CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60680 of 2017

[Arising out of Order-in-Appeal No. 72/ST/DLH/2016 dated 30.06.2016 passed by the Commissioner (Appeals-I), Central Excise, Delhi]

NC Jindal Institute of Medical Care & Research ……**Appellant**
Model Town, Hisar,
Haryana 125005

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak ……**Respondent**
SCO 6 to 8 & 10, Sector 1, Huda Market,
Rohtak, Haryana 124001

APPEARANCE:

Ms. Krati Singh with Ms. Samiksha Uniyal and Ms. Yashaswi Singh,

Advocates for the Appellant

Mr. Goverdhan Dass Bansal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61736/2025

DATE OF HEARING: 06.08.2025
DATE OF DECISION: 02.12.2025

S. S. GARG :

The present appeal is directed against the impugned OIA dated 30.06.2016, passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has rejected appeal of the Appellant by confirming the demand of service tax under 'Business Support Service' along with interest and penalty.

2. Briefly stated facts of the present case are that the Appellant are registered with the service tax department under 'Health Services' and 'Renting of Immovable Property'. The Appellant entered into agreements with Lal Pathlabs Pvt Ltd, Mangalam Lab, 360 Degrees Healthcare Pvt Ltd and Clearview Healthcare Pvt Ltd (collectively known as Diagnostic Service Providers or 'DSPs') for providing the pathology lab and other diagnostic services in the hospital. Further, as per the agreements, the Appellant provides basic amenities such as space, water, electricity etc to DSPs for functioning and DSPs install and operate their equipment in the Appellant's premises. DSPs render services to patients within the hospital premises and outside the hospital premises. The Appellant raises the invoice on patients for diagnostic services rendered in the hospital and shares for receipts with DSPs in an agreed percentage for which DSPs also raise monthly bill for collection. This amount is paid to DSPs after deducting the administrative and up-keep charges. DSPs also share the revenue earned by rendering services outside the hospital premises to patients referred by the Appellant in an agreed percentage. The department entertained the view that the Appellant are providing Business Support Services ('BSS') to DSPs therefore, the Appellant are liable to pay the service tax under BSS. Two show cause notices, dated 09.10.2013 and 07.10.2014, were issued to the Appellant proposing the demand of service tax of Rs.24,96,056/- and Rs.17,65,430/-, along with interest and penalty, for the period 01.04.2008 to 31.03.2013 and 01.04.2013 to 31.03.2014 respectively on the amount retained by the Appellant. The show cause notice dated 09.10.2013 invoked the extended period of

limitation for proposing the demand for the period 01.04.2008 to 31.03.2013 and alleged that the Appellant provided BSS by providing infrastructural support services to DSPs. Further, the show cause notice dated 07.10.2014, proposed the demand for the period 01.04.2013 to 31.03.2014 on the basis that the support services are not excluded from the ambit of 'Service' defined under Section 65B(44) of the Finance Act. After following the due process, the Adjudicating Authority, vide OIO dated 08.01.2015, provided the benefit of cum-tax and confirmed the demand of service tax amounting to Rs.24,41,737/- and Rs.15,71,226/- for the period 01.04.2008 to 31.03.2013 and 01.04.2013 to 31.03.2014 respectively, along with interest and penalty. Aggrieved by the said OIO, the Appellant filed appeal before the learned Commissioner (Appeals) to the extent it is prejudicial to their interests, and the learned Commissioner (Appeals), vide the impugned OIA, has rejected their appeal and upheld the OIO; hence, the Appellant have preferred the present appeal before us.

3. Heard both the sides and perused the material on records.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts that the issue involved in the present case has been decided by the Tribunal as well as by the departmental Appellate Authority in Appellant's favour for the previous as well as subsequent periods in Appellant's own case and the case of its sister unit. In this regard, she provides the following

chart of the Orders passed by the Tribunal and the Appellate Authority in Appellants' favour on the issue involved:

Order	Party's name	Period	Issue
Final Order No. 60579/2024 dated 16.10.2024 passed by the Tribunal = **2024 (10) TMI 824 CESTAT Chandigarh**	OP Jindal institute of Cancer & Research	2008-09 to 2012-13	Service Tax on services provided to DSPs
Order-in-Appeal No. Appl/PKL/ST/249-250/ 2018-19 dated 27.02.2019 passed by the Commissioner (Appeals)	OP Jindal institute of Cancer & Research	2015-16 to 2017-18 (till June 2017)	Service Tax on services provided to DSPs and Doctors
Order-in-Appeal No. Appl/PKL/ST/248/2018-19 dated 26.02.2019 passed by the Commissioner (Appeals)	NC Jindal Charitable Trust	2015-16 to 2017-18 (till June 2017)	

4.1 She further submits that the issue involved in the present case has been settled in the Appellant's favour till the Tribunal level, as mentioned in the above table, and the department has not filed any appeal against the above-mentioned Orders, therefore, the said Orders have attained finality. She further submits that the department deviated from its stand while passing the impugned order confirming the demand on the same issue against the Appellant. She also submits that it is a settled law that the department cannot take contrary stands on the same issue for the same assessee. For this, she places reliance on the following decisions:

- **CCE, Pune-II vs. S S Engineers – 2023 (386) ELT 192 (SC)**
- **Rosmerta Technologies Ltd vs. CCE – 2020-TIOL-916-CESTAT-CHD affirmed by Hon'ble Supreme Court – 2021-TIOL-24-SC-ST-LB**

4.2 The learned Counsel further submits that the Commissioner (Appeals), vide the impugned order, has confirmed the demand of service tax under the head of BSS for the period 01.04.2008 to 31.03.2013 on the revenue retained by the Appellant out of the amount received from patients in respect of services rendered by DSPs as a consideration towards infrastructural and administrative support services provided to DSPs and further, for the period 01.04.2013 to 31.03.2014, the demand was confirmed on the basis that the support services are not excluded from the definition of 'Service' provided under Section 65B(44) of the Act. In this regard, she submits that w.e.f. 01.07.2012, negative list regime was in effect, therefore, the Commissioner (Appeals) has wrongly confirmed the demand under BSS for the period 01.07.2012 to 31.03.2013. She further submits that the Appellant are not providing any service to DSPs and in fact, there is a revenue sharing agreement between the parties, which are on record; as per the agreements, the parties have agreed for a revenue sharing model on principal-to-principal basis out of the revenue generated from the diagnostic services provided by DSPs with the help of infrastructure and other facilities provided by the Appellant in an agreed percentage. She also refers the **Circular No. 109/03/2009-ST dated 23.02.2009** which clarifies that when two contracting parties enter into revenue sharing arrangement then both the parties act on principal-to-principal basis and there is no provision of service amongst the parties. She further submits that in fact the Appellant have entered into a joint venture with DSPs with an intention to do business for mutual gain. She further submits that this issue is also no more *res integra* as has been settled by the

Tribunal/Courts in various cases wherein it has been held that there is no provision of service or payment for services in the revenue sharing arrangements and therefore such transactions are not exigible to service tax. For this, she places reliance on the following cases:

- **Mormugao Port Trust vs. CCE -2017 (48) STR 69 (Tri. Mum.) – Affirmed by Hon'ble Supreme Court – 2018 (19) GSTL J118 (SC)**
- **M/s Sikri Multiplex Cinema P Ltd vs. CGST – 2024 (6) TMI 582 CESTAT Chandigarh LB**
- **OP Jindal Institute of Cancer & Research vs. CCE – 2024 (10) TMI 824 CESTAT Chandigarh**
- **SJS Healthcare Ltd vs. CCE – 2024 (4) TMI 300 CESTAT Chandigarh**
- **Aashlok Nursing Home Pvt Ltd vs. CCE – 2024 (5) TMI 888 CESTAT New Delhi**
- **Apollo Hospitals International Ltd vs. CCE – 2023 (12) TMI 953 CESTAT Ahmedabad**
- **M/s Sir Ganga Ram Hospital vs. CST – 2020 (43) GSTL 390 (Tri. Del.)**
- **M/s Sir Ganga Ram Hospital, Bombay Hospital & Medical Research Centre, Appollo Hospitals, M/s Max Health Care Institute Ltd vs. CCEs & CSTs and CST Delhi vs. M/s Indraprastha Medical Corporation Ltd – 2018 (11) GSTL 427 (Tri. Del.)**

