

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**

**West Zonal Bench, Ahmedabad**

Appeal No. ST/111/2010-DB

(Arising out of OIA No. 317/2009/STC/HKJ/COMMR-A-/AHD dated 30/11/2009 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

**Concord Biotech Ltd.**

**- Appellant**

Vs.

**C. S.T. Service Tax- Ahmedabad**

**- Respondent**

**Represented by:**

For the appellant : Shri P.G. Mehta (Advocate)  
For the respondent : Shri Gobind Jha, Supdt (AR)

**CORAM:**

**Hon'ble Mr. Ramesh Nair, Member (Judicial)**  
**Hon'ble Mr. Raju, Member (Technical)**

Date of Hearing: 16/11/2018

Date of Decision:20/12/2018

Order No. **A/12866 / 2018**

*Per: Ramesh Nair*

The brief facts of the case are that the appellant developed microbial strain for the manufacture of lovastatin. The technical know-how for the same was transferred to M/s Lupin Ltd. for the manufacture of active Pharmaceuticals Ingredients. The case of the department is that this transaction is of providing services of scientific or technical consultancy services. Accordingly, demand was confirmed.

2. Shri P.G. Mehta, Ld. Counsel appearing on behalf of the appellant submits that the transaction as per the facts of the present case is one time transfer of technical know-how along with supply of microbial strain for the manufacture of final product namely lovastatin by M/s Lupin Ltd. He submits that since it is a transfer of technical know-how it cannot be classified under scientific or technical consultancy services. The sale of technical know how does not attract Service Tax. He placed reliance on the following judgments:

1. Matrix Laboratories Ltd. v/s. CC & CE, Hyderabad-00 2008(9) STR-15 (Tri-Bang.)
  2. Korpan Ltd. Vs. CCE, Raigad 2011 (23)STR-627 (tri- Mum)
  3. CCE, Nasik V/s. Hindustan Aeronautics Ltd. 2015 (40) STR-289 (Tri.- Mumbai)
  4. Wanbury Ltd. V/s. CCE & S.T., Raigad 2016 (43) STR-226 (Tri- Mumbai)
  5. Ambalal Sarabhai Enterprises Ltd. 2009 (14) S.T.R. 355 (Tri- Ahmd.)
3. Shri Govind Jha, Ld. Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that on going through the agreement between the appellant and the Lupin Ltd, the transaction is of supply of technical know-how. The relevant clauses of the agreement are reproduced below:

**2.0 SCOPE OF THE AGREEMENT**

*The agreement pertains to supply of 'Strain & Technology' and 'Demonstration' on laboratory (shake flask) scale for the fermentation process to manufacture Lovastatin by CONCORD to LUPIN.*

**3.0 RESPONSIBILITY OF CONSULTANT**

*CONCORD shall transfer the 'Strain' and impart all the information related to Process & Technology, required to manufacture Lovastatin by fermentation including the raw material requirements and detailed process description to LUPIN.*

*CONCORD shall demonstrate the process on shake flask scale; at least three batches, for the guaranteed norms given in para 4.0 hereunder.*

**4.0 GUARANTEED NORMS**

*Fermentation Titre and time cycle: 7.0 to 8.0 gms of Lovastatin/litre of broth in shake flask in fermentation time cycle not exceeding 240 hrs. Average of 5 shake flasks would be taken for the purpose of calculating the guaranteed titre.*

### 5.0 TERMS OF PAYMENT

*LUPIN agrees to pay to CONCORD a total sum of Rs. 25.0 lacs in consideration of the entire scope of work as per this agreement as given below:*

