

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 51987 of 2015

[Arising out of Order-in-Original No. 10/ST/CHD-II/2015 dated 24.02.2015 passed by the Commissioner of Central Excise, Chandigarh-II]

Fortis Healthcare Ltd

Fortis Hospital, Sector 62,
Phase VIII, Mohali 160062

...Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax, Chandigarh-II**

Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

...Respondent

APPEARANCE:

Mr. Yuvraj Singh, Advocate for the Appellant

Mr. Anurag Kumar and Mr. Goverdhan Dass Bansal, Authorized
Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60001/2026

DATE OF HEARING: 11.12.2025

DATE OF DECISION: 06.01.2026

S. S. GARG :

The present appeal is directed against the impugned order dated 24.02.2015 passed by the Commissioner of Central Excise, Chandigarh-II, vide which the learned Commissioner confirmed the demand of service tax amounting to Rs.1,47,12,837/- under Section 73 of the Finance Act, 1994 along with interest under Section 75 of

the Act and also imposed penalties under Sections 77 & 78 of the Act; however, no penalty was imposed under Section 76 of the Act.

2. Briefly stated facts of the present case are that the Appellant are engaged in provision of Health Care Services to their patients, which are either non-taxable or exempt from service tax during the different periods involved in the show cause notices; in the course of such provisions, the Appellant availed certain specialized services such as Radio Diagnosis, MRT, CT Scan, Dental Care etc from specialized service providers namely, (i) CT Scan Research Centre Pvt Ltd, (ii) Landmark Medscan Pvt Ltd and (iii) Axiss Dental Pvt Ltd (refers as 'DSPs') within the hospital premises on payment of agreed/fixed consideration/revenue. The Appellant entered into specific agreements with all these DSPs, the terms & conditions of which clearly states that it is a service simpliciter agreement on principal-to-principal basis. The department entertained the view that the Appellant were providing 'Support Services of Business or Commerce' to the DSPs and therefore, the Appellant are liable to pay service tax under the said category. On these allegations, the department issued the show cause notice dated 22.04.2014 by invoking the extended period of limitation. After following the due process, the learned Commissioner, vide the impugned Order-in-Original, confirmed the demand along with interest and also imposed penalties. Aggrieved by the said order, 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 and is liable to be set aside as the same has been passed without properly appreciating the facts and the law, and binding judicial precedents.

4.1 The learned Counsel further submits that the issue involved in the present appeal is no more *res integra* and has been settled by the Tribunal in favour of the assessee/appellants in the following cases:

- **OP Jindal Institute of Cancer & Research [Final Order No. 60579/2024 dated 16.10.2024 – CESTAT Chandigarh]**
- **Om Savitri Jindal Charitable Society and NC Jindal Institute of Medical Care & Research [Final Order No. 61695-61696/2025 dated 20.11.2025 – CESTAT Chandigarh]**
- **NC Jindal Institute of Medical Care & Research [Final Order No. 61736/2025 dated 02.12.2025]**

4.2 The learned Counsel further submits that the Appellant are not providing 'Support Services of Business or Commerce' to the DSPs rather the Appellant are engaged in providing comprehensive Health Care Services to their patients. He further submits that the Appellant are the receiver of services provided by the vendors, therefore the finding of the Commissioner, that the Appellant are providing services to the vendors and are charging from them, is factually incorrect and perverse. He also submits that the finding of the Commissioner, that the amount retained by the Appellant is consideration for providing infrastructural services, is not sustainable. He also submits that in any case, the Appellant are providing health services, which are exempt/non-taxable all through.

4.3 The learned Counsel further submits that the contracts between the Appellant and the DSPs are on principal-to-principal basis and are in the nature of sharing of revenue, therefore there is no service being provided from one party to another. In this regard, he relies on the **Circular No. 109/03/2009-ST dated 23.02.2009**.

4.2 As regards the invocation of extended period of limitation, the learned Counsel submits that in the facts & circumstances of the case, extended period could not have been invoked because the issue involved was pan India and various Courts have held in favour of the assessee/appellants. He further submits that the Hon'ble Supreme Court has held that mere non-disclosure/non-filing of ST-3 returns does not amount to suppression of facts and therefore, extended period cannot be invoked. For this, he relies on the following judgment:

- **CCE & ST vs. Elegant Developers [2025 SCC Online SC 2376]**

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. We find that the issue involved in the present appeals is no longer *res integra* and has been settled by the Tribunal in favour of the assessee/appellants in various cases as cited above. In this regard, we may refer to decision of the Tribunal in the case of **OP Jindal Institute of Cancer & Research** (supra), wherein this Tribunal vide its **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:

"Revenue Sharing:-

- "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. As regards the invocation of extended period of limitation is concerned, we find that the issue involved in the present case was relating to interpretation of statutory provision, therefore, the extended period cannot be invoked as the issue was pan India and the Tribunal/Courts in various decisions have held that revenue

sharing arrangements between the Appellant and the DSPs are not subject to service tax; moreover, the appellant was under a *bona fide* belief that Healthcare Services are not liable to service tax since the issue involved is that of interpretation; hence, extended period of limitation cannot be invoked.

8. In view of our discussion above and by following the ratios of above cited decisions (*supra*), 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 06.01.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)