4.3 The learned Counsel further submits that the services, if any, rendered by the Appellant are not BSS, the same qualify as 'healthcare services'. She further submits that in the case of **OP Jindal Institute of Cancer & Research vs. CCE, Rohtak – 2024 (10) TMI 824 CESTAT Chandigarh**, this Tribunal has itself held that the Appellant is not providing services under BSS. She also relies on the following decisions wherein also similar placed transactions have been held to be not exigible to service tax under BSS:

- **M/s Fortis Healthcare India Ltd vs. CCE – 2019 (9) TMI 462 CESTAT Chandigarh**
- **M/s Ivy Health & Life Sciences P Ltd vs. CCE – 2019 (4) TMI 178 CESTAT Chandigarh**
- **CCE & ST, Panchkula/Delhi-IV vs. Alchemist Hospital Ltd, Artemis Medicare Services Ltd (vice versa) – 2019 (3) TMI 1331 CESTAT Chandigarh**
- **SJS Healthcare Ltd vs. CCE – 2024 (4) TMI 300 CESTAT Chandigarh**
- **Aashlok Nursing Home Pvt Ltd vs. CCE – 2024 (5) TMI 888 CESTAT New Delhi**
- **M/s Diabetic Association of India vs. CST – 2025 (6) TMI 1964 CESTAT Mumbai**
- **CCE & ST, Goa vs. M/s Goa Golf Club Pvt Ltd – 2023 (5) TMI 1026 CESTAT Mumbai**
- **M/s Gujarmal Modi Hospital & Research Centre for Medical Sciences vs. CST – 2019 (1) TMI 378 CESTAT New Delhi**

4.4 The learned Counsel further submits that the demand proposed by the show cause notice dated 09.10.2013 is time barred because the said show cause notice has invoked the extended period of limitation to raise demand for the period 2008-09 to 2012-13 against the Appellant. She also submits that the department has not brought anything on record to establish that the Appellant had suppressed the material facts from the department. She submits that the Appellant provided all the details asked by the department and they were under a *bona fide* belief that they are not liable to pay service tax on the revenue retained out of the receipts from the patients in relation to services provided by DSPs. For this, she relies on the following decisions:

- **OP Jindal Institute of Cancer & Research vs. CCE – 2024 (10) TMI 824 CESTAT Chandigarh**

- **Taj GVK Hotels & Resorts Ltd vs. CCE – 2025 (7) TMI 930 CESTAT Chandigarh**

She also submits that the present case involves interpretation of complex legal provisions; the issue of taxability of the amount retained by the hospital out of the receipts from healthcare services provided by the DSPs, is an industry wide issue which is being decided recently by the judicial forums across the country and therefore, extended period of limitation cannot be invoked for such interpretational issues. In this regard, she relies on the following decision:

- **M/s Clix Capital Services Pvt Ltd vs. CCE – 2025 (5) TMI 1830 CESTAT Chandigarh**

