IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.ST/50142/2015 & 70862/2016-CU[DB]

[Appeal No.ST/50142/2015, arising out of Order-in-Original No. 11/ST/Commissioner/Noida/2014-15 dated 30/09/2014 passed by Commissioner of Customs, Central Excise & Service Tax, Noida & Appeal No.ST/70862/2016, arising out of Order-in-Original No. 41/Commissioner/Noida-I/2015-16 dated 16/03/2016 passed by Commissioner of Central Excise, Noida-I]

M/s Jubilant Chemsys Ltd. **Appellant (s)**

Vs.

Commissioner of Central Excise & S.T., Noida **Respondent (s)**

Appearance:

Shri Devinder Sharma, Advocate for Appellant (s)
Shri Gyanendra Kr. Tripathi, Asstt Commissioner (AR), for Respondent (s)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 11/12/2018
Date of Decision : 11/12/2018

FINAL ORDER NOs-**70021-70022 / 2019**

Per: Anil G. Shakkarwar

Above stated two appeals are taken up together for decision, since the issues involved in both of them are same and appellant is also same. The period is different. The period covered by Appeal No.ST/50142/2015 is from April, 2012 to March, 2013 and the period covered by the other appeal is from April, 2013 to March, 2014.

2. After hearing both the sides duly represented by learned Advocate Shri Devinder Sharma on behalf of the appellant

and learned A.R. Shri Gyanendra Kumar Tripathi, Assistant Commissioner on behalf of the Revenue we note that the appellant is Company incorporated under the Companies Act, 1956 and is having 100% Export Oriented Unit. The appellants are registered for payment of service tax of services provided by them and also services received by them under Reverse Charge Mechanism. The appellants are also availing facility of Cenvat credit. Further, appellants are claiming refund of accumulated Cenvat credit under Rule 5 of Cenvat Credit Rules, 2004. Through the impugned orders, service tax of around Rs.1.43 crores and around Rs.95 lakhs were confirmed against the appellants and penalties were imposed under Section 76 & 77 of Finance Act, 1994. We note that the appellants were supplying small quantities of organic compounds manufactured outside India to Eli Lilly and Company, Endo Pharmaceuticals and other drug manufacturing companies located abroad in collaboration with group companies such as M/s Jubilant Biosys Ltd. (JBL), Bangalore and M/s Jubilant Life Sciences Ltd. (JLL) It appeared to revenue that appellants were providing taxable services to M/s Jubilant Biosys Ltd. and such services were classified by revenue under the category of Scientific or Technical Consultancy Services. The contention of the appellant before the Original Adjudicating Authority was that appellant entered into an agreement along with M/s Jubilant Biosys Ltd. & M/s Jubilant Life Sciences Ltd. with

Pharmaceutical Companies located outside India and appellant was not Sub-contractor of M/s Jubilant Biosys Ltd. and that the appellant was receiving consideration in Convertible Foreign Exchange from companies outside India, such as, Eli Lilly and Company and Endo Pharmaceuticals and other such drug manufacturing companies located outside India and therefore, the activities rendered by the appellants were covered by Export of Services Rules, 2005. However, the learned Original Adjudicating Authority has denied the benefit of Export of Services Rules, 2005 to the appellant.

3. The learned Counsel for the appellant has submitted that the issue herein is already decided by this Tribunal in appellants own case for the earlier period through Final Order No.ST/A/70562/2017-CU[DB] dated 02.05.2017. He has further submitted that the said Final Order has been accepted by the Department and demand for the subsequent period has been dropped. The learned Counsel for appellant has further submitted that this Tribunal on the basis of said Final Order dated 02.05.2017, decided the Appeal No.ST/50872/2014-CU[DB] through Final Order No.70759/2018 dated 11.04.2018. He has further submitted that this Tribunal has held that the activities undertaken by the appellants were that of export of services and they were not Scientific or Technical Consultancy Service rendered by

the appellant to M/s Jubilant Biosys Ltd. He has further prayed to set aside both the impugned Orders-in-Original.

4. We also note that learned A.R. for revenue has agreed that the issue involved in the present two appeals are already decided by above stated Final Orders dated 02.05.2017 & 11.04.2018.

5. We note that the issues identical to those involved in the present appeals are decided through above stated two Final Orders. For the sake of reference, we reproduce the findings in para-15 of the said Final Order dated 02.05.2017:-

> *"15. Having considered the rival contentions, we are satisfied that the appellant is not a subcontractor, but a co-venture along with JBL in executing the research and development assignments for clients like Eli Lilly and Company Ltd., USA situated outside India. We are further satisfied that the appellant have exported their services under the agreements, and also received payments in convertible foreign exchange through the EEFC account operated by JBL, as the lead venture, JBL have acted as the lead venture under the Research Agreement dated 14th November, 2005, as noticed hereinabove which clearly stipulates that JBL shall be the lead venture acting on behalf of all the three co-ventures, namely, JBL, JCL and Jubilant Organosys Ltd. The said agreement also provides that the foreign client, namely Eli Lilly and Company, USA shall give all notices, correspondence etc. to the lead venture JBL acting for all the three co-ventures. We further take notice of the clause in the said agreement that all the three are not subcontractors of each other, but they are all contractors in their individual capacity for the foreign client and JBL is the representative of all the three companies, as*

> *the lead partner. We also take notice of the certificate of chartered accountants, annexed in the paper book, which was also before the court below, which certifies that during the period in question, the affairs of the appellant have been verified and examined the payments made by Jubilant Biosys Limited to Jubilant Chemsys Ltd. for its share of activities under the work orders received from the parties located outside India. It further certifies that entire consideration for the work executed was initially received in EEFC account of JBL and thereafter, the Revenue share of JCL was transferred to its bank account in foreign currency. It further certifies that during the period April, 2005 to March, 2012 JBL, has not made any payment to appellant JCL for any research work carried out on account of JBL for which any [PR, if any, have been generated and have become property of JBL. We also take notice of the fact that all the research work done by the appellant JCL forms part of the property of the client located outside India. Thus, we hold that the appellant have satisfied both the conditions for export of service, namely, rending of service from India and receipt of the service by the client outside India and receipt of consideration in convertible foreign currency in India. Accordingly, we allow appeals by the appellant – assessee (No. ST/546/2012 & ST/5175/2014) with consequent benefits and set aside the impugned order."*

Further, para-22 of said Final Order dated 11.04.2018 is reproduced bellow for reference:-

> *"22. As regards the issue of payment of interest on the duty paid through the CENVAT account when sufficient balance was available on the date the duty liability crystallized, we find that the issue is squarely covered by the decision in the case of Oil and Natural Gas Corporation Limited Vs CCE Surat-2015 (38) S.T.R. 867 (Tri-Ahem), wherein this Tribunal has observed as under: 5.1 In view of the above case law and also the settled proposition of law even in a clandestinely*

evasion cases also the Cenvat credit of inputs/input services admissible, during the period of offence, is allowed to be abated from the total duty demanded even at the appeal stage. The interest payable is only calculated on the duty liability finally determined and not with respect to the duty demanded in the show cause notice. In this case appellant stands on a better footing as the Cenvat credit was available in the Cenvat account but could not be debited. It has to be thus held that interest is not payable with respect to duty required to be debited in the Cenvat Credit Account provided sufficient balance was available in the Cenvat Credit Account. Nothing has been brought on record that such a credit was not available in the Cenvat Account during the relevant period for debit. Appeal of the appellant is thus required to be allowed on merits. In view of the settled position of law we hold that interest is not payable by the Appellant on the amount of duty paid through CENVAT account."

We note that both the issues involved in the present appeal are already decided in respect of the same appellant for the earlier period in favour of the appellant.

6. We, therefore, set aside the impugned orders and allow both the appeals. The appellant shall be entitled for consequential relief, as per law.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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