- a) Rs. 15.0 lacs against handing over of lyophils/Cryovials (5 nos.) and slants the 'Strain' and the technology package, pilot scale process know-how, re-isolation and testing process, analytical method etc. to LUPIN.*
- b) Rs. 10.0 lacs against satisfactory laboratory scale demonstration within 7 days.*
- c) If the fermentation titre achieved in 240 hrs of cycle time is less than 7.0 gms/lit. as Mevinolinic Acid against USP Reference Standard of Lovastatin then for every 0.5 gm/lit. less activity LUPIN will deduct 5% of the total sum up to 6.0 gm/lit. CONCORD will return the complete amount to LUPIN.*
- d) In case the titre is more than 8.0 gm/lit, LUPIN will pay additional for every 0.5 gm/lit in excess of \_\_\_\_\_ gm/lit achieved during the shake flask trials.*
- e) LUPIN will bear the complete cost for the travelling lodging and boarding for the two CONCORD scientists during the demonstration of the technology.*
- f) The CONCORD scientists will be available for reasonable amount of verbal consultation without additional cost of scale up to pilot plant. However, if the CONCORD representative presence is required at Tarapur for this purpose the fees for that will be negotiated separately."*

On plain reading of the above agreement it is clear that the agreement is for supply of microbial strain and technology thereof and for 'Demonstration' on laboratory (shake flask) scale for the fermentation process to manufacture lovastatin by M/s Lupin Ltd. As per the terms of payment also, it is a one-time payment for supply of strain and technical know-how. In this case it is clear that the agreement between the appellant and Lupin Ltd is for supply of technical know-how for the manufacture of lovastatin by the Lupin Ltd. Therefore, allegation of the department that the services involved is the scientific and technical consultancy services, is incorrect. Since it involves supply of technical know-how, the same is not liable to Service Tax as held in the various judgments as cited by the Ld. Counsel. In the case of Matrix Laboratories Ltd., the Tribunal (Bang.) held as under:

"Fact:

**2.** *The appellant's contention is that they did not come within the category of "Scientific or Technical Consultancy Services (STC)". They*

*are leading pharmaceutical company in India and they are engaged in the manufacturing and marketing of pharmaceutical products and diagnostics in India. They develop technology for the manufacture of Active Pharmaceutical Ingredients (APIs), which they have sold on valuable consideration to their clients M/s. Ranbaxy. There is no service provided therein continuously in terms of the agreement but it is a complete sale of the technology on consideration, therefore, they did not come within the said category. The learned Commissioner has deferred with them by rendering findings in para 13. In para 13, it is noted by the Commissioner that Clause (h) of Preamble of the agreement indicate that the appellant would supply APIs of the products to clients as a preferred customer at competitor's rates.*

*Finding:*

**6.** *We have carefully considered the submissions and also specifically the finding recorded in para 13 of the impugned order. We have considered the terms of the Agreement. On perusal of the terms of the Agreement, we notice that the assessee has sold the technical know-how after developing the technology for manufacture of Active Pharmaceutical Ingredients on valuable sale consideration to their client M/s. Ranbaxy Ltd. The Revenue is required to establish that there was no sale of the technology developed by the assessee but what was rendered was only service in terms of the definition of the term Scientific or Technical Consultancy Services. The learned JDR persuade us to accept the terms of the definition which contemplates that when there is technical assistance in any manner, then, it should be considered as service. Further, we find that the technology was developed for manufacture of Active Pharmaceutical Ingredients and was sold as such with all the rights and technical documentations. The appellants do not have any right on the technical information sold to M/s. Ranbaxy Ltd. It is not the case that they received any commission for the services rendered in the form of consultation fee. This is a case of transfer of technology without holding any rights and receipt of valuable sale consideration. In such a circumstance, the view taken by this Bench in the rulings rendered by this Bench and other Benches, as cited by the Counsel and noted supra, would apply to the facts of the case. The judgment of BSNL is clearly distinguishable, as the issue therein pertains to levy of Sales Tax in respect of goods which were sold. It is not the situation in the present case. Therefore, we do not find any merit in the impugned order. The impugned order is not legal and proper in the light of the citations noted. Hence, the impugned order is set aside and the appeal is allowed with consequential relief, if any."*

In the case of Ambalal Sarabhai Enterprises Ltd. (supra), this Tribunal passed following order:

*"Fact:*

*M/s. Ambalal Sarabhai Enterprises Ltd. (ASE in short) entered into an agreement dated 19 October 1999 with Sarabhai Piramal Pharmaceuticals Pvt. Ltd. (SPPL in short.) and another agreement dated the 18th of June 2000 with Sarabhai Zydus Animal Health Ltd. (SZ for short) for permanent transfer of know-how at a consideration of Rs. 20 Crores and Rs. 28 Crores respectively. The Revenue took up investigation of these agreements which culminated in issue of show*

