केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर,
कस्टम हॉउस(तल प्रथम)
नवरंगपुरा- अहमदाबाद ,380009

Office of the Commissioner
Central Goods & Services Tax &
Central Excise,
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-15/OA/2018

आदेश की तारीख़ / Date of Order : 20.03.2020

जारी करने की तारीख़ / Date of Issue : 20.03.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–37/2019-20

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पीटल कम्पाउन्ड , अहमदाबाद -380016 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम

एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैंचार प्रतियों में दाखिल उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कं) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबंन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide Show-Cause-Notice F.No. **DGGI/AZU/36-20/2018-19** dated **10.4.2018** issued to M/s Clinical Care Consultants Pvt. Ltd.,Nr. Shukan Mall, Off. Science City Road,Sola, Ahmedabad – 380060.

Brief Facts of the Case

M/s Clinical Care Consultants Pvt. Ltd., Nr. Shukan Mall, Off. Science City Road, Sola, Ahmedabad - 380060 (hereinafter referred to as M/s CCCPL for the sake of brevity) is a company engaged in providing professional services by providing doctors to undertake medical procedures in various hospitals. The PAN of M/s CCCPL is AADCC9743Q. They are not registered with Service Tax.

2. Intelligence gathered by the officers of Directorate General of Goods and Services Tax Intelligence (erstwhile Directorate General of Central Excise Intelligence), Ahmedabad Zonal Unit, Ahmedabad [herein after referred to as *'DGGST"* for the sake of brevity] indicated that M/s CCCPL is engaged in the activities of deputing doctors to M/s CIMS Hospital Pvt. Ltd. (hereinafter referred to as M/s CIMS for the sake of brevity), but they are not discharging service tax on the income received towards the same, claiming it to be healthcare services exempted vide Notification No. 25/2012-ST dated 20.06.02012. But, the nature of services provided by M/s CCCPL does not qualify to be healthcare services and hence the benefit of exemption notification No. 25/2012 with respect to healthcare services is not applicable to them.

3. Based on the above intelligence, an inquiry against Ml/s. CCCPL was initiated under summons dated 02.02.2017 issued under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and the documents relevant to the inquiry were called for. In response to the Summons, Ml/s CCCPL submitted their reply along with the relevant documents viz. Balance Sheet, P&L Statement, invoice summary, sample invoices etc.

4.1 On scrutiny of the documents submitted by M/s CCCPL, it is observed that they had entered into MoU with M/s CIMS on 02.08.2010. As per the MoU, M/s CIMS is a hospital providing healthcare services and other ancillary services to its clients and patients and for these purposes, it requires services of doctors and specialists to meet the requirements of its setup. M/s CCCPL on the other hand is a company rendering the kind of professional services as is desired by M/s CIMS. M/s CCCPL had agreed to extend its services to the clients and patients of M/s CIMS who are covered under such healthcare management plans and intensions of M/s CIMS on grounds of the agreed terms and conditions.

4.2 The terms and conditions of the contract assign certain duties to M/s CCCPL, which *inter alia* states that:

(i) M/s CCCPL will be providing professional services to M/s CIMS and would be performing medical procedures as would be required on the walk-in-patients of M/s CIMS as well as on the patients who are referred to M/s CIMS by the professionals working under M/s CCCPL or by any other physician having no association to M/s CCCPL or M/s CIMS.

(ii) M/s CCCPL will ensure that all the doctors that provide services to M/s CIMS will work only through M/s CCCPL and hence, it would be M/s CCCPL who would be paid for the services of such professionals.

(iii) M/s CCC PL acknowledges that M/s CIMS is relying on M/s CCCPL to provide services on the Starting Date. In the event that CCCPL breaches this Agreement by failing to provide services on the Starting Date, M/s CIMS will suffer substantial damages as a result of such deficiency. This condition shall also apply at all times after the date from which the agreement comes into force and M/s CCCPL agrees that it will be liable to pay liquidated damages to M/s CIMS. Such damages include, but are not limited to, the costs of locating a replacement, the loss of services during the search for a replacement and the costs of unused facilities. Both the parties agree that these damages are difficult to predict and to determine, and they have, therefore, agreed to the amount of 15,00,000/- per case as the amount of liquidated damages (not a penalty) to be paid by M/s CCCPL to M/s CIMS in the event M/s CCCPL is unable to provide services as required by this agreement.

4.3. The payment terms in the Agreement shows that:

The payment to which M/s CCCPL would be entitled to will be based on the rate that will be mutually decided by both the parties. The rate would be determined based on the collections made by M/s CIMS from patients, Type of procedure performed and Nature of treatment that is availed by the patients at M/s CIMS.

4.4. The agreement also contains conditions regarding **"Limitations of Liability and Indemnity"**, which interalia reads as follows:

(i) M/s CIMS will not interfere in the treatment and medical care provided to its beneficiaries. M/s CIMS will not be in any way held responsible for the outcome of treatment or quality of care provided by M/s CCCPL.

(ii) M/s CIMS shall not be liable or responsible for any acts, omission or commission of the Doctors of M/s CCCPL.

4.5. From the sample invoices submitted by M/s CCCPL, it is observed that they have raised monthly invoices to M/s CIMS towards *"Fees for providing healthcare services for medical treatment of patients including performance of medical procedures, healthcare consultancy to patients and clinical diagnosis for the month_____"*. The break-down details of the invoice contains details namely - "Admission No.", "Patient Name", "Service Name", "CCCPL charges". The bills have been raised on the basis of medical procedures (e.g. Angioplasty, ICU visit, Echo screening etc.) conducted on particular patients.

5. STATEMENT DATED 11.12.2017 OF SMT. JOLLY SHAH, HEAD OF ACCOUNTS DEPARTMENT OF MIS CLINICAL CARE COSULTANTS PVT. LTD

5.1 A statement of Smt. Jolly Shah, Head of Accounts Department of M/s CCCPL was recorded under the provisions of Section-14 of Central Excise Act, 1944, as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 on **11.12.2017.** The relevant portion of the statement showing applicability of Service Tax is reproduced below:

"Q. 7. Please explain the procedure of treatment of patients at CIMS Hospital, wherein doctors of M/s CCCPL are rendering their services.

A. 7. As per the terms of the contract between M/s CCCPL and M/s CIMS, the doctors of M/s CCCPL sit in CIMS Hospital, Ahmedabad. They provide medical consultancy, IPD, OPD services to the patients of M/s CIMS. The inventory for the same is maintained by M/s CIMS patient wise and categorized on the basis of medical procedure undertaken on the patients. Based on such inventory, bills are raised by M/s CCCPL to M/s CIMS on monthly basis on the pre-agreed rates. The rates are based on the medical procedures undertaken on the patients.

Q. 8. Whom does a patient directly contact for receiving healthcare service? Kindly state whether bills/invoices to patients are raised by M/s CIMS or by M/s CCCPL? Whom does the patients give payment for medical treatment, to M/s CIMS or to M/s CCCPL?

A. 8. A patient requiring healthcare services contacts CIMS Hospital (M/s CIMS) for receiving healthcare services. Thereafter, the doctors of M/s CCCPL treat the patients. Bills/invoices to the patients are raised by M/s CIMS and not by M/s CCCPL. Payment for medical treatment is paid by the patients to M/s CIMS and not to /is CCCPL.

Q.9. Whether, the patients are informed or do they have any knowledge that the doctors are from M/s CCCPL and not from M/s CIMS?

A.9. No. The patients come to CIMS Hospital and receive healthcare services from M/s CIMS itself It is the internal arrangement between M/s CIMS and M/s CCCPL that the doctors of M/s CCCPL will treat the patients of M/s CIMS.

Q.10. From your above answer, it appears that the healthcare services to patients are provided by M/s CIMS and M/s CCCPL is providing the input service (through professional services of its doctors) to provide that healthcare service. Do you agree with the same.

A.10. Yes. M/s CCCPL is providing input service through the professional service of its doctors for M/s CIMS to provide healthcare services to its patients.

Q. 11. Does M/s CCCPL has its own facilities to provide diagnostics, treatment or care for illness services to provide medical treatment to patients?

Ans. 11. No. M/s CCCPL does not have its own facilities to provide diagnostics, treatment or care for illness services to provide medical treatment to patients. It uses the facilities available with M/s CIMS for providing healthcare services through its doctors.

Q.12. In MoU dated 02.08.2010 between M/s CCCPL and M/s CIMS, under Para 4 (h), the following is mentioned:

"CCPL acknowledges that M/s CIMS is relying on CCCPL to provide services on the Starting Date set forth above. In the event that M/s CCCPL breaches this Agreement by failing to provide services on the Starting Date, CIMS will suffer substantial damages as a result of such

deficiency. This conditions shall also apply at all times after the date from which the agreement comes into force and CCCPL agrees that it will be liable to pay liquidated damages to C/MS. Such damages include, but are not limited to, the costs of locating a replacement, the loss of services during the search for a replacement and the costs of unused facilities. Both the parties agree that these damages are difficult to predict and to determine, and they have, therefore, agreed to the amount of 15,00,000/- per case as the amount of liquidated damages (not a penalty) to be paid by CCCPL to C/MS in the event CCCPL is unable to provide services as required by this agreement."

Q.12. Please state, whether any such liquidated damage has been paid by M/s CCCPL to M/s CIMS from 2012-13 to 2016-17.

A. 12. No. Such liquidated damage has never been paid by M/s CCCPL to M/s CIMS.

Q. 13. The above agreement regarding liquidated damage due to absence of services of doctors is between M/s CIMS and M/s CCCPL. Whether similar agreements are made by M/s CIMS with its Patients to whom, it provides healthcare services?

A. 13. No. Such agreement for paying compensation etc. due to absence of doctors or medical facilities are not made by M/s CIMS with its patients."

