Guard

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599	फैक्स/ FAX : 079-2754 4463	E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO.STC/15-114/OA/2020 DIN : 20220164WT000000B5D8

आदेश की तारीख़ / Date of Order : 17.01.2022

जारी करने की तारीख़ / Date of Issue : 18.01.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–53/2021-22

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 , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 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, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

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 भी चार प्रतियाँ में अग्रेषित 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 क) 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 उपबन्धों 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 कें 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.

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 no. STC/15-114/OA/2020 dated 21.10.2020 issued to M/s. Veparseva Healhcare Private Limited, 197/2, B/h. Golden Triange, St.Xaviers High School Road, Ahmedabad-380 009

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 53 /2021-22

M/s. Veparseva Healhcare Private Limited, 197/2, B/h. Golden Triange, St.Xaviers High School Road, Ahmedabad-380 009 were issued SCN F. No. STC/15-114/OA/2020 dated 21.10.2020 by the Principal Commissioner, Central GST & Central Excise, Ahmedabad North.

BRIEF FACT OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN ARE AS UNDER:

M/s. Veparseva Healhcare Private Limited, 197/2, B/h. Golden Triange, St.Xaviers High School Road, Ahmedabad-380 009 (hereinafter referred to as "the service provider") are engaged in the business of providing taxable services and are holding Service Tax Registration No. AACCV4902DSD001.

2. On preliminary verification of Third Party Data received from CBDT, the Sales/Gross Receipt from Services (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 by the assessee. It was observed that there was difference in Value of Services in ITR/TDS and Gross Value of Services provided in ST-3 returns which was to the tune of Rs. 27,58,64,228/-. It therefore appeared that the service provider had less/not discharged their service tax liability of Rs. 4,00,00,313/- on the aforesaid differential amount of Rs. 27,58,64,228/- for the F.Y. 2015-16. The details of the said non reconciliation of figures in ST-3 Returns & ITR data are as under:-

Sr. No.	F.Y.	Total Gross Value Provided (STR)	Sale of Services (ITR)	Total Value for TDS (including 194C,194Ia,194Ib, 194J,194H)	Higher Value (Value difference in ITR&STR) or (value difference in TDS&STR)	Resultant Service Tax short paid (including cess)
1	2015-16	0	275864228	4970072	275864228	40000313

3. The assessee were requested to provide explanation to department for such difference vide letter dated 06.10.2020 for difference in value shown in ST-3 Returns vis-à-vis that shown in Income Tax return filed for FY 2014-15. It was also requested to furnish the documents viz. Balance Sheet, Profit and Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger & ST-3 Returns for FY 2014-15. But, the assessee neither produced any documentary evidences explaining the differential

value nor submitted any reply, hence, no further verification could be done in this regard by the department.

4. Since the assessee had not submitted the required details of services provided by them during F.Y.2015-16, the service tax liability had been ascertained on the basis of income mentioned in Income Tax returns and Form26AS filed by the assessee with the Income Tax department. The figures/data provided by the Income Tax department was considered as total taxable value in order to ascertain the Service Tax liability under Section 67 of the Finance Act,1994.

5. The service provider appeared to have not discharged their service tax liability on the actual value received towards taxable services provided by them, hence, there appeared to be a short payment of Service Tax of Rs. 4,00,00,313/- during the material period. Further, the service provider appeared to have contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, inasmuch as they had failed to pay Service Tax to the extent of Rs. 4,00,00,313/- as per their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services provided/received by them, the service provide also appeared to have contravened Section 70 of Finance Act 1994 read with Rule6 & 7 of the Service Tax Rules,1994 inasmuch they failed to properly assess their service tax liability.

6. The service provider appeared to have short paid/not paid Service Tax of Rs. 4,00,00,313/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the said Act along with interest under Section 75 *ibid* not paid by them under Section 68 of the said Act read with Rule 6 of Service Tax Rules, 1994, inasmuch as the said service provider had suppressed the facts from the department and contravened the provisions with intent to evade payment of service tax.

7. In terms of Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, every person providing taxable service to any person is required to pay Service Tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. In the present case, on the basis of Third Party Data/information of CBDT for the F.Y. 2015-16, the service provider appeared to have less discharged their service tax liability on the actual value received towards taxable services provided at the rate prescribed under Section 66 of the said Act. All these acts of contravention on the part of the service provider appeared to have

been committed by way of suppression of the facts by not declaring/not considering the correct value of taxable services provided by them for payment of Service Tax to the Central Government for the period in question, with an intent to evade payment of Service Tax and therefore the service tax which was not paid at the material time was required to be demanded under the proviso to Section 73(1) along with interest as per provision of Section 75 of the said Act.

8. As per Section 70 of the said Act, the person liable to pay Service Tax shall himself assess the tax due on the services provided by him and shall furnish a prescribed return as per Rule 7 of the Service Tax Rules, 1994. As the service provider had failed to do so, they appeared to be liable to penalty in terms of Section 77 of the said Act. The penalty under Section 78 of the said Act also appeared to be invocable in the instant case as they had suppressed the taxable value.

9. The provisions of the repealed Central Excise Act, 1944, Central Excise Rules, 2002 or the Finance Act,1994 read with Service Tax Rules,1994 have been saved vide Section 174 (2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made thereunder were sought to be enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under Show Cause Notice.

10. No data was shared by the CBDT, for the period 2017-18 (upto June-2017) and the assessee had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify short payment of Service Tax, if any, for the period 2017-18 (upto June-2017).

"Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified as under :

> '2.8 Quantification of duty demanded. It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the notice are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (OIO) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to

seek further particulars, if any, that may be necessary for it to show cause if the same is deficient."

11. It appeared that the "Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J OR Sales/Gross Receipts from Services (From ITR)" for the F.Y. 2016-17 to FY2017-18 (up to June'2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non-disclosure was made known to this department. The said assessee had also failed to provide the required information even after the issuance of letters from the Department. Therefore, the assessable value for the year F.Y.2016-17 to F.Y. 2017-18 (up to June'2017) was not ascertainable at the time of issuance of Show Cause Notice. Consequently, if any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against them under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period F.Y. 2016-17 to F.Y. 2017-18 (up to June'2017) covered under this Show Cause Notice, was to be recoverable from the said assessee accordingly.

12. Accordingly, a Show Cause Notice No. STC/15-114/OA/2020 dated 21.10.2020 was issued by the Principal Commissioner, Central Excise & CGST, Ahmedabad North to M/s. Veparseva Healhcare Private Limited, 197/2, B/h. Golden Triange, St.Xaviers High School Road, Ahmedabad-380 009, asking them as to why :

i) The demand of Service tax to the extent of Rs. 4,00,00,313/- (including cess) not paid/short paid by them should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

ii) Service Tax liability not paid during the Financial Year 2016-17 and 2017-18 (upto June-2017) , ascertained in future should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of Finance Act,1994;

iii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

iv) Penalty should not be imposed upon them under the provisions of Section 77(1)(c) and 77(2) of the Finance Act,1994.

v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

13. DEFENCE REPLY:

The assessee vide their letter dated 03.01.2022 submitted their written submission during Personal Hearing. They have stated therein

that they were engaged in the business of providing health care services. That they had been issued Notice dated 06.10.2020 requesting them to submit documents and details mentioned therein. That they were preparing for the documents, however, meanwhile impugned SCN bearing F. No. STC/15-114/OA/2020/707 dated 21.10.2020 was issued to them based on the information received from the Income Tax Department. That the present proceedings initiated in the Show Cause Notice were bad on facts as well as in law and therefore on this ground itself Show Cause Notice was liable to be set aside. That they were not liable to pay any service tax as alleged in the SCN.

They have submitted that SCN was the basic foundation of proceedings which may give rise to different consequences of law. They have submitted that the SCN failed to provide the reason and cite the relevant legislative provision by virtue of which the alleged service tax was payable by them for the Financial Year 2015-16 to Jun-17. They have submitted that in para3 of the SCN it was merely stated that as per the information received from the Income Tax Department, noticee had earned substantial service income and had not obtained service tax registration and had not paid the service tax. In para 6 of the SCN, it was merely stated that as per Income Tax Return for the Financial Year 2015-16 the assessee had earned income of Rs.27,58,64,228/- and had failed to discharge the service tax liability thereon. They have submitted that, SCN nowhere provide the reasoning as to why such alleged income was liable to service tax under the Finance Act, 1994. They have submitted that each and every income cannot be leviable to service tax unless and until the same falls within the ambit of Charging Section 66B of the Finance Act, 1994. They have further submitted that para 5 & 8 of SCN states that:

> "5. Since the assessee has not submitted the required details of services provided during the Financial Year 2015-16, the service tax liability of the service tax assesses has been ascertained on the basis of income mentioned in the Income Tax returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department is considered as the total taxable value in order to ascertain the Service Tax liability under Section 67 of the Finance Act, 1994.
>
> 8. Form the data received from CBDT, it appears that the "Total Amount Paid/Credited under Section 194C, 194H, 194I, 194J or Sales/Gross Receipts From Services (From ITR) for the Financial year 2016-17 to 2017-18 has not been disclosed thereof by the Income

Tax Department, nor the reason for the nondisclosure was made known to this department. Further, the assessee has also failed to provide the required information even after the issuance of letter from the Department. Therefore, the assessable value for the year 2016-17 and 2017-18 (upto June-2017) is not ascertainable at the time of issuance of this show cause notice. Consequently, if any other amount is disclosed by the Income Tax Department or any other source/agencies, against the said assessee, action will be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period 2016-17 to 2017-18 (upto June-2017) under this show cause notice, and due service tax will be recovered from the assessee accordingly."

They have submitted that in para 5 & 8 of the SCN, it was amply clear that the subject SCN was cryptic, illegal, presumptive and issued with predetermined mindset to demand the service tax, impugned SCN nowhere discussed the nature of activities carried out by them and under such scenario how the SCN can conclude that such activities were chargeable to service tax, that the same were not covered under negative list and covered under deemed service list and also not covered under the exemption list. They have submitted that the SCN itself was not sure regarding the chargeability of their activities under the Finance Act, 1994 and hence without discussing the actual activities of the notice had proceeded on the assumption that *"The figures & data provided by the- Income Tax Department is considered as the total taxable value in order to ascertain the Service Tax liability under Section 67 of the Finance Act, 1994."*. They have submitted that the impugned SCN proceeded with pre-determined mindset to Collect Amount as service tax without offering any logical interference with the law.

