax on the said services provided by the Appellant is not sustainable.

13. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

[Signature]

[Signature]

आर. एस. बोरिचा / R. S. BORICHA (शिव प्रताप सिंह) / (Shiv Pratap Singh),

अधीक्षक / Superintendent

के. व. एवं सेवा कर अपील, राजकोट आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D. CGST Appeals, Rajkot

To, Dr. Hardik Yogindra Mehta, Sanidhya Elegance, Opp. Azad Society Bus Stop, Ambawadi, Ahmedabad-380 015.	सेवा में, डॉ. हार्दिक योगींद्र मेहता, सानिध्या एलीगंस, आजाद सोसाइटी बस स्टॉप के सामने, आंबावाडी, अहमदाबाद-380 015।
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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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