5.2. From the above statement of Smt. Jolly Shah, Head of Accounts Department of M/s CCCPL, it can be observed that, a patient requiring healthcare service, visits CIMS Hospital (M/s CIMS), CIMS Hospital raises the bills/invoices to the patient towards medical treatment and the payment towards such medical treatment is made to MI/s CIMS by the patient. Thus it is obvious that the healthcare service to the patient is being provided by M/s CIMS, which is an exempted service as per Sr. No. 2 of Notification No. 25/2012-ST. Whereas, the role of M/s CCCPL is limited to providing doctors to M/s CIMS and the services of M/s CCCPL is used just an input service to the healthcare service provided by M/s CIMS to the patients and not the healthcare service itself.

6. STATEMENT DATED 23.03.2018 OF SMT. BELA PANCHAL, HEAD OF ACCOUNTS DEPARTMENT OF M/S CIMS HOSPITAL PVT. LTD.:

6.1 In order to ascertain the various aspects of the present case, a statement of Smt. Bela Panchal, Head of Accounts Department of M/s CIMS Hospitals Pvt. Ltd. (M/s CIMS) was recorded under the provisions of Section-14 of Central Excise Act, 1944, as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994 read with Section 17 4 of the CGST Act, 2017 on **23.03.2018.** The relevant portions of the statement showing applicability of Service Tax is reproduced below:

"Q4. Please explain the business relationship between M/s CIMS and M/s Clinical Care Consultants Pvt. Ltd., Ahmedabad (M/s CCCPL in short).

A.4. M/s CIMS is a multi-specialty hospital and requires the services of various doctors for treatment/providing healthcare services to its patients. M/s CCCPL is a group of doctors formed for the purpose of doing medical profession as a group and they provide healthcare services. The doctors of M/s CCCPL provide healthcare services to M/s CIMS as per the terms of MoU dated 02.08.2010.

Q5. Apart from the doctors of M/s CCCPL, whether M/s CIMS takes the services of other doctors?

A.5. Yes. M/s CIMS takes the services of other doctors as well.

Q. 6. Please provide the list of doctors of M/s CCCPL who provide services to M/s CIMS.

A. 6. The list of doctors cum directors of M/s CCCPL, who provide services to M/s CIMS is given below :

i. *Dr. Ajay Naik*
ii. *Dr. Anish Chandarana*
iii. *Dr. Hemang Baxi*
iv. *Dr. Keyur Parikh*
v. *Dr. Milan Chag*
vi. *Dr. Urmil Shah*
vii. *Dr. Satya Gupta and*
viii. *Dr. Dhiren Shah*

In addition to the above, there may be some other doctors, who might have provided

services to M/s CIMS through M/s CCCPL, whose names are not currently available with me.

Q. 7. Other than doctors and para-medics, any other professional of M/s CCCPL provide their services to M/s CIMS?

A. 7. No. Only the doctors of M/s CCCPL provide services to M/s CIMS.

QB. From the books of accounts of M/s CCCPL, it appears that they have not received any financial consideration from M/s CIMS from F. Y. 2014-15 onwards. Please explain the present practice followed.

A.8. From April 2014 onwards, M/s CIMS has started paying the fee to the individual doctors directly for the healthcare services rendered by them and not through M/s CCCPL.

Q.9. In Clause 4 (b) under "Duties of CCCPL" of the MoU dated 02.08.2010, it is mentioned that : " .... CCCPL will ensure that all the doctors that provide services to CIMS will work only through CCCPL and hence, it would be CCCPL who would be paid for the services of such professionals ... ". From your above reply that the doctors are now being paid directly by M/s CIMS and not through M/s CCCPL, it appears a violation of the conditions of the said MoU. Please explain.

A. 9. The said condition of MoU is binding for the doctors of M/s CCCPL, If he/she is providing services to M/s CCCPL. The doctors providing services directly to M/s CIMS are not bound by this MoU.

Q.10 Whether the MoU dated 02.08.2010 between M/s CIMS and M/s CCCPL is still in force?

A.10. The MoU was signed in 2010 and the present position of the MoU is not known to me and moreover the details are not available with me. I will be able to answer this question within 2-3 days after checking the details. The same will be submitted by me within 2-3 days.

Q.11. Please state, whether the above mentioned doctors of M/s CCCPL who were providing services to M/s CIMS are still providing services to M/s CIMS directly or through M/s CCCPL?

A.11. M/s CIMS is not receiving any services from M/s CCCPL from April 2014 onwards. The doctors mentioned in Answer No. 6 above are now providing their services directly to M/s CIMS.

Q. 12. In the arrangement between M/s CIMS and M/s CCCPL, please state whom does a patient directly contact for receiving healthcare service? Also state whether bills/invoices to patients are raised by M/s CIMS or by M/s CCCPL? Whom does the patients give payment for medical treatment, to M/s CIMS or to M/s CCCPL?

A. 12. M/s CIMS has various doctors including the doctors of M/s CCCPL. The doctors from M/s CCCPL, who provides services to M/s CIMS are specialist doctors in their fields. In case of patients, who require their services, the patients come to CIMS Hospital (M/s CIMS) for receiving such healthcare services. Thereafter, the doctors of M/s CCCPL provide the required healthcare services to the patient. Bills/invoices to the patients are raised by M/s CIMS and not by M/s CCCPL, Payment for medical treatment is done by the patients to M/s CIMS and not to M/s CCCPL.

Q. 13. Whether, the patients are informed or do they have any knowledge that the doctors are from M/s CCCPL and not from M/s CIMS?

A. 13. No. The patients come to CIMS Hospital and receive healthcare services from M/s CIMS itself. It is the internal arrangement between M/s CIMS and M/s CCCPL that the doctors of M/s CCCPL will treat the patients of M/s CIMS.

Q. 14. From your above answer, it appears that the healthcare services to patients are provided by M/s CIMS and M/s CCCPL is providing the input service (through professional services of its doctors) to provide that healthcare service. Do you agree with the same.

A. 14. Yes. M/s CCCPL is providing input service through the professional service of its doctors to M/s CIMS for providing healthcare services to its patients.

Q.15. In MoU dated 02.08.2010 between M/s CCCPL and M/s CIMS, under Para 4 (h), the following is mentioned:

"CCCPL acknowledges that M/s CIMS is relying on CCCPL to provide services on the Starting Date set forth above. In the event that M/s CCCPL breaches this Agreement by failing to provide services on the Starting Date, CIMS will suffer substantial damages as a result of such deficiency. This conditions shall also apply at all times after the date from which the agreement comes into force and CCCPL agrees that it will be liable to pay liquidated damages to CIMS. Such damages include, but are not limited to, the costs of locating a replacement, the loss of services during the search for a replacement and the costs of unused facilities. Both the parties agree that these damages are difficult to predict and to determine, and they have, therefore, agreed to the amount of 15,00,0001- per cas · as the amount of liquidated damages (not a penalty) to be paid by CCCPL to CIMS in the event CCCPL is unable to provide services as required by this agreement."

Please state, whether any such liquidated damage has been paid by M/s CCCPL to M/s CIMS from 2012-13 to 2016-17.

A. 15. No. Such liquidated damage has never been paid by M/s CCCPL to M/s CIMS

Q. 16. The above agreement regarding liquidated damage due to absence of services of doctors is between M/s CIMS and M/s CCCPL. Whether similar agreements are made by M/s CIMS with its patients to whom, it provides healthcare services?

A. 16. No. Such agreement for paying compensation etc. due to absence of doctors or medical facilities are not made by M/s CIMS with its patients."

6.2. From the above statement of Smt. Bela Panchal, Head of Accounts Department of M/s CIMS, it can be observed that, a patient requiring healthcare service, visits CIMS Hospital (M/s CIMS), CIMS Hospital raises the bills/invoices to the patient towards medical treatment and the payment towards such medical treatment is made to M/s CIMS by the patient. Thus it is obvious that the healthcare service to the patient is being provided by M/s CIMS, which is an exempted service as per Sr. No. 2 of Notification No. 25/2012-ST. Whereas, the role of M/s CCCPL is limited to providing doctors to M/s CIMS and the services of M/s CCCPL is used just an input service to the healthcare service provided by M/s CIMS to the patients and not the healthcare service itself.

6.3 The statement also reveals that upto March 2014, M/s CIMS used to pay professional fees to M/s CCCPL towards the services of doctors of M/s CCCPL, who treats the patients at CIMS. From April 2014 onwards, M/s CIMS have not taken any services from M/s CCCPL and hence have not made any payment to them. Instead, they have started taking the services of same doctors by directly paying considerations to them for their services. It clearly shows that M/s CCCPL was providing service to M/s CIMS by way of aggregating doctors for them and were not providing healthcare services themselves. In her Statement Smt. Bela Panchal has also admitted that the services provided by M/s CCCPL to M/s CIMS are input service (through professional services of its doctors) to healthcare service provided by M/s CIMS (Indicating that though the services of M/s CIMS are exempted, services of M/s CCCPL may or may not be exempted [Section 66F(1) of Finance Act, 1994]).

7. **Observations:**

7.1 In view of the discussions made here-in-above, it appeared that M/s CCCPL cannot be said to have provided services enumerated in the definition of *"Health Care Services"* to their clients, rather *Health Care Services* were provided by M/s CIMS to their client/patients/customers in their hospital. The doctors supplied/provided by M/s CCCPL did not have any agreement with the patients/customers of M/s CIMS. The patients/customers approached M/s CIMS for receiving Health Care Services and only M/s CIMS provided this service by putting to use the doctors supplied by M/s CCCPL and raised bills/invoices to the patients towards such Health Care Services. Moreover, the patient was never informed about the internal arrangement between M/s CCCPL and M/s CIMS. Thus it was obvious that the healthcare service to the patients was provided by M/s CIMS, which is an exempted service as per Sr. No. 2 of Notification No. 25/2012-ST. The role of M/s CCCPL was limited to providing doctors to M/s CIMS and the services of M/s CCCPL was used just an input service to the healthcare service provided by M/s CIMS to the patients and not the healthcare service itself.

7.2 From the above, it was observed that M/s CIMS provided healthcare services to their patients and for this they took the input services of the doctors of M/s CCCPL. M/s CCCPL provide medical practitioners/doctors to M/s CIMS for conducting medical procedures/treatment of their patients and receive considerations towards this calculated on monthly basis. The invoices raised by M/s. CCCPL are based on the medical procedure/treatment conducted patient wise as well as medical procedure/treatment wise. Further, M/s CCCPL claimed that they were not providing manpower supply service, as they have not supplied labour on man-day or man-hour basis.

7.3. The definition of "Supply of Manpower" has been given under Rule 2(g) of Service Tax Rules, 1994 as under':

""Supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control."

7.4. In the instant case, para 8 of the Agreement dated 02.08.2010 between M/s CCCPL and

M/s CIMS describes the control on the medical professionals provided by M/s CCCPL to M/s CIMS. The conditions of the contract are reproduced below:

"(a) CIMS will not interfere in the treatment and medical care provided to its beneficiaries. CIMS will not be in any way held responsible for the outcome of treatment or quality of care provided by CCCPL.

(b) CIMS shall not be liable o responsible for any acts, omission or commission of the Doctors of CCCPL."

7.5. From the above, it can be-seen that the control over the medical professionals provided by M/s CCCPL rest with M/s CCCPL only and M/s CIMS is neither authorized to interfere in the treatment process nor to be held responsible for the outcome of the treatment or quality of care provided by M/s CCCPL or its doctors.

7.6. The explanation above shows that the services provided by M/s CCCPL to M/s CIMS cannot be categorized under the category of "Manpower-Recruitment and Supply Agency Service".

7.7. With regard to the healthcare services provided to the patients of M/s CIMS, the situation is as under:

(i) Prior to 01.07.2012, vide Notification No. 30/2011-ST dated 25.04.2011, taxable service referred to in sub-clause zzzzo of clause (105) of Section 65 of Finance Act was exempted. sub-clause zzzzo of clause (105) of Section 65 of Finance Act is reproduced below :

"to any person, -

(i) by a clinical establishment; or

(ii) by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine"

Here services to patients are not being provided by M/s CIMS directly and hence point (i) above is not applicable.

As per Point No. (ii) above the doctors of M/s CCCPL providing healthcare services to the patients of M/s CIMS and hence the services appear to be exempted.

(ii) From 01.07.2012 onwards - As per Sr. No. 02 of Mega Exemption Notification No. 25/2012-ST "Healthcare services by a clinical establishment, an authorized medical practitioner or para medics" are exempted service. Thus the services provided by M/s CIMS to its patients fall under this category and hence exempted.

7.8. Now as per the terms of agreement dated 02.08.2010, M/s CIMS have engaged M/s CCCPL, for providing professional services to conduct medical procedures/treatments on the patients/clients of M/s CIMS. Thus, M/s CIMS is providing healthcare services and as per Sr. No. 02 of Mega Exemption Notification No. 25/2012-ST, the healthcare services provided by M/s CIMS appears to be exempted. M/s CCCPL, in turn provide input services for providing the exempted services and not providing the exempted services themselves. As per Section 66F(1) of the Finance Act, 1994, if the main service is exempted, the input to that services may or may not be exempted.

The text of Section 66F(1) and its Illustration reads as follows:

"Unless otherwise specified, reference to a service (herein referred to as main service} shall not include reference to a service which is used for providing main service.

Illustration

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of Section 660, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 660 and hence, such service is le viable to service tax."

7.9. From the above, it is evident that the professional service provided to M/s CIMS by M/s CCCPL through its doctors is just an input service to the main service, i.e. Healthcare Service which is exempted. Thus, the exemption available to M/s CIMS does not appear to be available to M/s CCCPL in view of Section 66(F)(1), as discussed above and hence the professional services (by way of providing medical professionals/doctors) provided by M/s CCCPL to M/s CIMS appears to be taxable w.e.f. 01.07.2012.

7.10. Moreover, as per para 4(h) of the agreement dated 02.08.2010, M/s CCCPL will pay liquidated damages in the event of failure to provide services to M/s CIMS and the liquidated damages are to be paid for every instance of such failure. The text of the agreement is reproduced as under:

> *"M/s CCCPL acknowledges that M/s CIMS is relying on M/s CCCPL to provide services on the "Starting Date". In the event that M/s CCCPL breaches this Agreement by failing to provide services on the Starting Date . In the event that CCCPL breaches this Agreement by failing to provide services on the Starting Date, M/s CIMS will suffer substantial damages as a result of such deficiency. This conditions shall also apply at all times after the date from which the agreement comes into force and M/s CCCPL agrees that, it will be liable to pay liquidated damages to M/s CIMS. Such damages include, but are not limited to, the costs of locating a replacement, the loss of services during the search for a replacement and the costs of unused facilities. Both the parties agree that these damages are difficult to predict and to determine, and they have, therefore, agreed to the amount of 15,00,000/- per case as the amount of liquidated damages (not a penalty) to be paid by M/s CCCPL to M/s CIMS in the event M/s CCCPL is unable to provide services as required by this agreement."*

From the conditions of the agreement, it can be seen that the services provided by M/s CCCPL to M/s CIMS are only services through their doctors/medical professionals, and absence of these services will make them liable to pay liquidated damage to the service recipients, i.e. M/s CIMS. Further the ultimate patient, who actually requires the healthcare service, is not the beneficiary of such liquidated damages. Had the services of M/s CCCPL been healthcare services, absence of service would not have attracted punitive action, as mentioned in the agreement. This clearly shows that the services provided by M/s CCCPL is only the input to the healthcare services provided by M/s CIMS to its patients and not the exempted services of healthcare itself.

8. <u>Legal Provisions and CBEC circular on the subject</u>

8.1. Section 65(B)(44) of Finance Act, 1994 reads:-

"Service means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) to (c)

8.2 Section 65B(51) of Finance Act, 1994:-

"Taxable Service" *means any service on which service tax is leviable under Section 66B".*

8.3. Section 66F(1) of Finance Act, 1994:-

> *"(1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.'*
>
> *Illustration*
>
> *The services by the Reserve Bank of India, being the main service within the meaning of 12 clause (b) of section 660, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 660 and hence, such service is le viable to service tax."*

8.4. Valuation of Taxable services provided by M/s. CCCPL is to be done as per Section 67 of Finance Act, 1994 and Rule 2(A) of the Service Tax (Determination of Value) Rules, 2006 and accordingly, they are required to pay Service Tax on the gross receipt.

8.5. In view if Section 66, 668 and 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, M/s. CCCPL are liable to pay Service Tax at the specified rate by the due dates on the taxable services given by them.

8.6 As per the provisions of Section 69 of the Finance Act, 1994 read with Rule 4 of Service Tax Rules, 1994, being provider of taxable services, M/s CCCPL were required to obtain service tax registration.

8.7. As per the provisions of Section 70 of the Finance Act, 1994, M/s. CCC PL were required to correctly assess their service tax liability and file the ST-3 Returns duly incorporating the same.

8.8. Thus, from the documents, statements and legal provisions, it appears that *M/s* CCCPL is liable to pay service tax on the consideration received by them on the entire income received by them, as it is not covered under any exemption notification nor appears in the Negative List mentioned in Section 66(D) of the Finance Act, 1994.

9. **Outcome of the Investigations/Conclusion:**

9.1. In view of discussions in the foregoing paras, the evidences brought on record, statement dated 11.12.2017 of Smt. Jolly Shah, Head of Accounts of *M/s CCCPL* and statement dated 23.03.2018 of Smt. Bela Panchal, Head of Accounts of M/s CIMS, it appeared that:

(i) *M/s.* CCCPL have provided taxable services other than Negative List to M/s CIMS by way of providing doctors for conducting medical procedures/treatment on their patients (From July 2012 to March 2014) and also provided manpower supply service to other clients (from April 2014 to March 2016).

(ii) W.e.f. 01.07.2012, the above activities are taxable services other than Negative List and hence taxable.

(iii) However, as they have failed to discharge the service tax on their service income, the same is required to be demanded from them.

(iv) In her statement dated 11.12.2017, Smt. Jolly Shah, Head of Accounts of M/s CCCPL has admitted that they have not paid service tax on their service income considering it to be healthcare service, which is exempted. But, in view of the Section 66F (1) of Finance Act, 1994 and the other issues discussed here-in-above, they are required to pay service tax on such consideration received.

(v) M/s CCCPL have neither obtained Service Tax Registration nor have they filed ST-3 Return. As per the provisions of Section 69 and Section 70 of the Finance Act, 1994, M/s CCCPL were required to obtain Service Tax Registration and make self-assessment of the Service Tax payable on the services provided by them, to deposit Service Tax and to file proper Service Tax Returns with the department. However, M/s CCCPL did none of these.

(vi) From the documents submitted by M/s CCCPL, their statements along with the statement of authorized representative of M/s CIMS (i.e. the service receiver) and the discussions made here-in-above, it appeared that though M/s CCCPL was engaged in providing taxable services, w.e.f 01.07.2012, they wilfully did not obtain service tax registration nor did they file their service tax returns in order to evade payment of service tax. Moreover, the submissions and statements of M/s CCCPL show that despite having knowledge of service tax rules and regulations, they had deliberately tried to justify their misdeed by claiming their services to be exempted. Detailed analysis of their agreement with M/s CIMS and their statements have already indicated the services provided by them to be taxable w.e.f. 01.07.2012. Despite having knowledge of various aspects, the act of mis-declaration by the service provider shows the suppression of facts and contravention of provisions with intent to evade Service Tax payment on the part of M/s CCCPL. Had the investigation not taken place, the issue would have gone un-detected. Thus, the action of M/s CCCPL was not bonafide in as much as they have wilfully attempted to evade Service Tax. Thus, proviso to Section 73(1) of the Finance Act, 1994, for the

extended period of limitation, appears to be invocable to demand and recover Service Tax payable.

(vii) The evasion of service tax by M/s. CCCPL on the service income for the F.Y. 2012-13 (From 01.07.2012) to 2015-16 (Service income for 2016-17 is NIL) is given in Annexure-A to this notice. According to the said Annexure-A, M/s. CCCPL have, during the period from 01.07.2012 to 31.03.2016, evaded the service tax to the tune of **Rs. 4,43, 16,329/-** on the taxable income received by them.