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record and have gone through the case-laws cited by the Appellant. We find that the issue involved in the present appeal, relating to revenue sharing arrangements between the Appellant and the DSPs, is no longer *res integra* as the Tribunal as well as the departmental Appellate Authority, for the earlier and the subsequent periods, have decided the issue in favour the Appellant vide the Orders as cited in table (*in para 4 above*) by holding that revenue sharing arrangements are not subject to service tax under the BSS. Further, we note that the department has not filed any appeal against the above-mentioned Orders, therefore, the said Orders have attained finality and therefore, the department cannot take contrary view on the same issue for the same assessee

as held in the case of **CCE, Pune-II vs. S S Engineers** (supra). Further, we find that this Tribunal in the case of **OP Jindal Institute of Cancer & Research** (supra) vide **Final Order No. 60579/2024 dated 16.10.2024**, has considered the identical issue along with the agreements entered into by the Appellant with the DSPs and has held that revenue sharing arrangements between the Appellant and the DSPs are not subject to service tax; the relevant findings of the Tribunal are reproduced herein below:

> **"6.** We have considered the submissions made by both the parties and perused the material on record; and have also gone through the various judgments relied upon by the appellant. We find that the only issue involved in the present case is whether the appellant is liable to pay service tax under the category of 'Support Service of Business or Commerce' as defined under Section 65(104c) read with Section 65(105)(zzzq) of the Finance Act, 1994 to the DSPs by providing them infrastructure, equipments, facilities and administrative support. For deciding this issue, it is essential to reproduce the definition of 'Support Service of Business or Commerce', which is reproduced herein below:
>
> > **"Section 65(104c)** : "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, [Operational or administrative assistance in any manner], formulation of customer service and pricing policies, infrastructural support services and other transaction processing.
> >
> > [*Explanation* — For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to

handle messages, secretarial services, internet and telecom facilities, pantry and security;]

Section 65(105)(zzzq) : to any person, by any other person, in relation to support services of business or commerce, in any manner;"

7. Further, we have also seen the terms and conditions of various agreements entered into by the appellant and the various DSPs, which are produced on record. All the agreements provide in details the revenue sharing between the parties out of the total receipts collected from the patients for all the tests conducted by the DSPs. The department entertained the view that the infrastructural support service provided by the appellant to various DSPs is tantamount to the service under "Support Service of Business or Commerce" and therefore, the appellant is liable to pay service tax on that. Further, perusal of the agreements between the parties clearly shows that the contracts between the appellant and various DSPs are on principal-to-principal basis and are in the nature of sharing-revenue. As per the contracts, the appellant is required to provide infrastructure and DSPs are required to install their equipments; and the revenue earned from the patients is shared between the appellant and the DSPs and no taxable service is being provided by the appellant to DSPs. Here, it is pertinent to extract the relevant clauses of such agreements with regard to sharing of revenue. The relevant clauses of one of the contracts with one of DSPs, Dr. Lal Pathlabs Pvt Ltd ('LPL'), is reproduced herein below:

"<u>Revenue Sharing</u>:-

- "The Hospital" and LPL will share the net revenue as below. Net Revenues for this purpose means all revenues earned out of pathology tests of the hospital subject to discounts, rebates etc.

- In respect of the work referred by the Hospital and are carried out at the lab in the hospital itself as per the attached Annexure C, LPL and the Hospital will share revenue in the proportion of 50:50.

- In respect of the work referred by the Hospital and are carried out at any other Lab of LPL (Annexure E) LPL and the Hospital will share revenue in the proportion of 75:25.

- In respect of samples collected from corporate, camps, referral doctors, insurance companies, hospitals and any other networking of LPL and performed in the LPL lab inside the Hospital premises, LPL and the Hospital will share revenue in the proportion of 95:5. This will also be applicable to tests sent outside India.

- The revenue in respect of work referred to by the Hospital shall be collected by the Hospital and LPL will collect revenue for the balance work. The accounts in respect of the Revenues collected by the Hospital will be audited by the LPL at its own cost and the Hospital hereby agrees to make available such audited accounts to LPL for reconciliation to determine the mutual shares. The Revenues shall be shared on a monthly basis.

- As per details given by the Hospital, the yearly net revenues at present is Rs. 1.6 cr. which has been taken as basis for arriving at the above mentioned revenue share. The hospital will help LPL and try to make sure that at least this revenue is generated out of the pathology lab. Any deviation beyond 10% on lower side will attract a revision of the revenue sharing clauses mutually.

- The Hospital will be responsible for all cash collections for the tests referred by the Hospital

- The Hospital will allow LPL to perform tests of samples collected from the network other than the Hospital in the LPL lab situated inside the hospital premises."

The perusal of above clauses reveals that there is absolutely no stipulation of payment of any service charges by the DSPs to the appellant and the contract is purely for sharing of revenue.

8. We also find that the Circular No. 109/03/2009-ST dated 23.02.2009 relied upon by the appellant also recognizes that

the transactions between two contracted parties on principal-to-principal basis are not to be treated as service. Though the circular was issued in context of levy of service tax on movie theaters, but the context is applicable in the present case also, because in the present case, the appellant and the DSPs are dealing with each other on principal-to-principal basis.

9. We also find that as per the terms of the contracts, the appellant has allowed the DSPs to install their equipments and machines and operate their respective centers in the hospital. In fact, diagnostic services are provided by the Hospital through the patients using the expertise and machinery of the DSPs. All reports of such diagnostic services are issued under the name of the Hospital. Further, the billing of such services is also done by the appellant's Hospital to the patients directly. Further, the entire revenue from the diagnostic centers is accounted for in the books of account as 'revenue of the appellant' and the appellant pays for the services provided by the DSPs to the appellant after retaining its own percentage. It clearly shows that the service, if any, has been provided by DSPs to the appellant and not by the appellant to DSPs.

10. We also note that it is the appellant who established the Hospital and providing healthcare services to the patients and DSPs are, in fact, a part of the appellant as a joint venture who are providing diagnostic services to the patients; it is the patient, who is ultimate recipient and beneficiary of medical services in the appellant's Hospital. In fact, the Hospital provides the healthcare services to the patients and whenever any diagnostic service is required, the appellant and DSPs jointly provide the same to the patients. The revenue flow from the patients to the appellant which is shared by the appellant with DSPs as per the contract.

11. Further, we are of the view that mere providing of a building along with some basic amenities like electricity, water, sewage etc cannot be qualified as 'support service' for

running a business. These facilities are provided to the DSPs to enable them to provide the services to the appellant; and without these facilities, DSPs would not be in the position to provide the service to the appellant. We also note that it is the appellant who is engaged in running the Hospital for providing the healthcare services to public and the diagnostic services provided by the DSPs are an integral part of such healthcare services provided by the appellant. Healthcare services are fully exempted from the tax w.e.f. 25.04.2011 vide Notification No. 30/2011-ST dated 25.04.2011. This notification was rescinded w.e.f. 01.07.2012, but healthcare services are not liable to service tax in the negative list regime also.

12. We also find that the case-laws relied upon by the appellant regarding the revenue-sharing arrangement clearly held that if there is a revenue-sharing arrangement on principal-to-principal basis to further their mutual interest of providing healthcare services to the patients, then no service tax can be levied.

13. Further, we are of the view that in the present case the service, if any, rendered by the appellant are not 'BSS' and rather qualifies as 'Healthcare Service' which is exempted from service tax.

14. As regards the invocation of extended period of limitation, we are of the view that the appellant has not suppressed any material facts with intent to evade payment of tax and the entire earning of the appellant from the revenue-sharing modal was recorded in the balance-sheet, which is a public document. Moreover, the appellant was under a *bona fide* belief that healthcare services are not liable to service tax and the issue involved is that of interpretation; hence, extended period of limitation cannot be invoked. Therefore, substantial demand raised for the period 2008-09 to September 2011 is barred by limitation. Since the demand

itself is not sustainable, therefore, the question of interest and penalty also does not arise.

15. In view of our discussion above, we are of the considered view that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.**”**

7. Since, the issue is covered by the decision of this Tribunal in the above cited case, therefore, by following the ratio of above cited decision, we are of the considered view that the impugned order is not sustainable in law and is liable to be set aside and we do so by allowing the appeal of the Appellant.

(Order pronounced in the open court on 02.12.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi