Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10430 of 2017 - DB

(Arising out of OIO-VAD-EXCUS-002-COM-034-16-17dated 04/11/2016 passed by Principle Commissioner Customs, Excise and Service Tax-VADODARA-II)

Unimed Technologies Limited........Appellant
Baska- Ujeti Road,
Ujeti, Halol,
PANCHMAHALS
GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-ii......Respondent
1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat- 390023

APPEARANCE:

Shri A. B. Nawal, Learned Cost Accountant, Appeared for the Appellant
Shri Rajesh Nathan, Assistant Commissioner(AR), Appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 11161/2024

DATE OF HEARING: 16.05.2024
DATE OF DECISION:04.06.2024

RAMESH NAIR

The brief fact of the case is that the appellant is engaged in the manufacture of Pharmaceutical products classifiable under CH. No.30 of the Central Excise Tariff Act, 1985. The appellant is also registered under the provisions of Finance Act, 1994 as a Service-provider under the category of Rent-a-Cab Scheme operator service, Manpower Recruitment/Supply Agency service, Scientific and technical consultancy services, Transport of goods by Road/ Goods Transport agency service, Sponsorship service provided to body corporate or firm including sports consultancy sponsorship, Business Support Service, Works Contract Service, Legal

Consultancy Service other than the 119 listed. They are also availing the benefit of Cenvat credit of duty paid on the inputs/ capitals goods as well as service tax paid on input services under the provisions of Cenvat Credit Rules, 2004.

During the course of EA-2000 audit conducted by the department during the month of March-April-2013 for the period from January-2010 to January, 2013 and it was noticed that the appellant have wrongly availed and utilized the cenvat of Service Tax on scientific and technical consultancy services for payment of Service Tax on non taxable service i.e. Sale of technology. It was also observed that the appellant does not have the facility of R & D and simply traded the technology or IPR developed on the basis of scientific & technical consultancy which is input service provided by M/s Sun Pharmaceutical Industries Limited (SPIL) and M/s Sun Pharma Advanced Research Company Limited (SPARC). Accordingly, a Show Cause Notice dated 06/04/2016 was issued proposing denial of Cenvat Credit amounting to Rs.4,94,14,277/- along with the demand of interest and penalty. The said Show Cause Notice was adjudicated vide order-In-Original dated 04/11/2016 whereby, the Adjudicating Authority has confirmed the demand of Cenvat Credit, imposed equal amount of penalty and also demanded interest. Being agrieved by the Order-In-Original dated 04.11.2016 the present appeal is filed by the appellant.

2. Shri A.B. Nawal, Learned Cost Accountant, appearing on behalf of the appellant at the outset submits that the Cenvat Credit was denied on the ground that the output service is not a service and it is simply a trading of technology. Therefore, the appellant is not entitled for the Cenvat Credit on Scientific and Technical Consultancy Service. He submits that on the same ground in the appellant’s own case, on the issue of admissibility of the Cenvat Credit, the appellant’s refund under Rule 5 of the Cenvat Credit

Rules were rejected. The Tribunal dealing in those cases passed the following orders:

1. Final Order No. 12764-12769/ 2023 dated 15.12.2023
2. Final Order No. A/10247-10248/2020 dated 24.01.2020

1. He submits in view of the above order, the issue is no long res-integra and the same is settled and following the same, present appeal deserves to be allowed.

3. Shri Rajesh Nathan, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. In the present case, the Cenvat Credit on Scientific & technical consultancy services were denied and ordered to be recovered in terms of Rule, 14 on the ground that since the appellant have carried out the trading of technology, hence, not provided any output service. Therefore, they are not eligible for Cenvat Credit on scientific and technical consultancy services . The very same issue has been considered by this Tribunal in the appellant's own case as cited supra. One of the Order No. 12764-12769/2023 dated 15.12.2023 is extracted below:

> "The issue involved in the present case is that whether the appellant is entitled for refund on export of scientific and consultancy service received from M/s. SPIL and M/s. SPARC for manufacture of final product under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2017-CE (NT) dated 18.06.2012 issued thereunder.
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> 2. Shri A.B Nawal, Learned Cost Accountant appearing on behalf of the Appellant at the outset submits that the very same issue in the appellant's own case has been settled by this Tribunal vide Final Order No. A/10247-10248/2020 dated 24.01.2020, therefore, on the basis of said decision the appeal deserves to be set aside.
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> 3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.
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> 4. We have carefully considered the submission made by both the sides and perused the records. We find that in respect of same input service

in the same set of facts, in the appellant's own case refund was allowed by this Tribunal vide Final Order No. A/ 10247-10248/2020 dated 24.1.2020. The said order is reproduced below:-

"This appeal has been filed by M/s. Unimed Technologies Limited and Shri P.K.Jain (GM) against Order demanding Service Tax, Interest and imposing penalty under Section 11 AC read with rule 15 (2) of the Cenvat Credit Rules and under Rule 26 of the Central Excise Rules, 2002.
2. The appellant M/s. Unimed Technologies Limited entered into separate agreements with M/s. Sun Pharmaceuticals Industry Limited (SPIL) and M/s. Sun Pharma Advance Research Company Limited (SPARC) for carrying out research and development and transfer of developed technology/Know-How for manufacture of various pharmaceuticals products. Accordingly, SPIL & SPARC developed certain technologies for manufacturing of various pharmaceuticals products and sold/transferred such technology to the appellant under five different invoices after payment of Service Tax thereon under the head of Scientific and Technical Consultancy Service. The appellant availed the Service Tax Credit of this service tax paid by SPIL & SPARC. The appellant exported the said service on the same day on which they had availed the credit of the service received from SPIL & SPARC.