*notice to the respondents requiring them to explain as to while (sic)(why) transfer should not be treated is (sic)(as) amounting to consulting engineer service and should not be levied to service tax. The original adjudicating authority came to the conclusion that the agreements between the parties amounted to providing consulting engineer services, and therefore the respondents were required to discharge service tax on the consideration received by them and further he also imposed penalties under various Sections of the Finance Act, 1994 and also demanded interest as applicable. The Commissioner (Appeals) set aside the order of the adjudicating authority on appeal filed by the respondents and the revenue is in appeal against the order of the Commissioner (Appeals).*

*Finding:*

**3.** *We have considered the rival submissions in detail. The appeal filed by the Revenue, mainly relies on supplementary agreement dated 8 September, 1999 and Clause 7 of the shareholders agreement dated 29 January, 2000 in support of the contention that the agreements under consideration were not merely for the sale of technical know-how, but they have also provided consulting engineer service in the form of technical advice, consultancy, etc. There is no dispute that the respondents had sold the technical know-how required for the manufacture of various products involved in the agreements. The question to be decided is whether other two agreements have resulted in change of the nature of the transaction. The learned SDR had relied upon the decision of the Tribunal in Indian Farmers Fertilizer Cooperative Ltd. and submitted that the agreement was inclusive of technical assistance, along with the technical know-how. The supplementary agreement dated at September, 1999 requires the parties to the agreement to set up a task force to study and recommend economies wherever possible. We have to note that after the agreements were entered into, the respondents were also required to manufacture the products in respect of which the know-how was sold and the supplementary agreement of September, 99 was an effort to reduce expenses involved in the manufacture and as rightly pointed out by the respondents had nothing to do with the sale of technical know-how. The task force was to be set up jointly by the concerned parties, and it cannot be said that the task force which was set up jointly amounted to rendering technical advice and formed part of the sale of the technical know-how. There is no relationship of service provider, and the receiver between the parties to the transaction in the implementation of supplementary agreement. As regards the second agreement, the staff which was employed for the purpose of marketing, accounting management etc. were transferred and we are not able to appreciate how these amounted to rendering the technical advice or assistance. If the contention of the Revenue is accepted, mere transfer of staff in one company to another, would amount to rendering the consulting engineering services. Further, the question also arises as to what the respondents should have done with the staff who are engaged in marketing and other activities, which were no longer required to be undertaken by them, consequent to the sale of technical know-how and their activity being limited only to the manufacture and transfer of goods to the purchasers. It is quite clear from the terms of the agreement and the details, after the transfer of know-how, the respondents took up only manufacturing activity, and the remaining activities were taken over by the purchasers of the technical know-how. It is also the submission of respondents that the purchasers of the technical know-how were not required to get all the goods manufactured only by the respondents as per the agreement.*

*But they were free to get it done by others also. Therefore, what has been done by way of implementation of the other agreements is to ensure that the staff is deployed usefully and economies are achieved in the process of manufacture. Achieving economies in the manufacture, consolidating marketing and other activities as a result of the sale of technical know-how can (sic)(cannot) amount to providing consultancy and advice cannot be classified under the category of consulting engineering service. In view of the above discussions, we have to agree with the arguments advanced by the learned advocate on behalf of the respondents that the agreements under consideration for sale of technical know-how and least and they do not involve any consulting engineering service provided by the respondents to others. We also find that several judgments and decisions cited by the learned advocate on behalf of the respondents are relevant and are applicable to the present case. However, we have not discussed the same in detail, since the case of the appellants on its own facts, and details, leads us to the conclusion that the agreement is nothing but a sale of technical know-how and does not amount to rendering of any consulting engineering service. Since the revenue has lost the case on merits, we are not going into the issue of limitation."*

In view of the above judgments, the issue is no longer res integra.

Accordingly the impugned order is set aside. Appeal is allowed.

*(Pronounced in the open Court on 20/12/2018)*

**(Raju)**  
Member (Technical)

**(Ramesh Nair)**  
Member (Judicial)

DS