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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 455 of 2012

(Arising out of OIA-171/2012/STC/AK/COMMR-A-/AHD dated 27/07/2012 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I)

Ba Research India Ltd **......Appellant**
Ba Research House, Opp. Pushparaj Towers,
Nr. Judges Bunglows, Bodakdev,
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-I **.........Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat – 380015

<u>APPEARANCE:</u>
Shri Dhaval Shah, Advocate for the Appellant
Shri Vijay G Iyengar, Superintendent (AR) for the Respondent

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

Final Order No. <u>A/ 12244 /2022</u>

DATE OF HEARING: 26.09.2022
DATE OF DECISION: 22.12.2022

<u>RAJU</u>

This appeal has been filed by M/s BA Research against demand of service tax on storage charges collected by them from their clients.

2. Learned Counsel for the appellant pointed out that the appellant are engaged in provision of services of technical testing and analysis. The appellant provide technical testing and analysis services to their clients and in some cases at the request of client the appellant also stored the relevant samples for a certain period on charges. He pointed out that in the initial period of 3 months the charges of storage are included in the technical testing fee. However, in case the samples are to be stored beyond that period. they charge a certain amount from their clients .

2.1 Learned counsel pointed out that the storage charges are charged only in respect of storage after the testing and the initial period of storage of three months is completed. He pointed out that the Article 10 of the master service agreement dated 06.09.2006 in the impugned order indicates that the service of storage after the period of three months is optional.

2.2 Learned counsel further argued that it is clear from the article 10 that the activity of storage charges after the testing is purely optional, independent and at the request of the client.

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. We find that it is not in dispute that the appellant are providing the service of technical testing and analysis service. It is also not in dispute that the storage charges are collected by the appellant only in cases of storage beyond the period of three months which is included in the technical testing and analysis services already provided by the appellant. Article 10 of the impugned order is reproduced below:-

> *"ARTICLE 10. RETENTION OF RECORDS AND BIOLOGICAL SAMPLES*
>
> *10.1 CRO acknowledge that all test articles, raw data, documentation, protocols, case report forms, source documents, final reports and biological fluids are the exclusive property of the Sponsor. All raw data, documentation, protocols, case report forms, source documents and final reports must be retained by CRO for the required period of time (presently 15 years) that is detailed and demanded in the applicable guidelines on record retention in force at the time of the study is completed for that information which pertains to its services.*
>
> *10.2 Biological fluids shall be retained for a period of 3 months after the Final report is delivered to the Sponsor for no charge, after which period Sponsor shall be offered the choice of;*
>
> > *a) storing the samples at CRO at an additional cost as mutually agreed upon, or*
> >
> > *b) transported to Sponsor's location at Sponsor's cost, or*
> >
> > *c) destroyed upon Sponsor's direction at CRO's Cost."*

On perusal, the article 10 clearly indicates that the service of storage after the period of three months is purely optional and independent service. It can by no stretch of imagination be called technical testing and analysis service.

4.1 The impugned order observes that the service of storage and technical testing are not mutually exclusive service. We do not agree with this contention and the Article 10 clearly prescribed that only at the request of client the service of storage beyond period of 3 months provided. The agreement also provides separate and independent charges for the purpose of storage. In this background we do not find any merit in the argument that the charges recovered on account of storage beyond period of 3 months can be considered as part of the provision of technical testing and analysis service. The demand therefore cannot be sustained.

5. Accordingly, impugned order is set aside and appeal is allowed.

(Pronounced in the open court on 22.12.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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