3. The revenue argued that the service received from SPIL & SPARC was never used by the appellant for manufacture of any goods or for provision of any service but was exported as such, and therefore, the appellant was not entitled to avail Cenvat Credit of the said amount.

4. Learned Counsel for the appellant pointed out that the appellant is registered with Service Tax under the category of Scientific and Technical Consultancy Service provider. Learned counsel argued that Cenvat Credit of Scientific and Technical Consultancy Service used for providing same service cannot be denied. He placed reliance on this tribunal decision in MERCEDES BENZ RESEARCH & DEVELOPMENT INDIA PVT LTD VS C.S.T. BANGALORE 2017 (49) S.T.R. 227 (TRI.BANG). He also relied on decision of tribunal in case of FINOLEX CABLES LTD. VS. COMMISSIONER OF C. EX.,GOA 2007 (210) E.L.T. 76 where it was held that the facility available to merchant exporter cannot be denied to an manufacturer.

5. The appellant also relied on Rule 3(5) of Cenvat Credit Rules to assert that input service can be exported as such after availing credit. It was also argued that such services cannot be consumed when the same are used. It was argued that the Goods & Services are substantially different in that respect.

6. Learned Authorized Representative relied on the impugned order. He particularly pointed out Para 25.8, 25.10 & 25.12 of the impugned order where assertion has been made that the service was exported on the same day when it was received. In these arguments it was asserted by the learned Authorized Representative that this fact of receipt & export of services on same day establishes that the services were not used by the appellant and, therefore, no credit can be allowed of such services.

7. We have gone through the rival submissions, we find that the appellants M/s. Unimed Technologies Limited entered into a contract with M/s. Sun Pharma Global Inc., (SPGI) for supply of certain technology/Knowhow. The appellant sub-contracted the generation of this technology/Knowhow to SPIL & SPARC. SPIL & SPARC produced the said technology/Knowhow and supplied the same to the appellant who in turn further supplied the same to SPGI on the same day when they took credit on invoice of SPIL/SPARC. The entire case of revenue is that the appellant have not used the *service provided by SPIL & SPARC and, therefore, they cannot avail the said credit of service tax paid by SPIL & SPARC. It has been argued that the service received from SPIL & SPARC has been directly supplied to SPGI without use by the appellant. The revenue has relied on the definition of input service which requires use of the input service by the appellant before credit is availed.*

8. On the first principle it is seen that the services has been exported by the appellant and logically there should not be any tax liability on such exports even on the first principle any tax paid on development of such service should be refunded to the appellants. Availability of credit is also a kind of refund. 9. A perusal of the agreement of the appellant with SPIL shows that it gives the Right of Supervision and Monitoring to the appellant. Para 2 of the agreement reads as follows:

> *"ULT shall have right, but not the obligation, to direct, monitor and supervise all research, studies and trials by SPIL so that it meets with UTL's objectives of Research and Development, and discuss the methodologies and results of such research, studies or trials with the persons responsible for the design and conduct of such research, studies or trials by or on behalf of SPIL."*

It is also seen similarly the Para 6 prescribes the time schedule of the activity. From the said clauses it is apparent that while the technology was being developed by SPIL. The appellant was directly involved in Supervision and Monitoring even the time schedule and development was being decided mutually. From the above it is apparent that while the technology was being prepared it was being monitored by the appellants themselves which in itself amounts to use of the service.

10. The only fact that revenue has used to insist that the service was provided to the appellant and exported by the appellant on the same day is that the date of invoice is common. It is apparent from the facts of the case that the service was not provided in one day, the service was provided in a particular time duration and the service provided was beingsimultaneously used by the appellant by Supervising and Monitoring the activity in the entire duration. Thus, it cannot be correct to say that the service provided by the SPIL was not used by the appellant. The revenue's argument is that the entire service was provided on the date of invoice is totally fallacious and illogical. Thus, we hold that the appellants received and consumed the service while they were participating in the development of technology by supervising and monitoring the same.

11. In view of above we do not find any merit in the argument of the revenue that the services provided by SPIL was not used by the appellant and were exported as such. We find that the agreement in respect of SPARC is also the same and, therefore, the arguments above are equally applicable to the services provided by SPARC.
12. In view of above we do not find any merit in the arguments of the revenue that services were exported without use by the appellant and, therefore, no credit is admissible.

13. Appeal is consequently allowed."

4.1 From the above decision in the appellant's own case it can be seen that the issue in the present case and the case cited above is identical. In view of above decision the issue in hand stands settled and the issue is no longer res-integra. Accordingly, following the above decision of this Tribunal in the present case impugned orders are not sustainable. Hence the same are set aside.

> 5. All the appeals are allowed with consequential relief, if any, in accordance with law."

In view of the Tribunal's order in the appellant's own case as discussed above, in the present case the issue is no longer res-integra.

5. Accordingly, following the Tribunal's decisions in the appellant's own case, we are of the view that appellant are entitled for the Cenvat Credit on scientific and Technical consultancy services. Accordingly, impugned order is set aside. The appeal is allowed.

(Pronounced in the open court on 04.06.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi