

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

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42460 of 2014

(Arising out of Order-in-Appeal No. 25/2014 dated 07.08.2014 passed by Commissioner of Central Excise (Appeals), Central Revenue Building, Lal Bahadur Shastri Marg, Madurai – 625 002)

M/s. Aravindh Eye Hospital

Anna Nagar,
Madurai – 625 020.

...Appellant

Versus

Commissioner of GST and Central Excise

Madurai Commissionerate,
Central Revenue Building,
Lal Bahadur Shastri Marg,
Madurai – 625 002.

...Respondent

APPEARANCE:

For the Appellant : Mr. Joseph Prabhakar, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41426 / 2025

DATE OF HEARING : 05.08.2025

DATE OF DECISION : 04.12.2025

Per Mr. VASA SESHAGIRI RAO

The present appeal is directed against the Order-in-Appeal No. 025/2014 dated 07.08.2014 ['Impugned Order' for short] passed by Commissioner (Appeals) whereby a demand was confirmed against M/s. Aravindh Eye Hospital, Madurai ['Appellant' for short] for an amount of

Rs.34,83,008/- being the Service tax not paid on the value of taxable services rendered under the categories of Manpower recruitment or supply agency service, Commercial training or coaching service and management or Business Consultant service along with interest and a penalty of Rs 34,83,008/- was imposed under Section 78 of Finance Act, 1994 along with penalty of Rs 10,000/- each under Section 77(1)(a) and Section 77(2) of Finance Act, 1994.

2.1 Briefly stated, the facts of the case are that the during the verification of accounts, it was found that the appellants have received certain amounts on provision of services as described in Para 1 for the period from 2007 to 2012 and have not paid service tax for the amounts received in respect of the above services. Hence, a Show Cause Notice No. 23/2012-ST dated 19.10.2012 was issued. The Joint Commissioner of Central Excise, Madurai Commissionerate after due process of law *vide* Order-In-Original No. MAD-CEX-000-JTC-043/2013 dated 30.09.2013 have confirmed the demand with interest and imposed penalties under various provisions of the Finance Act, 1994 as mentioned in Para 1 above.

2.2 Being aggrieved, the Appellant filed an Appeal before the Commissioner (Appeals) Madurai and after due process of Law, the Appeal was rejected.

2.3 Once again aggrieved, the Appellant is before this Tribunal in Appeal.

3. The Ld. Advocate Mr. Joseph Prabhakar, appeared for the Appellant and the Ld. Authorized Departmental Representative Mr. Anoop Singh, appeared for the Respondent who presented their arguments / submissions.

4. The Ld. Mr. Joseph Prabhakar Ld. Advocate, on behalf of the Appellant has contended that: -

4.1 In terms of conditions in Agreement of Govel Trust with Indhira Gandhi Eye Hospital and Research (IGEHR) which runs Aravind Eye Hospital (AEH), the Role of AEH is clearly mentioned in terms of sending doctors, carrying out training and development activities. AEH has a role in reviewing performance and making periodical visits. Rajiv Gandhi Charitable Trust (RGCT) has all rights in monitoring and controlling activities of IGEHR. An Agreement has been entered into between Govel Trust and

RGCT to set up eye hospital named IGEHRC. Cost payable to AEH includes Management fee and reimbursements.

4.2 In accordance with the terms and conditions in Agreement of AEH with MP Birla Netralaya (MPBN), the Role of AEH is clearly mentioned in terms of training and selection of personnel, sending Doctors, assisting in recruitment, initial Orientation, assistance in sourcing equipment and consumables, promotion, advice *etc.*

4.3 This Agreement is between AEH and MPBN to set up eye clinic named MPB Eye Clinic in Kolkata. Cost payable to AEH includes % of revenue received from patients and training fees.

4.4 As such, it has been alleged that AEH have been providing the required manpower i.e., Sending Doctors and staff for agreed consideration that AEH have been imparting the required training for agreed consideration and that AEH has rendered advice, technical assistance and has taken agreed consideration reflected in P&L Account as Royalty fee. The Impugned order discusses the fact that they have received earnings and declared these amounts as Royalty Income in their P&L account.

4.5 The Order-in-Original dated 30.09.2013 brings out that consideration for sending Manpower, training, royalty Income *etc.*, which were reflected in Book of Accounts and discusses the issue of Bundled Service which was introduced in 01.07.2012 and was not given retrospective effect. Even otherwise, these 3 Services will not make activity as one of running Hospital by AEH. They have collected course fee for training and such training courses were not affiliated to any University. It is a matter of fact that IGEHRC and MPBNEC are independent legal entities than AEH in terms of Registrations taken before various regulatory and tax authorities. Even the same flows from clauses of MOU. The fact remains that AEH is not running Hospitals at Amethi or Kolkata but IGEHRC/MPBNEC are running Hospitals respectively. Further, Assessee's reliance on Education Guide dated 20.06.2012 and cited Case laws on subject matter will not help them since they are neither a Departmental Circular nor a Manual of Instructions.

4.6 The Para 28 of Order-in-Appeal clearly brings out fact that there is an agreement, there has been services for agreed consideration, they have raised Bills also, considerations have been received and therefore, ST is leviable. Further, it appears that Assessee is trying to make an afterthought and unclear arguments in terms of

classifying received consideration as Reimbursement or Royalty Income and has not substantiated what they call Reimbursement at this stage in terms of MOU or submissions before lower Authorities, It has to be checked Bill/Invoice wise since they have wrongly reflected the same as. Royalty Income in their Book of Accounts.

4.7 The issue of extended period has been discussed and justified as the Appellant didn't even file any return for the period from 2007-8 to 2009-10 and has taken registration belatedly on 09.07.2010 only.

5. *Per Contra*, the Ld. AR supported the findings in impugned Order and added that, but for the timely visit of the Audit, the issue would have gone unnoticed as the services were not declared in their monthly Returns. He justified the invocation of extended period and imposition of penalty in this case. Finally, he submitted that there is no merit in the Appeal and prayed for rejection of the same *prima facie*.

6. Having given our consideration to the rival contentions, we proceed to examine the issues arisen on merits.

7. In the backdrop of the above facts, the following legal and factual questions arise for our decision: -

- i. Whether consideration received for setting up, deputing Doctors and Staff and imparting training, monitoring and managing another hospital from 2008–09 to 2011–12 under continuing cooperation and collaboration by joining hands with the other hospital are taxable separately as
 - (a) management/consultancy services to other hospitals,
 - (b) supply/secondment of manpower,
 - (c) commercial training/coaching of doctorsunder service tax law for the said period when a single MOU was signed between the Appellant and the Hospital?
- ii. Whether the extended period is invocable in this case and imposition of penalties under Section 77 and 78 of Finance Act, 1994 is justified?

8.1 The Appellant has entered into MOUs with two separate Trusts to establish and operate, purchase the equipment, depute their manpower on rotation basis and train the staff of MOU Hospital, monitor the joint venture hospitals and the income earned by them from these

activities were shown as Royalty income/management fee in the P & L Account.

8.2 The Appellant has submitted that they had entered into joint venture agreements with the hospitals and the revenue earned by them is their share of Revenue. It was also submitted by them that they have shown the revenue under Royalty receipts by mistake, but it is earned by the joint venture with their partners and it cannot be termed as service. The Appellant provides the know-how, deputed their staff and advised on the infrastructure and the funds.

8.3 The contention of the revenue is that the Appellants are not running the hospital, but providing services to them and that the services can be trisected into management/consultancy services to other hospitals, supply/secondment of manpower, commercial training/coaching of doctors/staff which are taxable under service tax law for the said period as per the details obtained from the Appellant.

8.4 The Appellant took a stand that the services are bundled together and that they are not offering any single service as a standalone service as that is not in their line of

business. They relied upon the CBEC education guide issued in 2012 in the context of negative tax regime i.e. after 01.07.2012, wherein the concept of bundled service was introduced for the first time and also health service is under the Negative list of services. They have cited that CBEC guide is just like any Circular offering clarifications and therefore applicable for the past period also and is binding on the officers but however this plea was rejected in Adjudication which was also upheld in appeal as it pertained to clarifications of services after 1.7.2012 and the period of dispute is well before that i.e. positive service tax regime.

8.5 We find that the Education Guide was released to assist taxpayers, tax administrators, and practitioners in understanding the new service tax regime introduced, as amended by the Finance Act, 2012, which replaced the earlier positive-list system with the Negative List system.