10. It is pertinent to mention here that the system of self-assessment was in vogue in respect of Service Tax. In the scheme of self-assessment, the department came to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it placed greater onus on the party/assessee to comply with higher standards of disclosure of information in the statutory returns. It is seen from the facts of the emerged during the investigation of the instant case that M/s CCCPL had neither obtained Service Tax Registration nor have filed the Service Tax Returns despite the fact that they were engaged in providing taxable services. Thus, M/s CCCPL had suppressed the material facts from the Department by not obtaining Service Tax Registration thereby not filing ST- 3 Returns. This appeared to be done intentionally so as not to bring their taxable activities to the notice of the Department, though they were engaged in providing taxable services, as discussed here-in-above. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s CCCPL, it shows intent to evade payment of service tax by an act of omission in as much as M/s CCCPL though being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, failed to disclose to the department at any point of time, regarding the nonpayment of service tax on account of the their receipt towards providing taxable services on account of deputing doctors to M/s CIMS (in F.Y. 2012-13 and 2013-14) and later on providing manpower supply service (in F.Y. 2014-15 and 2015-16) to other client, during the period from July 2012 and March 2016. M/s CCCPL had deliberately not obtained Service Tax Registration and thereby not filed their ST-3 Returns with intentions to evade service tax by not disclosing their receipts towards taxable service rendered by them and service tax involved thereon. Had the investigation proceedings not conducted by DGGSTI, Zonal Unit, Ahmedabad, these facts would not have come to light.

10.1 M/s CCCPL had failed to declare their taxable income towards deputing doctors at M/s CIMS (in 2012-13 & 2013-14) and also towards providing manpower supply service (in F.Y. 2014-15 and 2015-16) by not obtaining Service Tax Registration and thereby not filing ST-3 Returns during the aforesaid period. Further, M/s CCCPL have never sought any clarification from Service Tax Authorities regarding taxability of their services. In view of the specific omissions and commissions as elaborated earlier, it is apparent, that M/s CCCPL had deliberately suppressed the facts of receipt of consideration towards providing taxable services by not obtaining Service Tax Registration and thereby not filing ST- 3 Returns . This amounts willful suppression of facts with the deliberate intent to evade payment of Service Tax. The non-payment of Service Tax on the amounts so collected by M/s CCCPL which appears to be the consideration for providing taxable service came to the knowledge of the DGGSTI only due to specific investigations carried out as spelt out earlier. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 appears to be invocable to demand Service Tax for the period from July 2012 to March 2016.

10.2 In this regard, it may not be out of place to highlight here the observations of the Hon'ble Apex Court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 regarding applicability of the extended period in different situations.

> *"11. A plain reading of sub-section (1) of section 11 A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such*

non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.

12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis -statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section I IA of the Act shall have effect as if the words one year have been substituted by the words five years.

13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11 A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would- tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to jive years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to jive years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department

there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11 A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus:

> *"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis -statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."*

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

10.3 Therefore, it appears that M/s CCCPL have willfully suppressed the above facts with intent to evade payment of Service Tax and the extended period of limitation of five years as envisaged under proviso to sub-section (1) of Section 73 of Chapter V of the erstwhile Finance Act, 1994 (as it existed up to 30/06/2017) read with Section 174 of Central Goods And Service Tax Act, 2017, for the demand and recovery of service tax (including Cess) as quantified in the subsequent paras is applicable in the instant case.

11. <u>Quantification and demand of Service Tax :</u>

11.1 The income of M/s CCCPL for the period from July 2012 to Mar 2016 as per Balance Sheet along with corresponding ST liability is shown in Annexure *'A'* to this notice. The year-wise summary is given below :

(Amt. in Rs)

YEAR	Consulting fees Income(received from M/s CIMS)	Income from services(Manpower supply income)	Total	Applicable ST
2012-13 (Jul 12 to Mar 13)	161844200	0	161844200	20003943
2013-14	195328777	0	195328777	24142637
2014-15	0	540000	540000	66744
2015-16	0	729000	729000	103005
Total	**357172977**	**1269000**	**358441977**	**44316329**

11.2 From the above table, it appears that M/s. CCC PL have, during the period from 01.07.2012 to 31.03.2016, provided the taxable services and have received total taxable amount of Rs. 35,84,41,977/- resulting in the evasion of Service Tax of **Rs. 4,43,16,329/- (S. Tax. Rs. 4,30,27,617/- + Ed. Cess Rs. 8,58,511/- + SHEC Rs. 4,29,256/- + Swachch Bharat Cess Rs. 945/-) [Rupees Four Crore Forty Three Lakh Sixteen Thousand Three Hundred Twenty Nine only).** The said amount stood recoverable from them under the proviso to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994 along with the applicable interest and penalty.

11.3 In light of the facts discussed hereinabove and the material evidences available on records, it is further revealed that M/s. CCCPL have contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of taxable services provided by them to their clients. They have:

(i) Failed to assess, declare and pay the service tax due on the. taxable services other than Negative list and to maintain records, obtain Service Tax Registration and to furnish returns, in such form i.e. ST-3 and in such manner arid at such frequency, as required under Section 69 and 70 of the Finance Act, 1994, read with Rule 4 and 7 of the Service Tax Rules, 1994.

(ii) Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above.

(iii) Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provisions.

12. M/s. CCCPL, had failed to pay the applicable Service Tax on their taxable income w.e.f. 01.07.2012. Further, they had not obtained Service Tax Registration and not disclosed their taxable income in their ST-3 Returns (which should have been filed by them after obtaining Service Tax Registration) to the Department. By their willful act of suppression and mis-declaration of facts with sole intention to evade Service Tax, the extended period of five years, as provided in proviso of sub-section (1) of Section 73 of Finance Act, 1994 is invocable for demanding the Service Tax for the period from Jul, 2012 to Mar, 2016 in the subject matter. Accordingly, the Service Tax amount of **Rs. Rs. 4,43,16,329/- (5. Tax. Rs. 4,30,27,617/- + Ed. Cess Rs. 8,58,511/- + SHEC Rs. 4,29,256/- + Swachch Bharat Cess Rs. 945/-) [Rupees Four Crore Forty Three Lakh Sixteen Thousand Three Hundred Twenty Nine only)** evaded by M/s. CCCPL, during the period from Jul, 2012 to Mar, 2016, on the aforesaid taxable services, as detailed in Annexure-'A' to this show cause notice, is required to be recovered from M/s. CCCPL by invoking extended period of five years, under proviso. to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994. Consequently, M/s. CCCPL also appeared to be liable to pay interest as per Section 75 of the Finance Act, 1994 on the aforesaid evaded service tax.

13. Further, all above acts of contravention constitute an offence of the nature as described under the provisions of Section 69, 77 & 78 of the Finance Act, 1994, rendering themselves liable to penalty under Section 69 for failure to obtain Service Tax Registration, Section 77 ibid for failure to pay Service Tax by due dates and not furnishing the information in respect of above taxable service provided by them and taxable value thereof in prescribed periodical ST-3 returns as well as under Section 78 of the Finance Act, 1994 for suppression of taxable value of said taxable services provided by them.

14. Therefore, **M/s Clinical Care Consultants Pvt. Ltd, Plot No. 67/1, Opp. Panchamrut Bungalows, Nr. Shukan Mall, Sola, Ahmedabad - 380060** are hereby called upon to show cause to the Commissioner, CGST, Ahmedabad North, having his office at Custom House, Navrangpura, Ahmedabad - within 30 days of the receipt of this Show Cause Notice as to why:-

(i) The services provided by M/s CCCPL to M/s CIMS in terms of providing doctors for undertaking medical procedures/treatments and providing manpower services to other parties should not be treated as taxable services in view of Section 65(8)(44) of the Finance Act, 1994.

(ii) The Service Tax of **Rs. 4,43, 16,329/- (S. Tax. Rs. 4,30,27,617/- + Ed. Cess Rs. 8,58,5111- + SHEC Rs. 4,29,256/- + Swachch Bharat Cess Rs. 945/-) [Rupees Four Crore Forty Three Lakh Sixteen Thousand Three Hundred Twenty Nine only),** as detailed in Annexure-A to the notice, evaded on proving such taxable service during the period from July, 2012 to March, 2016, should not be demanded and recovered from them under proviso to Section 73(1) of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994, read with Section 17 4 of CGST Act, 2017;

(iii) interest should not be demanded and recovered from them under Section 75 of Chapter V of the Finance Act, 1994, read with Section 17 4 of CGST Act, 2017 on the Service Tax amount at (ii) above;

(iv) penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for non-payment of Service Tax by due dates in contravention of the provisions of Section 68 of the Act and the Rules made thereunder read with Section 174 of CGST Act, 2017;

(v) for their contravention of different provisions of the Finance Act, 1994 and the Service Tax Rules, 1994, why penalty should not be imposed upon them under Section 77 of Chapter V of the Finance Act, 1994, read with Section 174 of CGST Act, 2017; and

(vi) penalty for suppression and mis-declaration of correct taxable value and evasion of Service Tax with deliberate intention to evade Service Tax on the aforesaid taxable services should not be imposed upon them under Section 78 of Chapter V of the Finance Act, 1994, read with Section 17 4 of CGST Act, 2017.

15. DEFENCE REPLY

A reply dated 07.06.2018 in respect of Show Cause Notice dated 13.04.2018, was submitted wherein the assessee has interalia, stated as under:

1. CCCPL is a company formed by the group of doctors for the purpose of doing the medical profession in group. The CCCPL have group of doctors and providing health care services to CIMS hospital.
2. CIMS hospital is delivering healthcare service to the patients coming for treatment.
3. CIMS hospital, being a private limited company i.e. an unnatural person, is unable to provide any healthcare service on its own. Therefore, it has approached CCCPL for the services of professional doctors, specialist in various branches of medicine. As mentioned above, CCCPL being the company formed by group of doctors, entered into agreement for providing healthcare service to the patients through specialist doctors.
4. Thus CCCPL and CIMS both are providing healthcare service.

5. As per serial no. (2) of Notification 25/2012 dated 20-06-2012,**Health care services** provided by a **clinical establishment,** an authorized medical practitioner or para medics" are exempt from payment of service tax.

5.1 For claiming exemption under serial no. (2) Of Notification 25/2012, two component shall have to be explored i.e. nature of service and service provider;

1. The services provided must be health care services
2. Such services must be provided by clinical establishment, an authorized medical practitioner or para medics.

3. There is no criteria in **respect of recipient of healthcare service.** It means service recipient may be anybody.

5.2. The services provided must be health care services.

As per clause (t) of Explanation attached to Notification 25/2012-ST, **"health care services means** any services by way of diagnosis or treatment or care in India for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicine in India and includes services by way of transportation of the patient to and from 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."

5.3.. In definition of healthcare service, it is mentioned that services by way of diagnosis or treatment or care in India for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicine in India shall be considered as healthcare service.

6. CCCPL being group of doctors providing services of diagnosis or treatment or care in India for illness, injury, deformity, abnormality or pregnancy in a recognized system of medicine in India. All doctors belonging to CCCPL are highly qualified and experienced in their own field

and provides such services since many years.

7. CCCPL is providing health care services to CIMS by providing diagnosis and/or treatment and/or care as per the terms and conditions mentioned in MOU executed between these two parties. Duties of the CCCPL as per the said MOU are as under:

a) CCCPL will be providing professional services to CIMS and would be performing **medical procedures** as would be required on the walk-in patients of CIMS as well as on the patients who are referred to CIMS by professionals working under CCCPL or by any other physician having no association to CCCPL or CIMS.

b) CCCPL will maintain the highest quality of services by means of obtaining professional services, help and guidance from experts in the field. CCCPL will ensure that all the doctors that provide services to CIMS will work only through CCCPL and hence, it would be CCCPL who would be paid for the services of such professionals.

c) **It would also be the duty of CCCPL to take the post-operative care of the patients that it treats at CIMS.**

d) CCCPL will have its facility covered by proper indemnity policy including error, omission and professional indemnity and agrees to keep such policies in force during entire tenure of the agreement.

e) CCCPL will ensure that all the consultants provided by CCCPL maintain all the required professional ethics.

f) The consultants provided by CCCPL shall perform their duties under this Agreement in accordance with the rules of ethics of the medical profession. The consultants shall also perform their duties under this Agreement in accordance with the appropriate standard of care for his or her medical profession and specialty. CCCPL will ensure that the consultants provided by **CCCPL will be qualified for performing the procedures** along with the necessary membership from the appropriate medical council as well as other required permissions and licenses required on an individual level.

g) **CCCPL will ensure availability of the interventional cardiologists, cardiac surgeons and requisite specialist anesthetists for the purpose of carrying out the cardiac procedures. Other intensives, specialized professional service in medical field also carrying out.**

h) CCCPL acknowledges that CIMS is relying on CCCPL to provide services on the Starting Date set forth above. In the event that CCCPL breaches this Agreement by failing to provide services on the Starting Date, CIMS will suffer substantial damages as a result of such deficiency. This condition shall also apply at all times after the date from which the agreement comes into force and CCCPL agrees that it will be liable to pay liquidated damages to CIMS. Such damages include, but are not limited to the costs of locating a replacement, the loss of services during the search for a replacement and the costs of unused facilities. Both the parties agree that these damages are difficult to predict and to determine, and they have, therefore, agreed to the amount of 15,00,000 per case as the amount of liquidated damages (not a penalty) to be paid by CCCPL to CIMS in the event CCCPL is unable to provide services as required by this Agreement.

i) CCCPL will ensure availability of the professionals on all days at all times.

j) CCCPL will ensure optimal utilization of the resources of CIMS and CCCPL will not misuse the resources of CIMS, and would take reasonable amount of care in utilising the resources.

k) CCCPL will be responsible for setting up the cardiac department in CIMS and will work towards the development of cardiac department of the hospital. CCCPL will also develop and implement necessary SOPs and protocols; and would share the same in writing with CIMS.

l) **CCCPL will convey to their attached consultants to keep the patients only for the required number of days of treatment and carry out only the required investigation & treatment for the ailment which he is admitted.**

8. From the above it can be observed that under a MOU with CIMS, CCCPL carried out activities of professional services relating to diagnosis or treatment or care in India for illness,

injury, deformity, abnormality or pregnancy in a recognized system of medicine in India. Therefore, services provided by CCCPL are healthcare services.

8.1 Services must be provided by **clinical establishment**, an authorized medical practitioner or para medics.

9. As per clause (j) of para 2 of Notification 25/2012-ST, **"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 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. As discussed above, CCCPL, a body corporate, being a group of doctors offering services of diagnosis or treatment or care in India for illness, injury, deformity, abnormality or pregnancy. Therefore, it is clinical establishment providing healthcare service.

11. In definition of clinical establishment it is provided that an establishment can be in any form say hospital, nursing home, clinic, sanatorium or any other institution. **CCCPL is an institution which is providing the services specified in clause (t) of Explanation attached to Notification 25/2012-ST i.e. health care services.**

12. There is no condition or requirement in the definition of health care services that such services shall have to be provided to specified category of person or class of person. The definition has provided that services provided by but it is nowhere mentioned that services must be provided to....

13. Services should be provided by clinical establishment. It is not mentioned anywhere that services must be provided to any specific recipient. A clinical establishment can provide health care services to any one, i.e. either to a patient or to a hospital or to any other person.

14. The main intention for giving exemption is to exempt whole health care services from the scope of service tax. It is not necessary that services have to be provided directly by establishment to patient. In definition of health care service there is no restriction to provide these services to anybody.

15. In para 7.8 of show cause notice the Additional Director General noted that:

> *"7.8. Now as per the terms of agreement dated 02.08.2010, M/s CIMS have engaged M/s CCCPL, for providing professional services to conduct medical procedures/treatments on the patients/clients of M/s CIMS. Thus, M/s CI MS is providing healthcare services and as per Sr. No. 02 of Mega Exemption Notification No. 25/2012-ST, the healthcare services provided by M/s CIMS appears to be exempted. M/s CCCPL, in turn provide input services for providing the exempted services and not providing the exempted services themselves. As per Section 66F(1) of the Finance Act, 1994, if the main service is exempted, the input to that **services may or may not be exempted.** The text of Section 66F(1) and its Illustration reads as follows:*
>
> *"Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.*
>
> ***Illustration***
>
> *The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of Section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax."*

15.1 It is contented that illustration referred above has been inserted in Section 66F(1) w.e.f. 14/05/2015. Therefore the same is not applicable in the period covered in show cause notice. However, in the said illustration the input service has been provided by any bank to Reserve Bank of India. Any bank is not RBI therefore it cannot be considered as services provided by RBI and the services provided by any bank to RBI is taxable service. Services provided by Reserve Bank of India, being the main service within the meaning of clause (b) of Section 66D, does not include any agency service provided or agreed to be provided by any bank to RBI. In

illustration provided by you it is clearly mentioned that services provided by Reserve Bank of India are under negative list. If one branch of Reserve Bank of India provides services to another branch of Reserve Bank of India then will it be taxable assuming that both have separate registration?

15.2. In our case healthcare services provided by clinical establishment are exempted.CIMS as well as CCCPL both are clinical establishment and services provided by both of them are falling within the meaning of healthcare service. As per notification 25 dated 20/06/2012, the health care service provided by clinical establishment is exempt from service tax. There is no restriction on providing healthcare service from one clinical establishment to other clinical establishment. Therefore, exemption cannot be withdrawn merely on the ground that services provided by CCCPL are input services to CIMS.

15.3. The observation in the show cause notice in this regard is based only that healthcare services provided by CCCPL is input service for CIMS. Other than this there is no basis on which the health care service provided by CCCPL becomes taxable service.

16. Section 65F talks about principles of interpretation of specified descriptions of services or bundled services. In subsection (2) to Section 65F it is stated that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

17. In para no. 9.1(i) the Additional Director General concluded that M/s CCCPL have provided **taxable services other than negative list** to M/s CIMS by way of providing doctors for conducting medical procedures/ treatment on their patients. Nature of services provided by CCCP is capable of for identifying the most specific description i.e. healthcare service. Therefore, **healthcare service (most specific description)** shall be preferred over a **taxable services other than negative list(more general description).**

18. Since, the CCCPL is fulfilling all the conditions in above mentioned provisions of Section 65F(1) & (2) and notification 25/2012, it is eligible to claim exemption on health care services.

19. CCCPL has provided healthcare service. Since, healthcare services are exempted from payment of service tax, we are not required to comply with any of the provisions of the service tax i.e. to obtain registration number, payment of service tax and filing of periodical return for financial year 2012-13 and 2013-14. On the basis of the notification no. 25/2012 CCCPL has bonafide belief that the services provided to CIMS are not liable to service tax. The defaults of service tax provisions by CCCPL as mentioned in show cause notice are consequential and based on so called observations in respect of taxability of services after exploring the possibility to tax it as a supply of manpower and found it healthcare service not provided to patient and considered input service to healthcare service provided by CIMS and considered as taxable input service by invoking provisions of Section 66F(1) of the Finance Act 1994. Therefore, the taxability of service itself is in doubt and has difference of opinion. CCCPL has provided all the details from time to time and show cause notice has been issued on the basis of data provided by CCCPL. Other than this, the department has no independent finding or evidence proving the taxability of the service provided by CCCPL. On the basis of the facts of the case it is submitted that, there is no fraud, or collusion or any willful mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under with intent to evade payment of service tax.

20. They have not provided taxable service during financial year 2012-13 and 2013-14, Therefore, we are eligible for exemption of threshold limit upto Rs. 10,00,000/- as per notification no. 33/2012ST dated 20/06/2012 in subsequent years. Therefore, no service tax was paid on value of manpower services provided during financial year 2014-15 and 2015-16.

21. Alternatively, assuming but not accepting that our above contention is not acceptable, the value of taxable services provided in financial year 2014-15 is less than Rs. 10,00,000/- i.e. Rs. 5,40,000/- and no service tax is payable upto value of taxable service in financial year 2015-16. The value of taxable service provided in 2015-16 is Rs. 7,29,000/-. Therefore, there is no service tax liability in respect of financial year 2015-16 in view of Notification 33/2012-ST dated 20/06/2012.

22. **Mere non-payment of tax is equivalent to fraud, collusion or any wilful mis-**

statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under with intent to evade payment of service tax, is untenable. If that were to be true, then, it was beyond understanding, which form of non-payment would amount to ordinary default? Construing mere non-payment as falling under categories of 'fraud', 'collusion', 'suppression', 'wilful misstatement', etc. would leave no situation for which, ordinary limitation period may apply. The main body of the section, in fact, contemplates ordinary default in payment of duties and leaves cases of fraud or collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. We submit that non payment of service tax is not due to fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under with intent to evade payment of service tax. As stated earlier we had not paid service tax because the services provided by us to CIMS Hospital is covered under the definition of healthcare service and as stated in exemption notification, the healthcare services provided by any institution (CCCPL) is exempt and there is no class of service receiver defined. That means the service receiver may be anybody but the services provided by clinical establishment should be healthcare.

23. As per Section 69 of Finance Act, 1994, Every person **liable to pay** the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise. Since, as stated above we were not liable to pay service tax, we are not supposed to obtain service tax registration. It may be noted that all the service providers have not to obtain registration but only person liable to pay service tax has to obtain registration number. e not obtained service tax registration. All the material details have been reflected correctly and provided to department as and when asked. Therefore, it cannot be concluded that M/s CCCPL has suppressed facts by not obtaining registration.

24. As per Section 70 of Finance Act, 1994, Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed. Since, we were not liable to pay service tax, we had not obtained service tax registration and henceforth not filed returns. All the material details have been reflected correctly and provided to department as and when asked. Therefore, it cannot be concluded that M/s CCCPL has suppressed facts.

25. CCCPL has not made any fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under with intent to evade payment of service tax.

26. The department has issued summons to CCCPL on 02/02/2017. In response to which CCCPL has submitted all the details required called for vide letter dated 20/02/2017. In point no. 8 of the reply assesse has mentioned that CCCPL is providing health care services which are exempt from payment of service tax. Therefore, CCCPL clearly mentioned the facts from very beginning. During the course of hearing it was asked that services provided by CCCPL are in the nature of supply of manpower service. In respect of which explanation for nature of services provided by Clinical Care Consultants Private Limited (CCCPL) to other hospitals and explanation for not charging service tax on the said services was called for. CCCPL has submitted the said reply on 20/02/2017.

26.1 After explaining all the details, the Additional Director General has concluded that services provided by CCCPL are not in the nature of supply of manpower services. The same has can be verified from show cause notice. Relevant portion is reproduced:

> "7.2 *From the above, it is observed that M/s CIMS provides healthcare services to their patients and for this they take the input services of the doctors of M/s CCCPL. M/s CCCPL provide medical practitioners/doctors to M/s CI MS for conducting medical procedures/treatment of their patients and receive considerations towards this calculated on monthly basis. The invoices raised by M/s CCCPL are based on the medical procedure/treatment. conducted patient wise as well as medical procedure/treatment wise. Further, M/s CCCPL claims that they are not providing manpower supply service, as they have not supplied labour on man-day or man-hour basis.*

7.3. *The definition of "Supply of Manpower" has been given under Rule 2(g) of Service Tax Rules, 1994 as under:*

""supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control."

7.4. In the instant case, para 8 of the Agreement dated 02.08.2010 between M/s CCCPL and M/s CI MS describes the control on the medical professionals provided by M/s CCCPL to M/s CIMS. The conditions of the contract are reproduced below:

> *"(a) CIMS will not interfere in the treatment and medical care provided to its beneficiaries.CIMS will not be in any way held responsible for the outcome of treatment or quality of care provided by CCCPL.*
>
> *(b) CIMS shall not be liable or responsible for any acts, omission or commission of the Doctors of CCCPL."*

7.5. From the above, it can be seen that the control over the medical professionals provided by M/s CCCPL rest with M/s CCCP only and M/s CI MS is neither authorized to interfere in the treatment process nor to be held responsible for the outcome of the treatment or quality of care provided by M/s CCCPL or its doctors.

7.6 The explanation above shows that the services provided by M/s CCCPL to M/s CI MS cannot be categorized under the category of "Manpower Recruitment and Supply Agency Service".

26.2 From the above it is very clear that notice/summons was issued with the intention to consider services provided by CCCPL as supply of manpower service. However, considering facts and explanations it was concluded that such services are not supply of manpower. It was further explained that service provided by CCCPL are falling within the meaning of healthcare services. However, the Additional Director General concluded that M/s CCCPL have provided **taxable services other than negative list** to M/s CIMS by way of providing doctors for conducting medical procedures/ treatment on their patients. Nature of services provided by CCCPL is capable of for identifying the most specific description i.e. healthcare service. Therefore, **healthcare service (most specific description)** shall be preferred over a **taxable service other than negative list (more general description).**

27. The defaults of service tax provisions by CCCPL as mentioned in show cause notice are consequential and based on so called observations in respect of taxability of services after exploring the possibility to tax it as a supply of manpower and found it healthcare service not provided to patient and considered input service to healthcare service provided by CIMS and considered as taxable input service by invoking provisions of Section 66F(1) of the Finance Act 1994. Therefore, the taxability of service itself is in doubt and has difference of opinion. CCCPL has provided all the details from time to time and show cause notice has been issued on the basis of data provided by CCCPL. Other than this, the department has no independent finding or evidence of proving the taxable services provided by CCCPL. On the basis of the facts of the case it is submitted that, there is no fraud, or collusion or any willful mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under with intent to evade payment of service tax.

28. **Further Section 73(6) has defined "relevant date" for the purpose period covered under Section 73(1).**Therefore contention of the Additional Director General that service tax have been evaded on providing taxable service is vogue and therefore extended period of limitation cannot be applied. Therefore, in our opinion the show cause notice issued in respect of period July 2012 to October 2015 cannot be issued on 11/04/2018. Further the value of taxable service in respect of financial year 2014-15 & 2015-16 is less than Rs. 10 lacs and no service tax is payable in view of notification 33/2012-ST dated 20/06/2012.

Personal Hearing

16. Personal hearing in the matter was held on 07.02.2020, wherein Shri Rajesh.G.Shah, C.A and Sh. Nirav.S.Malkan, C.A appeared before me on behalf of the assessee. During the course of the hearing, they reiterated the submissions made in their letter dated 07.06.2018.

DISCUSSION AND FINDINGS:

17. I have gone through the records of the case, the submissions made by the assessee in their written submissions and the oral submissions made by the assessee at the time of the personal hearing.

18. I find that M/s. CCCPL have provided taxable services other than those specified in the Negative List to M/s CIMS by way of providing doctors for conducting medical procedures/treatment on their patients (From July 2012 to March 2014) and also provided manpower supply service to other clients (from April 2014 to March 2016). From 01.07.2012 onwards, as per Sr. No. 02 of Mega Exemption Notification No. 25/2012-ST "Healthcare services by a clinical establishment, an authorized medical practitioner or para medics" are exempted service.

19. M/s CCCPL is engaged in the activities of deputing doctors to M/s CIMS Hospital Pvt. Ltd, but they are not discharging service tax on the income received towards the same, claiming it to be healthcare services exempted vide Notification No. 25/2012-ST w.e.f 01.07.2012. It has been alleged in the Show Cause Notice that the nature of services provided by M/s CCCPL does not qualify to be "Healthcare services", as the above activities fall under taxable services other than Negative List and hence the benefit of exemption Notification No.25/2012 with respect to Healthcare services is not applicable to them.

20. Thus the issue to be decided in this case is whether the exemption as per Sr. No. 02 in respect of Health Case Services, under the aforesaid Notification No. 12/2012-S.T., dated 20.6.2012,is admissible to the assessee or otherwise.

21. The relevant portion of Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended, reads as under:

"..... hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

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

The terms "Clinical Establishment" and "Health Care Services" have been clearly defined under this Notification itself, for the specific purpose of this Notification, as under:

2. Definitions. – For the purpose of this notification,

*(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 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;*

*(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;*

22. Before analyzing the activity of the assessee, I hereby find it imperative to examine whether the assessee actually falls within the ambit of the terms "Clinical Establishment" and "Health Care Services". I find that the assessee is neither a hospital, a nursing home, a clinic, a sanatorium or an institution which 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, nor a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. From the records of the case, I find that M/s CCCPL does not have its own facilities to provide diagnostics, treatment or care for illness, in order to enable them to provide services to provide medical treatment to patients. It uses the facilities available with M/s CIMS for providing healthcare services through its doctors.

23.1 Section 2(e) of the Clinical Establishments (Registration and Regulation) Rules, 2010 defines clinical establishment as a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers services, facilities requiring diagnosis, treatment or care. For illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine established and administered or maintained by any person or body of persons, whether incorporated or not; or (ii) a place established as an independent entity or part of an establishment referred to in sub clause (I), in connection with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or Investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administered or maintained by any person or body of persons, whether Incorporated or not.

23.2 As per Oxford Dictionary, "clinical" means relating to the examination and treatment of patients and their illnesses; Establishment means organization, a large institution, or a hotel; the act of starting or creating something that is meant to last for a long time.

23.3 A 'clinic' or outpatient clinic is a small medical facility that provides health care for ambulatory patients – as opposed to inpatients treated in a hospital. Most clinics are run by one or more general practitioners – (*Wikipedia*). A clinic is a place or hospital department where patients are given medical treatment or advice, especially of a specialist nature. A hospital is an institution providing medical and surgical treatment and nursing care for sick and injured people. Hospital means an institution for the reception and care of sick, wounded, infirm or aged persons and include government or private hospitals, nursing homes and clinics.

24. Further, as per the definition of **"health care services"** as expressed under the said Notification, if any service has been provided by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and also 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 under certain circumstances;, such service is termed as "Health care services". From the facts of the case, I find that the assessee has not provided any of the described services to the patients, but have only provided doctors to CIMS.

25. In the first place, the assessee cannot be termed as a "Clinical establishment", inasmuch it has no any facility for providing for the diagnosis and treatment of patients on its own, which as per the above discussion, is one of the primary requirement for being called a "Clinical Establishment". M/s CIMS is a hospital providing healthcare services and other ancillary services to its clients and patients and here, in this case is the "Clinical establishment" providing "Health Care Service". For providing this purpose, it requires services of doctors and specialists to meet the requirements of its setup. M/s CCCPL on the other hand is a company rendering the kind of professional services as is desired by M/s CIMS. Further, the assessee has not provided any healthcare services, but are only providing professional service through its doctors and it cannot be said to have provided "Health care services", when in the first place, it is not even a "Clinical establishment", as discussed above.

26. From the plain reading and understanding of Sr.No. 2 of the Notification, it appears that for the services to be exempt, it should meet the following criteria, viz.

(a) They should be providing health care services

(b) The service should be provided by a clinical establishment, or an authorised medical practitioner, or a para-medic.

26.1 The assessee fails on both the counts and therefore, at this point itself, I find that the assessee is not eligible for availing exemption under Sr. No.2(i) of the Notification 25/2012-S.T, dated 20.6.2012.

27. Now, I take up the issue of the activity of the assessee and analyse the same in terms of the service provided to CIMS. From the statement of Smt. Jolly Shah, Head of Accounts Department of M/s CCCPL, it can be observed that, a patient requiring healthcare service, visits CIMS Hospital (M/s CIMS), CIMS Hospital raises the bills/invoices to the patient towards medical treatment and the payment towards such medical treatment is made to M/s CIMS by

the patient. Thus it is obvious that the healthcare service provided to the patient, is being provided by M/s CIMS, which is an exempted service as per Sr. No. 2 of Notification No. 25/2012-ST. Whereas, the role of M/s CCCPL is limited to providing doctors to M/s CIMS and the services of M/s CCCPL was used just an input service to the healthcare service provided by M/s CIMS to the patients and was not the healthcare service itself.

28. It is also revealed that upto March 2014, M/s CIMS used to pay professional fees to M/s CCCPL towards the services of doctors of M/s CCCPL, who treat the patients at CIMS. From April 2014 onwards, M/s CIMS have not taken any services from M/s CCCPL and hence have not made any payment to them. Instead, they have started taking the services of same doctors by directly paying considerations to them for their services. It clearly shows that M/s CCCPL was providing service to M/s CIMS by way of aggregating or arranging doctors for them and were not providing healthcare services themselves. In her statement Smt. Bela Panchal, Head of Accounts Department, CIMS, has also admitted that the services provided by M/s CCCPL to M/s CIMS are input service to the healthcare service provided by M/s CIMS, through the professional services of doctors of M/s. CCCPL. This clearly indicates that though the services of M/s CIMS are exempted; the services of M/s CCCPL are not exempted. M/s CIMS provided healthcare services to their patients and for this they took the input services of the doctors of M/s CCCPL. M/s CCCPL provided medical practitioners/doctors to M/s CIMS for conducting medical procedures/treatment of their patients and receive considerations towards this calculated on monthly basis. The invoices raised by M/s. CCCPL were based on the medical procedure/treatment conducted patient wise as well as medical procedure/treatment wise.

29. In view of the discussions made here-in-above, it appeared that M/s CCCPL cannot be said to have provided services enumerated in the definition of "Health Care Services" to their clients, rather the said Health Care Services were provided by M/s CIMS to their client/patients/customers in their hospital. The doctors supplied/provided by M/s CCCPL did not have any agreement with the patients/customers of M/s CIMS. The patients/customers approached M/s CIMS for receiving Health Care Services and only M/s CIMS provided this service by putting to use the services of doctors supplied by M/s CCCPL and raised bills/invoices to the patients towards such Health Care Services. Moreover, the patient was never informed about the internal arrangement between M/s CCCPL and M/s CIMS. Thus it was obvious that the healthcare service provided to the patients was provided by M/s CIMS, which is an exempted service as per Sr. No. 2 of Notification No. 25/2012-ST.,dated 20.6.2012. The role of M/s CCCPL was limited to providing doctors to M/s CIMS and the services of M/s CCCPL was used just an input service to the healthcare service provided by M/s CIMS to the patients and was not the healthcare service itself.

30. Further as per Section 66F(1) of the Finance Act, 1994, if the main service is exempted, the input to that services may or may not be exempted.

The text of Section 66F(1) and its Illustration reads as follows:

"Unless otherwise specified, reference to a service (herein referred to as main service} shall not include reference to a service which is used for providing main service.

Illustration

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of Section 660, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 660 and hence, such service is le viable to service tax."

31. From the above, it is evident that the professional service provided to M/s CIMS by M/s CCCPL through its doctors is just an input service to the main service, i.e. Healthcare Service, which is exempted. Thus, the exemption available to M/s CIMS does not appear to be available to M/s CCCPL in view of Section 66(F)(1), as discussed above and hence the professional services (by way of providing medical professionals/doctors) provided by M/s CCCPL to M/s CIMS is taxable w.e.f. 01.07.2012.

32. Moreover, as per para 4(h) of the agreement dated 02.08.2010, M/s CCCPL was required to pay liquidated damages in the event of their failure to provide services to M/s CIMS and the liquidated damages was to be paid for every instance of such failure. From the conditions of the agreement, it can be seen that the services provided by M/s CCCPL to M/s CIMS was service, only by way of arranging doctors/medical professionals, and in the event of their not being able to do so, the assessee was liable to pay liquidated damage to the service recipients, i.e. M/s CIMS. It may be noted that the patient, who is the actual recipient of the healthcare service, is not the beneficiary of such liquidated damages. If the services of M/s CCCPL had been really Healthcare services, absence of such service would not have attracted punitive action, as mentioned in the agreement. Thus it is loud and clear that the services provided by M/s CCCPL are not Healthcare Service, but only input service to the healthcare services, which was actually provided by M/s CIMS to its patients. Thus the service provided by the assessee is not exempt under Notification 25/2012-S.T., dated 20.6.2012.

33. Under Section 65(B)(44) of Finance Act, 1994, "Service means any activity carried out by a person to another for a consideration, and includes a declared service, Under the legal provisions, for any service to be provided, there has to be a service provider and a service recipient. In this case, the assessee is the service provider and CIMS is the service recipient, but the service provided by the assessee to CIMS is not Health care service. Healthcare service, as described in the above paras, has been provided by CIMS to the patients requiring healthcare service and who visit CIMS, for acquiring the same.

34. **Section 66F(1) of Finance Act, 1994, stipulates as under:**

"(1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.'

Illustration

The services by the Reserve Bank of India, being the main service within the meaning of 12 clause (b) of section 660, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 660 and hence, such service is le viable to service tax."

35. In view of the above, I hold that M/s. CCCPL had provided taxable services other than Negative List to M/s CIMS by way of providing doctors for conducting medical procedures/treatment on their patients (From July 2012 to March 2014) and also provided manpower supply service to other clients (from April 2014 to March 2016) and w.e.f. 01.07.2012, the above activities are taxable services other than Negative List and hence taxable. I hold that the assessee is not eligible for availing exemption under Notification No. 25/2012-S.T,dated 20.6.2012, as they have wrongly claimed that the services provided by them to CIMS fall under "Healthcare service". Therefore I hold that Service Tax amounting to **Rs. 4,43,16,329/-** as detailed in Annexure-A to the notice, evaded on providing such taxable service during the period from July, 2012 to March, 2016, is recoverable from them under proviso to Section 73(1) of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;

36. Further the department came to know about the service rendered only during the course of investigation. M/s CCCPL had neither obtained Service Tax Registration nor had filed the Service Tax Returns despite the fact that they were engaged in providing taxable services. Thus, M/s CCCPL had suppressed the material facts from the department by not obtaining Service Tax Registration and thereby not filing ST- 3 Returns. This appeared to be done intentionally so as not to bring their taxable activities to the notice of the Department and eventually evade payment of Service Tax. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. Intention to evade

payment of service tax is clearly evident by this act of omission of the assessee, inasmuch as M/s CCCPL though being well aware of the provisions of the erstwhile Finance Act, 1994 and Rules made there under, failed to disclose the nonpayment of service tax on account of their receipt towards providing taxable services on account of deputing doctors to M/s CIMS (in F.Y. 2012-13 and 2013-14) and later on providing manpower supply service (in F.Y. 2014-15 and 2015-16) to other client, during the period from July 2012 and March 2016. M/s CCCPL had deliberately not obtained Service Tax Registration and thereby not filed their ST-3 Returns with intentions to evade service tax by not disclosing their receipts towards taxable service rendered by them and service tax involved thereon. These facts would not have come to light had the investigation proceedings not been conducted by DGGSTI, Zonal Unit, Ahmedabad, Thus it is apparent, that M/s CCCPL had deliberately suppressed the facts of receipt of consideration towards providing taxable services by not obtaining Service Tax Registration and thereby not filing ST- 3 Returns . This clearly amounts willful suppression of facts with the deliberate intent to evade payment of Service Tax. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 is invocable to demand Service Tax for the period from July 2012 to March 2016.

37. In this regard, attention is drawn to the observations of the Hon'ble Apex Court in the case of Rajasthan Spinning and Weaving Mills, as elaborated in the preceding paras, judgment of the Hon'ble High Court of Andhra Pradesh and decisions of Tribunals, cited below.

37.1 The CESTAT, S.Z.B, Bangalore in the case of M/s. DTDC Courier & Cargo Ltd., in its decision reported in 2012 (26) S.T.R. 365 (Tri. - Bang.), has observed as under:

Stay/Dispensation of pre-deposit - Demand - Limitation - Failure to disclose relevant details to Department regarding services liable to tax - In such case, extender period of limitation is invocable - Section 73 of Central Excise Act, 1944 - Section 35F of Finance Act, 1994 read with Section 83 of Finance Act, 1994. [para 5]

37.2 The CESTAT, S.Z.B, Bangalore in the case of M/s. Ramky Infrastructure Ltd., in its decision reported in 2013 (29) S.T.R. 33 (Tri. - Bang.), has observed as under:

Demand - Limitation - Penalty - Imposition of - Material facts related to EPC projects not disclosed to Department - Registration under Works contract service taken and ST-3 returns filed only under compulsion from department - Even thereafter, ST-3 returns did not disclose material particulars to department, and their revisions did not disclose reason for exemption claimed therein - In that view, extended period found invocable as there was wilful suppression/mis-declaration of relevant facts with intent to evade payment of Service Tax - Assessee found liable to penalty as there was no reasonable cause for his failures (non-filing of returns, non-payment of tax etc.) - Sections 73(1), 76, 77, 78 and 80 of Finance Act, 1994. [paras 12.1, 13.1]

37.3. The Andhra Pradesh High Court Bench, in the appeal filed against the above order,in its decision reported in 2015 (39) S.T.R. J367 (A.P.)] has upheld that extended period of limitation is invocable and also upheld the imposition of penalties

38. In the era of self-assessment, the assessee is required to be proactive in declaring their activities to the Department. Here, I reiterate the judgment of the Hon'ble Supreme Court, in the case of CCE v/s. Mehta & Co. reported at 2011(264) ELT 481 (SC), wherein , it was held that "Demand - Limitation - Relevant date for computation of extended period for show cause notice - Cause of action is date of knowledge"

39. In the backdrop of the above discussion, I find that the assessee has deliberately evaded payment of Service Tax by wrongly availing the benefit of exemption under Notification 25/2012-S.T., dated 20.6.2012, as discussed above. The wordings of the Notification are clear and explicit and there is no room for having a different interpretation other than what has been clearly mentioned in the Notification and various provisions of the Finance Act,as discussed in the above paras.Thus I hold that the act of non-disclosure of the income on the taxable activity as detailed in above paras, by the assessee, is to be considered as suppression of facts and willful misstatement with an intend to evade payment of Service Tax there on. I, hereby rely on the provisions of law, judgment of the Hon'ble Courts and various decisions of the Tribunals, to

decide the issue and hold that extended period has been appropriately invoked in this case and I hold that the demand is sustainable on the ground of limitation also.

40. The assessee has evaded the payment of the above amounts of service tax. Hence as per the provisions of Section 75 of the Finance Act, 1994, the assessee are required to pay interest on the amount of service tax, from the date they were required to make the payment till the date they deposit the service tax amount in the Government exchequer.

Section 75 of the Finance Act 1994, as it then stood, states that:

"Every person , liable to pay the tax in accordance with the provisions of Section 68 or rules made thereunder, who fails, to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Government, by notification in the Official Gazette, for the period by which such crediting of the tax or any part thereof is delayed."

41. Hon'ble High Court of Gujarat in the case of **CCE & Cus. Vs Port Officer,** reported at **2010 (19) STR 641 (Guj)** has now settled the issue of penalty under Section 76. The relevant para is reproduced below ;

"10. A plain reading of Section 76 of the Act indicates that a person who is liable to pay service tax and who has failed to pay such tax is under an obligation to pay, in addition to the tax so payable and interest on such tax, a penalty for such failure. The quantum of penalty has been specified in the provision by laying down the minimum and the maximum limits with a further cap in so far as the maximum limit is concerned. The provision stipulates that the person, who has failed to pay service tax, shall pay, in addition to the tax and interest, a penalty which shall not be less than one hundred rupees per day but which may extend to two hundred rupees for everyday during which the failure continues, subject to the maximum penalty not exceeding the amount of service tax which was not paid. So far as Section 76 of the Act is concerned, it is not possible to read any further discretion, further than the discretion provided by the legislature when legislature has prescribed the minimum and the maximum limits. The discretion vested in the authority is to levy minimum penalty commencing from one hundred rupees per day on default, which is extendable to two hundred rupees per day, subject to a cap of not exceeding the amount of service tax payable. From this discretion it is not possible to read a further discretion being vested in the authority so as to entitle the authority to levy a penalty below the stipulated limit of one hundred rupees per day. The moment one reads such further discretion in the provision it would amount to re-writing the provision which, as per settled canon of interpretation, is not permissible. It is not as if the provision is couched in a manner so as to lead to absurdity if it is read in a plain manner. Nor is it possible to state that the provision does not further the object of the Statute or violates the legislative intent when read as it stands. Hence, Section 76 of the Act as it stands does not give any discretion to the authority to reduce the penalty below the minimum prescribed."

42. The Hon'ble High Court of Gujarat has further concurred with the above view in the case of **CCE Vs S J Mehta & Co.,** reported at **2011 (21) STR 105 (Guj.)** and **CCE Vs Bhavani Enterprises** reported at **2011 (21) STR 107 (Guj.).** Thus, I hold that penalty is imposable in this case.

43. As regards imposition of penalty under Section 76, 77 and 78 of the Finance Act. I have already held that the demand under the notice is recoverable by invoking the extended period of time under Section 73 of the Act and Section 75 of the Act mandates levy of interest on delayed payment of Service Tax. Therefore, the demand is recoverable alongwith interest under the said Section. Further, I find that, Section 78 of the Act provides as follows:

SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of Section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent of the amount of such service tax :

***Provided** that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2015 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :*

***Provided further** that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to*

(i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

***Provided** also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :*

***Explanation.** - For the purposes of this sub-section, "specified records" means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement; the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.*

44. It is observed that where any Service Tax has not been levied or paid or has been short-levied or short-paid by the reason of suppression of facts or fraud or collusion or wilful mis-statement or contravention of any of the Act or the Rules made thereunder with intent to evade payment of Service Tax, Section 78 of the Act provides for mandatory penalty and the person, liable to pay such Service Tax, shall also be liable to pay a penalty in addition to such Service Tax and interest thereon. The amount of penalty leviable under this section is equal to hundred percent of the amount of Service Tax evaded. In view of the findings given in foregoing paras, as extended period of time for demand under proviso to Section 73 of the Act is invokable in the present case, I find that the assessee has rendered themselves liable for penalty under Section 78 of the Act for the various acts/commission committed by them, as discussed in foregoing paras. Penalty under Section 78 of the Finance Act, 1994 is mandatorily imposable as has been held by the Apex Court in the case of Dharmendra Textile Mills Ltd-2008 (231) ELT 3 (SC) and Rajasthan Spinning & Weaving Mills Ltd-2009 (238) ELT 3 (SC).

45. However, penalty cannot be imposed both under Section 76 and 78 of the Finance Act as it is the clear intention of the legislature that they do not want penalty to be imposed under both the Sections. It is stated that the proviso to Section 78 of the Act, as introduced vide Finance Act, 2008 w.e.f. 10.05.2008, clearly provides that penalty under Section 76 shall not be imposed if it has been imposed under Section 78.

46.1 In *CCE v.First Flight courier Ltd. (2011) 22 STR 622 (P & H),* High Court held that penalty under section 76 is not justified if penalty under section 78 is imposed. It held, thus as under section 76 provides for penalty for failure to pay the amount while Section 78 provides for penalty for suppressing the taxable value. Section 78 is, thus, more comprehensive and provides for higher amount. Even if technically, the scope of Sections 76 and 78 is different, penalty under Section 76 may not be justified if penalty had already been imposed under Section 78. Thus, as the penalty is payable under Section 78 of Finance Act 1994, penalty under 76 will not apply. Therefore I refrain from imposing penalty under Section 76 of the Finance Act, 1994.

47. As regards imposition of penalty under Section 77 of the Finance Act, 1994, I observe that in the present case the assessee had failed to comply with provisions of the Act/Rules inasmuch as they have failed to obtain Service Tax registration, failed to self-assess the correct taxable value and failed to show the same in their statutory returns. Hence, they are liable to penalty under Section 77 of the Finance Act also.

48. In view of the foregoing discussion, I pass the following order:

ORDER

(i) The services provided by M/s CCCPL to M/s CIMS in terms of providing doctors for

undertaking medical procedures/treatments and providing manpower services to other parties should be treated as taxable services in view of Section 65(8)(44) of the Finance Act, 1994.

(ii) I confirm the demand of Service Tax amounting to **Rs.4,43,16,329/- (Rupees Four Crores Forty Three Lakhs, Sixteen Thousand Three Hundred and Twenty nine only)**, evaded on proving such taxable service during the period from July, 2012 to March, 2016, and order that the same should be recovered from them under proviso to Section 73(1) of Chapter V of the Finance Act, 1994, read with Section 68 of the Finance Act, 1994, read with Section 174 of CGST Act, 2017;

(iii) I order the recovery of interest on the amount of Service tax confirmed in point (ii) above at the prescribed rate from the said service provider under Section 75 of the Finance Act, 1994;

(iv) I impose Penalty of **Rs 10,000/- (Rupees Ten Thousand only)** on the assessee under Section 77 of the Finance Act, 1994.

(v) I impose penalty amounting to Rs. Tax amounting to **Rs.4,43,16,329/- (Rupees Four Crores Forty Three Lakhs, Sixteen Thousand Three Hundred and Twenty nine only)**, under Section 78 of the Finance Act, 1994 for suppressing the value of taxable services provided by them from the department with an intent to evade payment of Service Tax. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the service tax amount, provided such penalty is also paid within such period of 30 days.

49. The Show Cause Notice No. **DGGI/AZU/36-20/2018-19**, dated **10.4.2018**, issued by Directorate General of Goods and Services Tax Intelligence (erstwhile Directorate General of Central Excise Intelligence), Ahmedabad Zonal Unit, Ahmedabad, is hereby disposed off.

(Dr. Balbir Singh)
Commissioner
C.G.S.T &Central Excise,
Ahmedabad North

F. No.: STC/15-15/OA/2018

Date: 20.03.2020

By Regd. Post AD/Hand Delivery/S.P.A.D

To
M/s Clinical Care Consultants Pvt. Ltd.,
Nr. Shukan Mall, Off. Science City Road,
Sola, Ahmedabad - 380060

Copy to:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad
2. The Assistant Commissioner, Central Excise, Div-VII, CGST, Ahmedabad North.
3. The Superintendent, Central Excise, AR-___, Div-VI, Ahmedabad North
4. Guard File.