They have relied upon the following case laws;

- SBQ Steels Ltd. vs. Commissioner of Cus., C.Ex., & ST., Guntur 2014 (300) ELT 185 (AP)
- CCE vs. Shemco India Transport 2011 (24) STR 409 (Tri-Del.)
- AmritFood vs. CC 2005 (190) ELT433 (SC)

They have submitted that the impugned SCN itself was vague, cryptic and untenable in law and hence the same deserves to be quashed in *toto*.

They have further submitted that they were engaged in the

business of providing Health Care Services and sale of medicines, the Income as appeared in the income tax return consists of the income on account of:

(a) Health Care Services

(b) Sale of Pharmacies

They have submitted that Section 66B of the Finance Act, 1994 providing for the levy of service tax reads as under:

> "There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed".

They have submitted that it was amply clear that those services which were covered under the negative list of services would not be leviable to service tax under the Finance Act, 1994. They have submitted that, Section 66D of the Finance Act, 1994 which contains the negative list of services wherein clause (e) whereof reads as under:

> "(e) trading of goods"

They have submitted that it was amply clear that activity of sale of goods in their case i.e. sale of pharmacies were covered under the negative list of services and those activities were not leviable to service tax.

They have submitted that Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 provides for exemption from service tax in respect of various services and one of those includes the services in respect of health care services which reads as under :

> "Para. 2. (i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
>
> (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above;"
>
> Para. 2. Definitions. -
> For the purpose of this notification, unless the context otherwise requires,
>
> (d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;
>
> (i) "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;"

They have submitted that they were registered as Clinical Establishment/ Hospital and were engaged in the business of providing health care services in association with different Medical practitioners and such services provided by them were specifically covered under the ambit of Mega Exemption at Sr. No. 2 of Notification No. 25/2012-ST dated 20.06.2012 and no service tax was payable on the same. They have submitted that none of the services provided by them were taxable services, no service tax was payable by them and on this count alone the present SCN deserves to be quashed.

They have further submitted that Notification No.33/2012-ST dated 20.06.2012, provided exemption from service tax to small scale service providers. They have submitted that as per the said Notification taxable services of aggregate value not exceeding ten lakh rupees in any financial year is exempt from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994. Abstract of relevant part from said notification is reproduced hereunder for the ease of reference;

"G.S.R. .... (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act;"

They have submitted that the income on account of services was below the threshold limit of Rs. 10 Lacs exemption as provided for under exemption Notification No. 33/2012-ST dated 20.06.2012 for the Financial Year 2016-17 and they were eligible to claim the same and hence they were not liable to pay service tax on the alleged income. They have submitted that none of the services provided by them were liable to service tax and, hence they were eligible for Small Scale Service Provider Exemption. They have submitted that they were not liable for payment of service tax on such alleged service income for the very reasons that Services provided by them are;

(a) Falling Under Negative List and/ or

(b) Covered under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012

(c) Covered under Notification No. 33/2012-ST dated 20.06.2012 popularly known as small scale service provider exemption notification.

They have submitted that on this count alone the SCN deserved to be quashed in *toto*.

They have submitted that the value of services provided by them should be treated as cum tax, therefore, the calculation of service tax demanded was incorrect, if they were liable to pay any service tax on the amount received from their service receivers, the tax calculation itself was incorrect. They have submitted that the amount received by them from its service receivers have to be treated as inclusive of the amount of service tax payable. In the case of excise duty also, it had been held that the amount received should be taken as cum-duty price and the value should be derived there from, by excluding the duty alleged to be payable as required under:

"Section 4(4)(d)(ii) of the Central Excise Act. In support of this the Noticees rely on the Larger Bench decision in the case of ***Sri Chakra Tyres reported in 1999 (108) ELT 361.*** *The said decision of the Larger Bench has been*

affirmed by the Hon'ble Supreme Court as the departmental appeal has been dismissed vide Order dated 26th Feb. 2002 reported in ***2002 (142) ELT A279*** *(SC). We also rely on the Apex Court judgment in the case of* ***CCE v. Maruti Udyog Limited reported in 2002 (49) RLT 1 (SC),*** *wherein it has been held that the deduction under section 4(4)(d)(ii) is allowable, even in situations where no duty was paid at the time of removal. Thus, for service tax calculation, the amount paid by the service receiver should be considered as cum tax payment and service tax should be calculated accordingly."*

They have also relied on the Trade Notice No.20/2002 dated 23.5.2002 of Delhi-II Commissionerate, which reads as follows:

"The liability to pay the service tax remains with the service provider in the current scenario. Failure to realise or even charge the 5% service tax does not negate this statutory liability. In event of any such failure, the amounts realised from client in lieu of having rendered the service(s) will be taken to constitute amounts inclusive of service tax. Accordingly, the amount of service tax will be determined and required to be deposited to the credit of the Central Government"

They have further submitted that the legislature have further clarified the legal position in respect of the value of the taxable service by incorporating Explanation No. 2 in section 67 of the Act by virtue of the Finance Act, 2004, as below:

"Explanation No. 2Where the gross *amount charged by a service provider* is *inclusive of service tax payable, the value of taxable service shall be such amount* as *with the addition of tax payable,* is *equal to the gorss amount charged."*

They have relied upon the following judgments of the Hon'ble CESTAT:

(a) Rajmahal Hotel v CCE 2006 (4) STR 370 (Tri-Del)
(b) Gem Star Enterprises (P) Ltd. v. CCE 2007 (7) STR 342
(c) Panther Detective Services v. CCE 2006 (4) STR 116 (Tri.-Del.)