8.6 We note that it is a comprehensive explanatory document, not a notification or statutory instrument and it explains the philosophy, structure, and scope of the new law in simple, practical terms. The Education Guide is not a statutory notification, circular, or instruction issued under section 37B of the Central Excise Act or section 83 of the Finance Act. It is only a guidance document and hence not

binding on courts or quasi-judicial authorities. The guide is released purely as a measure of facilitation so that all stakeholders obtain some preliminary understanding of the new issues for smooth transition to the new regime.

8.7 We note that the department viewed the royalty and reimbursements as consideration for taxable Management / Business Consultancy, Business Support, and Manpower Recruitment or Supply Agency services. The appellant contends that both institutions are clinical establishments rendering healthcare, that the receipts represent cost sharing for integrated healthcare delivery, and that no distinct commercial service exists.

8.8 We have considered rival submissions and perused the MOU and the P & L Accounts. The MOUs record a collaborative healthcare arrangement: The Appellant Hospital provides clinical supervision, protocols, administrative systems, and deposes qualified personnel to ensure uniform standards. Remuneration is linked to Hospital's revenue and is applied towards salaries and overheads; there is no evidence of any separate profit-oriented consultancy or markup. The MOUs before us shows that the Hospital remained a clinical establishment governed / managed jointly by both.

8.9 The Appellant Hospital provided medical supervision, standard operating procedures, administrative practices, clinical protocols and deputation of staff for the primary purpose of ensuring clinical quality and continuity of healthcare services. The receipts described as “royalty” and “management fee” were, on the face of the MOU, intended to cover costs of supervision, staff deployment, training and operational alignment and the reimbursement of salaries for staff on deputation were not described or accounted with a commercial mark-up in the evidence on record.

On examining the MOUs entered into with AEH, the following is noted: -

8.10 The appellant Aravind Eye Hospital is a charitable hospital / trust which entered into two Memorandum of Understanding (MOU) with Hospital M.P. Birla Priyamvada Hospital and Indira Gandhi Eye Hospital to establish and set up world class facilities in eye care as per WHO policy document guidelines.

The financial terms of both the Hospitals as per MOU are Tabulated below.

Sl. No.	Category of service	M.P.Birla Nethralaya (in Rs.)	Indira Gandhi Eye Hospital & Research Centre (in Rs.)
1	Revenue from patients	3.5% of revenue	5% of patient

	by the Hospital to AEH (Management Fee)	from patients	revenues
2	Training Fees paid to AEH	For Doctors RS 10,000 pm, other staff Rs 5000 pm	
3	Salary of staff deputed by AEH	Will be reimbursed to AEH	Will be directly paid to deputed staff
4	One time salary as opportunity cost for 3 above	Will be reimbursed to AEH	Fixed as equal to gross salary
5.	Travelling and local expenses	At actuals	Will be paid directly to deputed staff
6	Outstation allowance	Doctors Rs 7000, Sr Staff Rs 2000, Jr and other staff Rs 1250 pm	Will be paid directly to deputed staff
7.	Interaction fees and visits from AEH		Rs 10,000 per day for Sr Doctors and Rs 2000 per day for others

8.11 M.P. BIRLA NETRALAYA (MPBN): -

- i. MPBN has arranged setting up of an eye hospital under the name of Priyamvada Birla Aravind Eye Hospital'
- ii. The Eye Hospital in a strategic alliance with AEH shall endeavour to provide free as well as paid care to eye patients with ocular disorders and will provide special thrust on research.
- iii. It is agreed that AEH shall share and facilitate the implementation of all necessary medical know-how available to them at present or as may be available in

future to AEH including telemedicine and other technologies in the AEH field of eye care for ensuring the best medical services at the Eye Hospital. shall also support the hospital by facilitating and assisting in the hiring of necessary personnel like qualified and trained doctors, ophthalmic assistants, opticians, para medical staff and such other staff who may be required to bring this hospital at par with the best institutes running in the country and abroad.

- iv. A separate Administrative Committee shall be constituted by MPBN for the routine day-to-day affairs of the Eye Hospital which shall have two representatives of AEH.
- v. ABH shall undertake to continuously assist in the building of MPBN's staff capacity by deputing their own qualified doctors, nurses and other hospital personnel as required and also assist MPBN In the recruitment and election of such staff
- vi. AEH shall help in sourcing state of the art equipment and instruments and shall Assist in price negotiations.
- vii. AEH shall provide on discounted basis and as is availed by them, all the consumables manufactured by Aurolab, themselves or by their collaborators like subject to the commercial terms of the supplying parties.

