

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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 403 of 2012

(Arising out of OIA-CS/35-36/SRT-II/2012 dated 14/05/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Chiron Behring Veccines Private Limited

.....Appellant

501, Shree Amba Shanti Chambers,
Andheri Kurla Road, Andheri, East,
Mumbai, Maharashtra

VERSUS

C.C.E. & S.T.-Surat-ii

.....Respondent

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

APPEARANCE:

Shri Sanjeev Nair, Advocate for the Appellant

Shri G.Kirupanandan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10211 /2023

DATE OF HEARING: 06.10.2022
DATE OF DECISION: 06.02.2023

RAMESH NAIR

The brief facts of the case are that the appellant have received franchise service from CB GmbH for manufacture of **rabies** vaccine at its plant located in Gujarat for manufacture and sale of **rabipur** vaccines the appellant entered into a license agreement dated 01.06.1998 with Chiron Behring GmbH & Company wherein the appellant would be granted an exclusive and non transferrable license to manufacture **rabipur**. The appellant would remit royalty @ 5% on the domestic sales to CB GmbH. The appellant voluntarily applied for service tax registration as recipient of service under the taxable category of franchise service on 28.04.2008. As the license agreement was entered with the appellant Mumbai office and payments for the said service were also made from Mumbai office, the appellant registered itself with jurisdictional service tax authority of head

office which is Service tax Commissionerate Division - III Mumbai. The appellant suo moto discharged the service tax liability from 16.06.2005 onwards on 07.05.2008. However the appellant was of the bona-fide belief that the value of service on which service tax is computed should be taken on net royalty amount remitted to CB GmbH after deducting TDS on gross royalty as per Income Tax Act. Subsequently, an investigation was initiated on 09.01.2009 by the preventive team of the Surat- II Commissionerate wherein the appellant was requested to submit details of service tax discharged under Reverse charge on franchise service received. The appellant during the course of investigation paid the balance service tax of RS. 17,17,373/- on the value of TDS deducted from royalty for the period 16.06.2005 to 28.02.2009 along with interest. Pursuant to aforesaid investigation, show cause notice dated 12.11.2009 was issued alleging short payment/non payment of service tax on gross royalty amount from 01.01.2005 to 15.06.2005 and also on TDS component an amount of Rs. 17,17,373/- for the period 16.06.2005 to 28.02.2009. The adjudicating authority confirmed the demand vide order in original dated 19.05.2011. Being aggrieved the appellant preferred an appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) vide order-in- appeal dated 14.05.2012 partly dropped the demand of service tax pertaining for the period prior to 18.06.2006 i.e. 01.01.2005 to 17.04.2006 and upheld the balanced demand of Rs.13,43,989/- for the period 18.06.2006 to 28.02.2009 on TDS component. Hence the present appeal.

2. Shri Sanjeev Nair, Learned Counsel appearing on behalf of the appellant reiterates the grounds of appeal. He further submits that the show cause notice and the impugned order is issued without authority and lacks jurisdiction for the reason appellant have been paying the service tax under the registration of their head office, Mumbai. Therefore, for any short payment the show cause notice should have been issued by the

Jurisdictional Commissionerate of Mumbai office. He further submits that the arrangement between CBV and CB GmbH does not qualify as franchise service. In this regard he submits that the services rendered by CB GmbH vide the agreement does not qualify as franchise service and hence not taxable under service tax category of franchise service. The agreement demonstrates that the same relates to grant of exclusive non transferrable license to manufacture product in the licensed manufacturing territory and there is no grant of right to representation in any manner whatsoever to CBV as a Franchisee. CBV paid service tax on the royalty payments for the period 16.06.2005 to 28.02.2009 under the bona fide mistake that the services qualify as franchise service. Based on the agreement entered into between the appellant and CBGMBH the service rendered thereof as compared to the relevant provision of the taxable category of franchise service, the services of grant of license to manufacture the product would not be covered under the ambit of taxable services category of franchise services. He further submits that there is no suppression of fact on the part of the appellant as the issue on merit was under litigation that whether in case of receipt of service from abroad, the recipient is liable to service tax. Therefore, in such case extended period could not have been invoked. He further submits that the appellant have paid the service tax much before the issuance of show cause notice along with interest therefore, the extended period was not invokable.

2.1 He further submits that since entire service tax amount and interest paid prior to issue of show cause notice, no show cause notice should have been issued in terms of section 73 (3) of Finance Act, 1994. Therefore, no penalty can be imposed. He also submits that the benefit of Section 80 of Finance Act, 1994 should be admissible to the appellant. In support of his above submission he placed reliance on the following judgment:

- Commissioner Vs. Ores India Pvt Ltd - 2008 (12) STR 513 (Tri.)

- Metlex India Pvt. Ltd – 2004(165) ELT 129 (SC)
- Bhagyalakshmi Poha Industries Vs. CCE , Bangalore – 2008 (231) ELT 627 (Tri.- Bang)
- Singareni Collieries Co Ltd Vs. Collector Of C. Ex – 1988 (37) ELT 361 (CEGAT)
- South India Carbonic Gas Industries Vs. CCE – 1994 (72) ELT 168
- Steelcast Ltd Vs. Commissioner of C. Ex, Bhavnagar – 2009 (14) STR 129
- Administrative Staff College of India Vs. C.C & C.E, Hyderabad – 2009 (14) STR 341 (tri. Bang.)
- Diebold Systems (Pvt.) Ltd vs. Commissioner of Service tax, Chennai – 2008 (9) STR 546
- Onward e- Services Ltd Vs. Commissioner of Service Tax, Mumbai- II- 2019 (21) GSTL 167
- Rinder Tools India Pvt Ltd – 2017 (48) STR 154 (Tri.- Mumbai)
- CCE Nashik Vs. Vinay Bele & Associates – 2008 (9) STR 350 (Bom.)
- JKD Popat vs. CCE, Nashik - 2008 (9) STR 54
- MR Bhagat v. CCE Nashik- 2008 (10) STR 130
- CCE Coimbatore Vs. T. Stanes and Co. – 2008 (12) STR 236

3. Shri G.Kirupanandan, Learned Assistant Commissioner (AR) reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. Before going into the merit of the case that is the jurisdiction issue and taxability, we find that the appellant have made a submission about limitation and sought benefit of section 73 (3) and Section 80 of the Finance Act, 1994. As regard the limitation we find that the issue about taxability on reverse charge basis in respect of service received from foreign based service provider was not free from doubt as the issue was finally decided by the Hon'ble Supreme court in a landmark judgment in the case of Indian National Shipowners Association. Moreover the appellant have paid the entire service tax even for the period prior to its levy i.e. before 18.04.2006 and the appellant have filed ST-3 returns wherein details of payments have been declared. In this fact we are of the view that demand

for the extended period is not sustainable. We further find that the appellant alternatively claimed the benefit of Section 73 (3) of finance Act, 1994 on the ground that the entire service tax along with interest paid prior to show cause notice. Considering this position we are of the view that the demand for extended period is not sustainable hence the same is set aside. Demand for the normal period if any, is sustained along with interest. However, in the facts and circumstances of the case the penalties are not sustainable hence the same is set aside. Since we have considered appellant's submission on the point of Section 73 (3) we are not going into other issue such as jurisdiction and taxability.

Accordingly, the impugned order is modified to above extent. The appeal is partly allowed.

(Pronounced in the open court on 06.02.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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