In case of **Advantage Media Consultant (10) STR 0449(Tri-Cal)**, Hon'ble tribunal had decided that unless service tax was also paid by the customer separately, amount recovered from the Consumer should be considered come tax only. The said judgment was also confirmed by the Supreme Court in the case of Advantage Media Consultant 2009 (14)STR 349 (S.C), The Apex Court of

India decided that unless service tax was paid separately by the consumer of the service, the value collected by the service provide should be considered cum tax.

"The Appellate Tribunal in its impugned order had upheld the remand order of Commissioner (Appeals) where cum-tax benefit was directed to be given. The party was rendering Advertisin . Agency service arid Service tax was not collected for services rendered to government agencies. It held that Service tax being an indirect tax, was borne by consumer of goods/ services and the same wa . collected by assessee and remitted to government and total receipts for rendering services should be treated as inclusive of Service tax due to be paid by ultimate customer unless Service tax was paid separately by customer. The Tribunal had noted that cum-tax value has been incorporated in Section 67 of Finance Act, 1994 vide amendments made subsequently."

They have submitted that it became crystal clear that the consideration received for the services provided should be considered cum tax and the tax liability calculated by the department was not correct as the noticee had not received amount of tax in addition to that. The SCN was liable to be dropped as the tax liability was required to be recalculated considering the value of service provided cum-tax.

They have submitted that extended period of limitation was inapplicable in the present case, therefore, service tax cannot be demanded invoking the proviso to sub-section (1) to Section 73 of the Finance Act,1994. There was no suppression of facts with intent to evade payment of service tax. Therefore, the entire demand was barred by limitation. They have submitted that they were under a bonafide belief that they were not liable to pay service tax. There can be no suppression of facts. Therefore, the extended period of limitation was not invokable.

They have submitted that they have never concealed any details from the department purposefully. In the present case noticee had been filing their income tax returns on regular basis and there was no such obligation on the part of the noticee to submit any

specific details or documents separately to the service tax authorities. They have submitted that their income details were available with Income Tax department all along and same could have been accessible all the time. Therefore, allegation made in the show cause notice of suppression of facts with intent to evade payment of duty was not tenable and it had no legs to stand. It was well settled law that the Department cannot press into service the machinery for invoking the extended period of limitation unless there was established an act declaration with intent to evade payment of duty. They have relied upon the following decisions:

(a) Cosmic Dye Chemical vs. Collector of Central Excise, Bombay 1995 (75) E.L.T. 721 (S.C.)
(b) Tamil Nadu Housing Board vs. Collecto 1994 (74) E.L.T. 9 (S.C.)
(c) Cadila Laboratories Pvt. Ltd. vs. CCE 2003 (152) ELT 262 (S.C:)
(d) Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay 1995 (78) E.L.T. 401 (S.C.)
(e) M/s. Continental Foundation Joint Venture Holding; Naphtha H.P. vs. CCE, Chandigarh-I 2007 (216) E.L.T.177(S.C)
(f) Alumeco Extrusion vs. CCE 2010 (249) ELT 577
(g) National Rifles vs. CCE 1999 (112) E.L.T. 483
(h) SPGC Metal Industries Pvt. Ltd. vs. CCE 1999 (111) *E.L.T.* 286
(i) Gujarat State Fertilizers vs. CCE, Vadodara 1996 (84) E.L.T. 539
(j) ITI (TID) Ltd. vs. CCE 2007 (11) ELT 316 (Tri)
(k) Neyveli Lignite Corporation Ltd. vs. CCE 2007 (209) ELT 310 (Tri) Commissioner vs. Bentex Industries 2004 (173) ELT A079 (sc)
(l) Commissioner vs. Binny Limited 2003 (156) ELT A327 (SC)
(m) Collector vs. Ganges Soap Works (P) Ltd. 2003 (154) ELT A234(SC)

They have submitted that the Show Cause Notice merely made a bald allegation of suppression. The Show Cause Notice had not brought on record any evidence to show that the Noticees had suppressed any fact from the Department. The issue involved in the present case was one of interpretation of law. The noticees were under bonafide belief that, none of the services provided by them were liable to service tax on their hands. Hence, the entire demand was hit by time bar . They have relied upon the decision of the Hon'ble Supreme Court in the case of **Pahwa Chemicals v. CCE - 2005 (189) E.L.T. 257 (S.C.).** The Hon'ble Supreme Court had held that mere failure to declare does not amount to mis-declaration or willful suppression. There must be some positive act on part of party to established either willful mis-declaration or

willful suppression. The Hon'ble Supreme Court in **CCE Mumbai vs. S Narender Kumar & Co 2011-TIOL-52-SC-CX** relied on the decision of **Anand Nishikawa Co. Ltd. 2005 (188) ELT 149 (SC)** observed as under:

"In taxation, it ("suppression off acts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression".
The extended period of limitation cannot be invoked in the facts involved in the present case and the SCN was liable to be *dropped.* They have submitted that they had maintained regular books of accounts and all transactions were duly recorded. The books of accounts were maintained in the usual manner. All transactions have been undertaken transparently and in the usual course of activities. The demand in the present case was based solely on the Income Tax Returns. They have submitted that they bonafidely believed that they were not liable to pay service tax as demanded, for the aforesaid reasons. There being no positive act on part of the suppress any facts from the department and there being no evidence for such allegation, the invocation of the extended period of 5 years is inapplicable."

They have submitted that they were not liable to pay service tax, they cannot be subjected to penalty under section 78(1) of the Finance Act, 1994, no interest under section 75 can be demanded from them.

They have submitted that it was a well-settled principle of law that where there was no demand of duty, penalty cannot be imposed. They have relied upon the judgment in the case of **Coolade Beverages Limited Vs. Commissioner of Central Excise (2004) 1 72 ELT 451 (All).**

They have submitted that the Show Cause Notice alleged that the assessee had suppressed the facts from the Department with an intention to evade payment of duty, the allegation of suppression of facts was perverse and contrary to the facts on records.

They have submitted that Section 78 can be invoked only when there was fraud, collusion, willful misstatement, suppression or contravention of any of the provisions of the Finance Act, 1994 or the rules framed there under with an intention to evade payment of service tax. The language of the service tax provisions is ambiguous. The law is in the nascent stage. They had no intention to evade payment of service tax. Therefore, they cannot be said to be acting malafide and suppressing facts with an intention to evade payment of service tax and penalty was

not imposable. They have relied upon the decision of the Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253.**The same was followed by the Tribunal in the case of **Kellner Pharmaceuticals Ltd. Vs CCE, reported in 1985 (20) ELT 80,** and it was held that proceedings under Rule 173Q were quasi-criminal in nature and as there was no intention on the part of the Noticee to evade payment of duty the imposition of penalty cannot be justified. They have submitted that the ratio of these decisions squarely applied in all force to the present case. There was neither any malafide intention nor any intention to evade payment of tax, accordingly, no penalty was imposable.

They have also relied upon the judgment of the Hon'ble Supreme Court in the case of **Akbar Badruddin Jiwani V. Collector of Customs 1990 (047) ELT 0161 SC,** wherein the Hon'ble Supreme Court has held :

> "57. *Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the Noticee has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law".*

They have further submitted that there was no *mala fide* or deliberate intention to evade payment of service tax and the default, if any, was solely on account of the bona fide belief that the Noticees were not liable to pay service tax, the activity being excluded from the ambit of taxable service. In such a situation, imposition of penalty was not justified. They have relied upon the decisions of;

(i) CCE, Trichy v. Grasim Industries 2005 (183) ELT 123 (SC)
(ii) Indian Explosives Ltd. v. CC 1992 (60) ELT 111 (Cal)
(iii) Tata Yodagwa Ltd. v. ACCE 1983 (12) ELT 17 (Pat)
(iv) Cement Marketing Co. of India Ltd. v. ACST 1980 (6) ELT 295 (SC)

They have submitted that no interest was payable in case where the demand itself was not payable. They have relied upon the decision of the Hon'ble Apex Court in the case of ***Pratibha Processors v. Union of India*** **1996 (88) E.L.T. 12 (SC),** wherein the Hon'ble Court held that

interest payable is a mere accessory of the principal and if the principal was not recoverable, payable, so was the interest on it.

They have further submitted that language of Section 75 of the Act makes it clear that it cannot be invoked in the facts of the present case.

They have submitted that Section 80 of the Act provides that no penalty shall be imposed on the assessee for any failure referred to in sections 76, 77 or 78 of the Act, if the assessee proves that there was reasonable cause for the said failure. Thus, the Act statutorily provides for waiver of penalty.

They have submitted that, the present issue involves interpretation of complex law against them. They have relied upon the judgment of ;

- Ispat Industries Ltd. v. CCE 2006 (199) ELT 509 (Tri.-Mum)
- NIRC Ltd. v. CCE 2007 (209) ELT 22 (Tri.-Del.)
- Chemicals & Fibres of India Ltd. v. CCE 1988 (33) ELT 551 (Tri.)

Therefore, the allegations that they have suppressed the facts about the non-payment of service tax during the relevant period with an intention to evade payment were incorrect and unsustainable in law.

They have submitted that precedents set out by the Judiciaries were having biding effect, precedents means previous instance or case which was, or may be taken as an example of rule for subsequent cases, or by which some similar act or circumstances may be supported or justified. They have submitted that precedents cover everything said or done, which furnishes a rule for subsequent practice. There were plethoras of precedents which have clarified the legal position pertaining to the subject matter on hand and hence in the presence of such precedents the decision in subject case was to be aligned with such precedents.

They have submitted that, in **Circular No. 201/01/2014-CX.6 dated 26.06.2014** the Board has given

the instructions regarding need to follow judicial discipline in adjudicating proceedings. In the said circular Board has directed to follow the directions of the Hon'ble Gujarat High Court propounded in case of M/s E.I. Dupont India Pvt. Ltd. v/s Union Of India [2014 (305) E.L.T. 282 (Guj.)] on need to follow judicial discipline. They have submitted that it was instructed by the Board in the said circular to persuade the judgment of Hon'ble Supreme Court in case of Union of India v/s Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (SC)].