- viii. With AEH shall also provide help to MPBN to get the best possible prices and in line with prices paid by them for materials, including capital goods, as is availed by on products manufactured by other parties.
- ix. The Eye Hospital shall, as far as practical, follow the clinical protocols and use clinical supplies as followed at AEH and recommended by them the details of the clinical protocols will be finalized through interactions with the Eye Hospital staff.

8.12 M/s. Rajiv Gandhi Charitable Trust

- i. AEH shall decide the building plan and the hospital layout along with RGCT.
- ii. AEH shall send key staff members consisting a Manager, IT person and supportive paramedics. h) Except the Manager and IT person sent by AEH, the remaining staff members shall be rotated by AEH. All the Training and development activities for doctors, paramedics and other supportive staff will be done at Aravind Eye Hospital.
- iii. In consensus with RGCT, AEH shall buy all the instruments and equipment needed for Indira Gandhi Eye Hospital.
- iv. Indira Gandhi Eye Hospital shall be a replica of Aravind Eye Hospital in terms of systems, work flow, records

and registers and AEH shall design and finalize the forms to be used in Indira Gandhi Eye Hospital.

- v. The supplies like lenses, medicines to be used in the Indira Gandhi Eye Hospital and Research Centre will be supplied from Aravind Eye Hospital at the cost of Indira Gandhi Eye Hospital. AEH has every right to decide the suppliers for lenses, Medicine and other stationeries used in Indira Gandhi Eye Hospital.
- vi. ABH shall conduct periodical meeting with the staff members of Indira Gandhi Eye Hospital and review the performance and Key staff from AEH shall make periodical visit to Indira Gandhi Eye Hospital to monitor its performance.

8.13 We also find that to manage the Hospitals' day-to-day operations, the Appellant has deputed medical and administrative staff to these Hospitals and, for these services, received periodic payments described in the agreement as "royalty" / "management fee" and, in certain instances, reimbursements of salaries/travelling and stay allowance paid to the deputed personnel. The department has treated these receipts as consideration for taxable services (Management or Business Consultancy Service and/or Manpower Recruitment/Supply Agency Service) and demanded service tax for the relevant pre-negative-list

period. The Appellant also imparted training to the staff of the MOU Hospitals also. The Adjudicating Authority confirmed the demand separately on all the three heads and thus, the appellant is in appeal.

8.14 We also find that in Para 5 of the impugned Order-in-Appeal No. 25/2014 dated 07.08.2014 that: -

"5. As per the agreement entered with the RGCT and MP Birla Nethralaya and as per the terms and conditions of the World Health Organisation, New Delhi the appellants for an agreed consideration are to provide the required doctors and other supporting staff and they are required to impart training to personnel also they are to provide required advice, consultancy or technical assistance in relation to logistics management, procurement and management of consumables and infrastructure and similar areas of management to M/s. Indira Gandhi Eye Hospital and Research Centre, Lucknow and Amethi. The appellants have received amounts for their above activity and credited under the income head of Royalty Income. The appellants claim that the activities rendered by them are an integral part of the activity of running the hospital for which they got remuneration. Also the appellants claim that the amount received as reimbursement also but there is no clause in MOU to substantiate their claim. Also, the appellants have not produced any evidences to show that they are the one who run hospitals at Amethi and Lucknow and the income received out of the activity was the actual income earned from running the hospital. Moreover, the income earned on such activity was not reflected under the correct head of the P & L accounts of the appellants. Hence, the arguments put forth by the appellants do not find any merit as it is devoid of any proof to substantiate their Claim. In view of the above, the argument of the appellants is not accepted."

Based on the same, the department rejected the plea of managing the hospital and that it was the MOU Hospital that was managing the same as the Appellant has not produced any evidence.

8.15 On perusal of the MOUs between the parties clearly shows that the contracts between the appellant and various Hospitals are on principal-to-principal basis and are in the nature of sharing-revenue. As per the contracts, the appellant is required to provide Knowhow and manpower and the MOU Hospitals will provide infrastructure and funds and will be part of the Joint management. The revenue earned from the patients is shared between the appellant and the MOU Hospitals and no taxable service is being provided by the appellant to other hospitals. There is absolutely no stipulation of payment of any service charges by the MOU Hospitals to the appellant and the contract is purely for sharing of revenue.