They have further relied upon the judgment of Hon'ble Gujarat High Court in case of Claris Lifesciences Ltd. v/s Union of India [2014 (305) E.L. T. 497 (Guj.)] wherein para 26 clearly spelt out the binding nature of the precedents over lower authorities,

> **"26.** *Despite such clear and specific directions and authoritative pronouncements, act of issuance of show cause notice by the Deputy Commissioner is wholly impermissible and unpalatable and deserves to be quashed and struck down with a specific note of strong disapproval. The respondents simply could not have exercised the powers contained under the statute in such arbitrary exercise and in complete disregard to the pronouncement of this Court particularly reminding the Revenue authorities of the binding effect of decision of Tribunal on the identical question of law. This not only led to multiplicity of proceedings but also speaks of disregard to the direction of this Court rendered in the earlier petition of this very petitioner. Resultantly, petition stands allowed. Both the show cause notices dated 21-8-2012 and 22-1-2013 are quashed and struck down.".* The said decision was also discussed and relied in case of **M/s E.I. Dupont India Pvt. Ltd. v/s Union Of India [2014 (305) E.L.T. 282 (Guj.)].**

They have requested to Set aside the SCN, Set aside the Service Tax demand of Rs. 4,00,00,313/-, interest under Section 75 of the Act and Penalty under Section 77(1) & 78 of the Act, 1994.

14. **PERSONAL HEARING**:

The assessee was granted personal hearing in the matter on 05.01.2022 to present their case. Shri Pratik Trivedi,

Chartered Accountant appeared on behalf of the noticee for hearing. He tendered a written submission dated 03.01.2022. He basically contested the demand arguing that M/s. Veparseva Healthcare Pvt. Ltd., were exempted from service tax as they were in the business of providing hospital/healthcare services, which are exempted from service tax as per the Mega Exemption Notification No.25/2012-ST. He requested to drop the proceeding in the interest of justice.

DISCUSSION & FINDINGS:

15. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 03.01.2022 and documents submitted by the assessee.

15.1 On going through the SCN, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for FY 2015-16, which was then compared with the gross value declared in ST-3 Returns filed for FY 2015-16 by the assessee. The difference in value of service to the extent of Rs. 27,58,64,228/- was noticed and therefore, the subject SCN for recovery of Service Tax of Rs.4,00,00,313/- was issued. Apart from the aforementioned difference noticed, no other documentary evidence was adduced by the department to substantiate the allegations. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 27,58,64,228/- under proviso to section 73(1) of Finance Act, 1944 or not.

15.2 Thus, first and foremost to understand the liability or otherwise of the noticee for paying Service Tax, I feel it necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any services for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

16. I discern that the assessee in his defence reply dated 03.01.2022 has stated that they have rendered service of Health Care Service and sale of medicines. . They have contended that these services which are covered under the negative list of service would not be levialbe to service tax under Finance Act,1994. They have submitted that in negative list of services wherein clause(c) are i.e. "trading of goods", that the sale of pharmacies are covered under the negative list of services and were not leviable to service tax.

16.1 I find that the assessee have submitted that Mega Exemption Notification NO.25/2012-St dated 20.06.2012 provides for exemption from service tax in respect of heath care services. They have submitted that they were registered as clinical establishment/hospital and were engaged in the business of providing health care service in association with different medical practitioners and such services provided by them were covered under the ambit of Mega Exemption Notification No.25/2012-ST dated 20.06.2012, at Sr.No.2, no service tax was payable by them.

16.2. I find that the assessee have submitted that they were not liable to pay service tax as per Notification

No.33/2012-ST dated 20.06.2012 as their aggregate value was not exceeding ten lakh rupees for the Financial Year 2016-17 and they were very well eligible to claim the benefit of exemption notification no.33/2012-ST in any financial year. They were eligible for the Small Scale Service Provider Exemption.

16.3. I find that , the assessee have submitted that they were not liable for payment of Service Tax on the income as the service provided by them were;

(a) Falling under Negative List and/or

(b) Covered under Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

(c) Covered under Notification NO.33/2012-ST dated 20.06.2012, known as small scale service provider exemption notification.

16.4. I find that the assessee have relied upon the various judgments/orders passed by the Hon'ble Supreme Court, High Courts, CESTAT on the issues that:-

the SCN was not sure regarding the chargeability of their activities under the Finance Act,1994,

- SBQ Steels Ltd. vs. Commissioner of Cus., C.Ex., & ST., Guntur 2014 (300) ELT 185 (AP)
- CCE vs. Shemco India Transport 2011 (24) STR 409 (Tri-Del.)

AmritFood vs. CC 2005 (190) ELT433 (SC).

that value of the services provided by the noticees should be treated as cum-tax;

(a) *Rajmahal Hotel v CCE 2006 (4) STR 370 (Tri-Del)*
(b) *Gem Star Enterprises (P) Ltd. v. CCE 2007 (7) STR 342*
(c) *Panther Detective Services v. CCE 2006 (4) STR 116 (Tri.-Del.).*

that there was no suppression since all facts were disclosed to the department; that they were not liable to pay service tax, hence, there was no question of imposing penalty on them;

(a) Cosmic Dye Chemical vs. Collector of Central Excise, Bombay1995 (75) E.L.T. 721 (S.C.)

(b) Tamil Nadu Housing Board vs. Collecto 1994 (74) E.L.T. 9 (S.C.)
(c) Cadila Laboratories Pvt. Ltd. vs. CCE 2003 (152) ELT 262 (S.C:)
(d) Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay 1995 (78) E.L.T. 401 (S.C.)
(e) M/s. Continental Foundation Joint Venture Holding; Naphtha H.P. vs. CCE, Chandigarh-I 2007 (216) E.L.T.177(S.C)
(f) Alumeco Extrusion vs. CCE 2010 (249) ELT 577
(g) National Rifles vs. CCE 1999 (112) E.L.T. 483
(h) SPGC Metal Industries Pvt. Ltd. vs. CCE 1999 (111) *E.L.T.* 286
(i) Gujarat State Fertilizers vs. CCE, Vadodara 1996 (84) E.L.T. 539
(j) ITI (TID) Ltd. vs. CCE 2007 (11) ELT 316 (Tri)
(k) Neyveli Lignite Corporation Ltd. vs. CCE 2007 (209) ELT 310 (Tri) Commissioner vs. Bentex Industries 2004 (173) ELT A079 (sc)
(l) Commissioner vs. Binny Limited 2003 (156) ELT A327 (SC)
(m) Collector vs. Ganges Soap Works (P) Ltd. 2003 (154) ELT A234(SC).

that they were not liable to pay service tax, hence, there was no question of imposing penalty on them;

Coolade Beverages Limited Vs. Commissioner of Central Excise (2004) 172 ELT 451 (All).
Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253.

that no penalty when they had bonafide belief;

(i) CCE, Trichy v. Grasim Industries 2005 (183) ELT 123 (SC)
(ii) Indian Explosives Ltd. v. CC 1992 (60) ELT 111 (Cal)
(iii) Tata Yodagwa Ltd. v. ACCE 1983 (12) ELT 17 (Pat)
(iv) Cement Marketing Co. of India Ltd. v. ACST 1980 (6) ELT 295 (SC)

that interest was not applicable;

Pratibha Processors v. Union of India 1996 (88) E.L.T. 12 (SC),

that issue involved bona fide interpretation of law;

- Ispat Industries Ltd. v. CCE 2006 (199) ELT 509 (Tri.-Mum)
- NIRC Ltd. v. CCE 2007 (209) ELT 22 (Tri.-Del.)
- Chemicals & Fibres of India Ltd. v. CCE 1988 (33) ELT 551 (Tri.)

That legal Precedents are binding in nature,

I find that M/s. Veparseva Healthcare Pvt. Ltd., is engaged in providing Health Care Services and are registered as Clinical Establishment/Hospital under definitions 2(j) of Notification No.25/2012-ST dated 20.06.2012 and they are also engaged in rendering various health care & diagnostic services as per definitions 2(t) of Notification No.25/2012-ST dated 20.06.2012. In view of the submissions made by the notice, the activities being carried out by the assessee for a consideration appear to be squarely covered under the definition of "Service" as defined under Section 65B (44) of the Act. I also find that

there is no dispute in this regard.

17. In order to comprehend the actual nature of service, I would like to take support of the following documents which have been submitted along with their aforementioned defence reply dated 03.01.2022. I would also like to discuss and reproduce the relevant excerpt of the documents.

17.1 The assessee is a registered company incorporated under the Company Act. The assessee has submitted the copy of independent auditor's report for F.Y.2015-16. In Note A to Annexure-A of the independent auditor report, it is clear that the company is engaged in business of Hospital. The same is reproducing herein as below.

Note A: Corporate Information.

VEPARSEVA HEALTHCARE PRIVATE LIMITED (the company) is a private limited company domiciled in India and incorporated under the provisions of the Companies Act,1956. The company is engaged in business of Hospital.

17.2 The assessee has also submitted the Independent Auditors' Reports for F.Y. 2015-16, 2016-17 and 2017-18. I find that the Independent Auditor is appointed by the Company under Section 139 of the Company Act. The auditor has to make a report, in accordance with Section 143 of Company Act, to the members of the company on the accounts examined by him and on every financial statements which are required by this Act to be laid before the company in general meeting. The report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11) and to the best of his information and knowledge, the said accounts, financial statements give a true

and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Further, the Profit and Loss Accounts for FY 2015-16, 2016-17 and 2017-18 recognises main Revenue as " Pharmacy Sales" and "Sales of Services-Rendered to patients".

17.3 The assessee has also submitted the Audit Report for the F.Y. 2015-16, 2016-17 and 2017-18 issued by auditors Surana Maloo & Co., Chartered Accountants, 2nd floor, Aakashganga Complex, Parimal Under Bridge, Nr. Suvidha Shopping Centre, Paldi, Ahmedabad, Firm Registraion No.112171W, under Section 44AB of the Income Tax Act, 1961. Section 44AB of Income Tax, Act, 1961 is reproduced herein below for ease of ready reference;

SECTION - 44AB, INCOME-TAX ACT, 1961-2021

Audit of accounts of certain persons carrying on business or profession.

44AB. [6]Every person,—

(*a*) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year [7][***]:

[8][**Provided** that in the case of a person whose—

(*a*) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(*b*) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

[9][**Provided further** *that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,*]

this clause shall have effect as if for the words "one crore rupees", the words "[10][*ten*] crore rupees" had been substituted; or]

(*b*) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(*c*) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(*d*) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

I find that in Form No.3CD in Para 4 issued by the auditor Vidhan Surana, Partner M. No. 041841 of Surana Maloo & Co., Chartered Accountants, it has been established that the assessee are liable to pay Service Tax and they are holding Service Tax registration No.AACCV4902DSD001. Para 10(a) of the said audit report states the nature of business or profession i.e. Speciality and Super speciality hospitals, Medical suppliers, agencies and stores and , para 11 of the said audit report states that Cash Book and Bank Book, Journal Register & Ledger, Sales & Purchase register, Debit notes & Credit notes have been examined to the best of their information and knowledge, that the said accounts read with notes thereon financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. I find that the assessee have submitted the copy of Audit Report under Section 44AB of the Income Tax Act,1961 for F.Y.2015-16,2016-17 and 2017-18 alongwith Profit & Loss Accounts including all Annexure.

17.4 I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by assessee during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records, according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the

statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

17.5 Having considered the above facts and discussion, I am of the view that the service provided by the assessee is appropriately classifiable under the Health Care Services.

18. I find that the SCN shows the difference in value to the tune of Rs. 27,58,64,228/- for FY 2015-16 when value of sales/gross receipt as per ITR are compared with gross value declared in ST-3 as mentioned in forgoing paras. Further para 6 of the SCN states that the levy of service tax for FY 2016-17 and FY 2017-18 (upto June 2017), which was not ascertainable at the time of issuance of the subject SCN, if the same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under the proviso to Section 73(1) of the Finance Act, 1994 read with Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 and the service tax liability was to be recoverable from the assessee accordingly. I however do not find any charges levelled for demand for FY 2016-17 and FY 2017-18 (upto June 2017) in charging part of the

SCN. On going through the ST-3 returns for FY 2015-16, it is noticed that the assessee has declared service tax liability to be discharged under RCM only and no liability under forward charge has been declared. As per ITRs filed by the assessee, Revenue from operations for FY 2015-16, 2016-17 and 2017-18 booked are as under:

Revenue form operations (Rs.)			
	FY 2015-16	FY 2016-17	FY 2017-18
Sale of Product-Pharmacy sales	12,76,41,610/-	15,79,39,627/-	14,14,02,398/-
Sale of services-rendered to patients	27,58,64,228/-	31,70,03,037/-	31,56,31,131/-

From the SCN, I find that the SCN has not questioned the taxability on any income other than the income from sale of services. I therefore refrain myself from entering into discussing the taxability or otherwise of income other than the sale of service.

19 Now, I consider it necessary to look into the definition of "Health Care Service" provided under the Act as the assessee has claimed their service to be Health Care Service. I find that the definition of "Health Care Service" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at definition Sr. No.2 (t), the same is reproduced hereinunder for better comprehension:

"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;"

20. I find that the Notification No. 25/2012 -ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of

Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of service tax on services rendered by them being Health Care Service and has claimed the exemption from levy of service tax under Sr. No. 2(i) of Notification No. 25/2012-ST dated 20.06.2012. I therefore would like to reproduce the said definition at Sr.No. 2(i) ibid hereinunder:

"2(i) Health Care Service by a clinical establishment, an authorised medical practitioner or paramedics;"

I also consider it necessary to look into the definition of "Clinical Establishment" and "Authorised Medical Practisioner" provided under the Act as the assessee has claimed their service to be Clinical Establishment. I find that the definition of "Clinical Establishment" and "Authorised Medical Practisioner" is provided under the Notification No. 25/2012-ST dated 20.06.2012 at Sr. No. 2(d) & (j), the same is reproduced herein as under for better comprehension/appreciation:

2. Definitions. – For the purpose of this notification, unless the context otherwise requires, –

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

(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 carryout diagnostic or investigative services of diseases;

As discussed hereinabove, it is amply clear that the assessee is a Hospital which is clearly engaged in business of

providing Health Care Service and is rightly covered under the above definition of clinical establishment.

21. Keeping in view the aforementioned detailed discussions, I find that the services rendered by the assessee is squarely covered under the Sr. No. 2(i) of the Notification No. 25/2012-ST dated 20.06.2012 and I find that the exemption is quite clearly available to the assessee as claimed by them. Since I am fully convinced with the arguments put forth by the assessee, I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

22. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. Accordingly, it is my considered view that the assessee has established their case quite unambiguously that the difference in value of service as discerned by the department by comparing the value of services in ITR/TDS and gross value of services provided in ST-3 Returns is basically on account of the exempt service being the Health Care Service rendered by the assessee as discussed hereinabove which was not shown in ST-3 Returns. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

23. In view of the facts and circumstances pertaining to the case, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on the need or otherwise of imposing penalty.

Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I drop the proceedings initiated against M/s. Veparseva Healhcare Private Limited, 197/2, B/h. Golden Triange, St.Xaviers High School Road, Ahmedabad-380 009, vide Show Cause Notice F.No. STC/15-114/OA/2020 dated 21.10.2020.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery

F.No. STC/15-114/OA/2020

Date:

To,
M/s. Veparseva Healhcare Private Limited,
197/2, B/h. Golden Triange,
St.Xaviers High School Road,
Ahmedabad-380 009

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad North.
3. The Superintendent, Range-IV, Division-VI, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File.