8.16 As per Para 2.2 of CBEC Circular No. 109/03/2009-ST dated 23.02.2009, we find that: -

Another type of arrangement is where the contract between the theatre owner and the distributor is on revenue sharing basis i.e. a fixed and pre-determined portion i.e. percentage of revenue earned from selling the tickets goes to the theater owner and the balance goes to the distributor. In this case, the two contracting parties act on principal-to-principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax.

Though the circular was issued in context of levy of service tax on movie theatres, but the principle involved is applicable to the present case also, because in the present case, the appellant and the other Hospitals are dealing with each other on principal-to-principal basis.

8.17 We observe that on the deputation of doctors and para-medical staff, the MOU MENTIONS that employees remained on Appellant's Hospital rolls and Hospital B reimbursed actual salary costs.

8.18 The Ld. counsel for the appellant submitted that both hospitals are clinical establishments/charitable trusts engaged in the business of healthcare; the MOU records a collaborative management arrangement integral to the delivery of clinical services and not a commercial consultancy arrangement. The appellant contends that the sums received are revenue-sharing mechanism out of the patient receipts and do not amount to consideration for a distinct taxable service. It was urged that deputed staff remained on Appellant Hospital's payroll and reimbursements were at cost without any profit element, thus falling outside manpower-supply service.

8.19 The MOU evidently indicate that in the vast majority of deputed staff the employees continued to remain on Appellant's Hospital payroll; Department had not demonstrated that the reimbursed salaries are not on actual cost basis with any demonstrable markup. No manpower agency invoices reflecting a profit element or separate commercial manpower supply contract are placed before us.

8.20 The Appellant submitted that the whole issue has to be analyzed from the perspective of classification of service. In this regard, the appellant would refer to Section 65A of the Finance Act, 1994, (as it existed up to 30.06.2012) which reads as below: -

"65A. Classification of taxable services –
(1) For the purposes of this chapter, classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65;
(2) When for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be affected as follows:
(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;
(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration;"

8.21 The Appellant submitted that the activity performed by them in terms of the MOU has to be analysed

in terms of clause (b) of Sub Section (2) of Section 65A of the Finance Act, 1994. We find as per this Clause, composite services consisting of combination of different services have to be classified in terms of the dominant nature of the service i.e. Composite/Integrated character: The relevant jurisprudence emphasises substance over form. We find that, when hospitals (particularly charitable clinical establishments) operate through collaborative arrangements for patient care, the activity is healthcare delivery and not a separate management consultancy or business support service. The departmental demand seeks to tax what is, in substance, integrated healthcare delivery.

8.22 From the Show Cause Notice / Order-in-Original / Order-in-Appeal, we find that the major service is business support services, manpower supply and training of staff in that order. Therefore, the management of the hospital is a dominant service in this case and has to be classified accordingly. Therefore, we have no hesitation in holding that that it is service related to health care clinical management. It is exempt from Service Tax as there is no element of service, and it is like a hospital managing its own hospital.

9. For the reasons recorded above we find as follows: -

- i. The receipts characterized as “royalty” / “management fee” are, on the material before us, are integrally connected with the provision of healthcare services and do not constitute a separate taxable Management or Business Consultancy Service. The payments are in substance revenue sharing for collaborative clinical management and there is no element of service among the joint venture partners.
- ii. Reimbursement of salaries in respect of staff deputed by Appellant Hospital to Hospital, where reimbursement is made on an actual cost basis and the employees continue to be on the payroll of Appellant Hospital, does not constitute a taxable Manpower Recruitment or Supply Agency Service.
- ii. Similarly, the charges of training of medical and non-medical personal cannot be treated as Commercial coaching centres as the Appellant and the MOU Hospitals are functioning under Trusts, and providing free eye care for certain percentage of the patients and therefore such an arrangement cannot be held to be on Commercial terms and has to be held as part of integrated clinical delivery.

The impugned demand, assessed on the above grounds, cannot be sustained and is hereby set aside.

10. As the demand is answered on merits itself, we find that there is no requirement to examine the aspect of limitation.

11. Accordingly, the impugned Order-in-Appeal No. 25/2014 dated 07.08.2014 is unsustainable. The demand of service tax, interest, and penalty is set aside.

12. The appeal is allowed with consequential relief to the appellant as per the law.

(Order pronounced in open court on 04.12.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK