CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT No - 2

Service Tax Appeal No.1921 of 2010
(Arising out of Order-in-Original No.05/2010 (ST) dated 12.03.2010 passed by Commissioner, Central Excise, Bangalore)

M/s Subex Limited
Adarsha Tech Park,
Outer Ring Road,
Deverabisnahalli,
Bangalore-560037 **.....Appellant**

VERSUS

Commissioner of Central Excise,
Bangalore-I Commissionerate,
C.R. Building, Queens Road,
Bangalore-560001 **....Respondent**

WITH

i. **Service Tax Appeal No.1025 of 2011 (M/s Subex Limited);**
(Arising out of Order-In-Appeal No.616/2010 dated 29/11/2010 passed by Commissioner of Central Excise (Appeals-II), Bangalore)

ii. **Service Tax Appeal No.2447 of 2011 (M/s Subex Limited);**
(Arising out of Order-In-Appeal No.320/2011 dated 28/04/2011 passed by Commissioner of Central Excise (Appeals-II), Bangalore)

iii. **Service Tax Appeal No.880 of 2012 (M/s Subex Limited);**
(Arising out of Order-In-Original No.01/2011 ST (Commr.) dated 30/12/2011 passed by Commissioner, Central Excise, Bangalore-I)

iv. **Service Tax Appeal No.881 of 2012 (M/s Subex Limited);**
(Arising out of Order-In-Original No.02/2011 ST (Commr.) dated 30/12/2011 passed by Commissioner, Central Excise, Bangalore-I)

v. **Service Tax Appeal No.28080 of 2013 (M/s Subex Limited);**
(Arising out of Order-In-Appeal No.321/2013 dated 07/08/2013 passed by Commissioner of Central Excise (Appeals-II), Bangalore)

vi. **Service Tax Appeal No.20612 of 2022 (M/s Subex Limited);**
(Arising out of Order-In-Appeal No.222/2022 dated 13/06/2022 passed by Commissioner of Central Tax (Appeals-I), Bengaluru)

APPEARANCE:

Shri V. Raghuraman, Senior Advocate and Shri. Bhanu Murthy JS, Advocate for the Appellant
Shri. M.A. Jithendra, Authorised Representative for the Respondent

CORAM:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 21742 - 21748 /2024

Date of Hearing: 02.05.2024
Date of Decision: 29.10.2024

Per: P.A. Augustian

M/s. Subex Limited, the Appellant a STP unit converted to a SEZ unit is engaged in providing revenue maximization solutions to telecom operators by development and sale of software products. As part of their business development, appellant acquired M/s. Azure Solutions Ltd. U.K. and M/s. Syndesis Ltd., Canada and the acquisition was financed by issue of Global Depository Receipts (GDRs) and Foreign Currency Convertible Bonds (FCCBs). The appellant for this purpose availed the services from various consultants, advisors and legal experts, who were located outside India, however, the appellant did not register with the Service Tax Department under the category of 'Banking and other Financial Services' for receiving taxable services and they have not paid service tax for the services received by them. Alleging that the services received by the appellant are classifiable under the category of 'Banking and other Financial Services' as defined in Section 65(12) r/w section 65(105)(zm) of the Finance Act, 1994, a show cause notice and periodical show cause notices were issued. On adjudication the Adjudicating Authority confirmed the demands along with interest and imposed penalties. Aggrieved by the said orders following appeals were filed before this Tribunal as detailed in the table below for the respective periods.

Appeal Nos	ST/1921/2010	ST/880/2012	ST/881/2012	ST/28080/2013
Date of Payment in forex and nature of issue	April and May 2007- Services received towards issue of FCCB outside India	May 2006 to September 2006; October 2006 to March 2007; April 2007 to June 2007- Services received towards GDR outside India	Jan 2007 to July 2007- Services received towards Acquisition of business outside India	April 2006 to September 2006; October 2006 to March 2007; April 2007 to June 2007 - Payment towards business Exhibition and sponsorship services outside India
Service tax demand	Rs.3,55,24,369	Rs.3,32,55,343	Rs.2,44,68,058	Rs.16,86,685
Date of payment of ST with interest	18.09.2007, 24.10.2007, 22.022008 and 13.11.2007	18.09.2007, 24.10.2007 and 13.11.2007	18.09.2007, 24.10.2007 and 13.11.2007	22.02.2008
Expiry of one year limitation- based on due date for filing returns for above transaction	25th October 2008	25th October 2007; 25th April 2008; 25th October 2008.	25th October 2008	25th October 2006; 25th April 2008; 25th October 2008.
Expiry of one year limitation- based on date of payment of tax	October 2008	October 2008	October 2008	25th February 2009
Date of SCN	11.05.2009	08.05.2009	11.05.2009	21.05.2009

2. In addition to the above 04 (four) Appeals, 02 (two) more Appeals as per the details given below related to refund of CENVAT credit were also filed:-

ST/2447/2011	Various services received towards issue of GDR, FCCB, acquisition of business and business exhibition services (Sept 2004 to October 2007)	Service Tax: Rs. 2,50,47,455 Interest: Rs. 16,42,668 **Total: Rs. 2,66,90,123**
ST/1025/2011	Claim for refund of cenvat credit in terms of Rule 5 of Cenvat Credit Rules,2004 (Oct 2007 to March 2008)	Rs. 8,91,55,168 [Note: Entire credit claimed as refund has been utilised by the company subsequently]

3. Further the appellant has filed another appeal with Appeal No. ST/20612/2022.

4. Since the issues in all the 7(seven) appeals are common and interrelated, they are being disposed by this order.

5. When the appeals were taken up for hearing, learned Sr. counsel for the appellant submits that all services are performed and consumed outside India for the purpose of issue of GDRs, FCCBs and for acquisition of companies outside India. Therefore, no service tax could be levied on such services. Learned counsel for the appellant further submits that creation of a new entry is not by way of amending the earlier entry and it is not carved out of the earlier entry. Therefore, the services rendered by the appellant cannot be brought under that entry after the introduction of new entry. Learned Sr. counsel further submits that as regards Section 66A, confusion remained in respect of classification of services as Department contends that any services in relation to mergers and acquisition are classifiable under 'Banking Service' whereas it is the contention of the appellant that the services be classified based on the nature of the service and not on the basis of their usage. Therefore, each service such as 'Legal Service' and 'Audit Service' have to be classified under respective heading irrespective of the fact that the recipient could use such services for the purpose of acquisition of business in such cases. Learned Counsel further submits that liability under Section 66A (Import of service) could be applicable

only on receipt of taxable services and not on receipt of non-taxable services.

6. Learned Sr. counsel for the appellant also submits that out of the 04 (four) impugned orders, considerable amount is demanded under the category of '**Legal Consultancy'** which involves an amount of Rs.31,86,331/- in Appeal No. 1921/2010, Rs.43,20,000/- in Appeal No. 880/2012 and Rs.10,29,487/- and in Appeal No. 881/2012. In this regard, learned counsel draws our attention to the Bills issued by M/s Jones Day Solicitors and International Lawyers which clearly shows that the Bill is for legal services rendered for the period from July 16, 2007, and an amount of USD 282,926.21 was charged vide Bill dated 27th September 2007. The learned Sr. counsel further submits that the service tax on legal services was introduced with effect from 01.09.2009 [Section 65(105) (zzzzm)] and the services received by them were prior to 2009, hence, they are not taxable under the provisions of Finance Act, 1994 and Service Tax Rules, 1994. Learned counsel to support the above contention draws our attention to the judgment of this Tribunal in the case of **Petronet LNG Ltd. Vs. Commissioner of Central Excise, New Delhi reported in 2017 (52) S.T.R. 419 (Tri. –Del.)** wherein it is held that:-

> *"5. We have heard both the sides and perused appeal records. On the first issue, we find that the appellants engaged M/s Baker Bott of U.S.A. in connection with extension project of their LNG terminal. We have perused request for proposal for selection of International Legal Consultant and also the billing made by the service provider. It is clear that the appellant called for proposals for selecting International Legal Consulting firm to provide various legal advisory services in relation to the project. On careful consideration to the scope of the proposal as well as bill raised by the service provider it is clear that the appellants received mainly legal consultancy service and not management or business consultant service. We also note that the finding of the Original Authority that the said legal firm did not represent the appellant in any Court or legal proceeding and, hence, the service is not legal consultancy, is fallacious. The scope of legal services*

encompasses advisory services also. We note that the law firm engaged by the appellant rendered service including advisory, legal opinion, documents and correspondence, reviewing etc. All these are in the field of contract law. We find the reasoning and findings of the lower authority devoid of merit and is unsustainable."

7. Learned counsel also draws our attention to the judgment of the Hon'ble High Court Bombay in the case of **Indian National Shipowners' Association Vs. Union of India reported in 2009 (14) S.T.R. 289 (Bom.)** wherein it is held that :-

"38. If the Department's contention is accepted that would mean that the activities of the members of the 1st petitioner are covered by entry (zzzy) and entry (zzzzj). Such a result is difficult to comprehend because entry (zzzzj) is not a specie of what is covered by entry (zzzy). Introduction of new entry and inclusion of certain services in that entry would presuppose that there was no earlier entry covering the said services. Therefore, prior to introduction of entry (zzzzj), the services rendered by the members of the 1st petitioner were not taxable. Creation of new entry is not by way of amending the earlier entry. It is not a carve out of the earlier entry. Therefore, the services rendered by the members of the 1st petitioner cannot be brought to tax under that entry."

8. As regards **underwriting service,** an amount of Rs. 1,10,00,022/- was demanded against which Service Tax Appeal No.1921 of 2010 was filed, similarly under the very same heading, stating as raising of funds relating to GDR issue, an amount of Rs.2,88,67,147/- was demanded against which Service Tax Appeal No. 880 of 2012 was filed and under the same heading 'underwriting' amending as 'advisory service' an amount of Rs. 1,64,06,496/-was demanded against which Service Tax Appeal No.881 of 2012 was filed. In this regard learned counsel draws our attention to the definition of 'underwriting' and submits that services of 'underwriter' in relation to 'underwriting' in any manner is brought under the taxable service vide Finance Act, 2008 w.e.f.

15.05.2008 [section 65(116/117)] and no demand is sustainable thereby up to the period 14.05.2008. The learned counsel further also draws our attention to Notification No.11/2006-ST dated 19.04.2006 where the underwriting service has brought under the ambit of taxable services in India. Learned counsel to support the above contention draws our attention to the Final Order of the Larger Bench in the matter of **Jubilant Life Science Ltd. Vs. Commissioner of C.Ex., Noida reported in 2013 (29) S.T.R. 529 (Tri.-Del.)**. wherein it is held that:-

> *"13. We have considered arguments on both the sides. We are not in agreement with the argument of Revenue that the service of Underwriting has to be necessarily provided by merchant bankers. We also do not agree with the argument that providing Underwriting Service is incidental to the services rendered as a Lead Manager to the issue. This is basically because the latter involves basically organizing an event viz. issue of the FCCBs and the former involves financial risk to the underwriters, and the two matters are totally different in nature. We are also not in agreement with the argument that the contract has to be considered as a whole and classified considering it as a single service and subjected it to tax. This is because the services are distinct in nature and the contract lays down the services as distinct services with separate remuneration fixed for the two services. Further if at all it is to be considered as one single bundle we do not agree with the contention of Revenue that the dominant nature of the service is that of Lead Manager's services, since JPMS is earning a higher commission by underwriting the issue taking the risk involved. Further from the facts of the case as stated by JLSL, that the issue was wholly subscribed by JPMS, the Lead Manager service was a minimal part of the contract in this particular case. Further "Underwriting Service" is specified in a sub-clause of Section 65(105) which occurs earlier than the sub-clause in which Lead Manager's Service occurs. So going by the criterion laid down in Section 65A(2)(c) of Finance Act, 1994, the service will get classified under "Underwriting Services".*

Therefore, we hold the view that the "Underwriting Service" rendered by JPMS to JLSL is distinct from the Lead Manager service provided. Since the underwriter service is to be subjected to tax under Section 66A of Finance Act 1994 taking into consideration the place of performance as per Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. In this case Underwriting was done outside India. So, we do not see any reason to tax the impugned service."

9. Learned counsel also draws our attention to the Final Order of the Tribunal in the case of **Commissioner of Central Excise, Goa Vs. Sesa Goa Ltd. reported in 2019 (25) G.S.T.L. 405 (Tri.-Mumbai)** wherein it is held that :-

"24. A simple reading of the said judgment it is clear that this Tribunal came to the finding that since it is a resell agreement and no conditions laid for functioning as 'underwriter' defined under Finance Act, 1994 i.e. to make offer to the public or existing shareholders and whatever is not subscribed that has to be purchased/subscribed in terms of agreement by the person i.e. underwriter. In the said case, since Joint Lead Manager has purchased the GDR initially for resale subsequently, the Tribunal held that the service provided cannot be considered as an underwriter service but fall under the category of Banking and other Financial Service providing the underwriting service.

25. In our opinion, there is no apparent conflict in the in the judgments of this Tribunal in Jubilant Life Science Ltd's case and Axis Bank Ltd's case on the concept of underwriter service or what constitute an underwriter service. It is clear that the role of an underwriter as defined under the relevant SEBI Rules adopted in the Finance Act, 1994 on the issue of securities to shareholders or public is to bear the risk of non-subscription of securities/bonds offered and to subscribe that portion of the securities/bonds issued against the underwriting commission agreed to be paid to them. In the present case, it is clear that the Respondent issuer issued bonds of value of US $500,000,000 which are convertible *into equity shares on maturity and the lead managers viz. M/s Goldman (Sachs) Asia LLC & M/s Morgan Stanley & Co. International PLC assumed the responsibilities to facilitate subscription of the bond by general investors outside India and in the event they fail to achieve 100% subscription of the general investors, the said lead managers undertook to subscribe the unsubscribed bonds. This fact has not been disputed by the Revenue.*

26. Therefore, in our opinion, the services provided by the foreign service provider are akin to the definition of the 'underwriting services' and not 'Banking or other Financial service', particularly merchant banking service. No doubt, under scope of merchant banking, the 'underwriting' is also as an activity, but considering the overall stipulation and conditions in the subscription agreement dt. 24.00.2009 between the Appellant and M/s. Goldman (Sachs) Asia LLC & M/s Morgan Stanley & Co. International PLC, it could be safely inferred that even though the amount paid for the services by the Respondent has been described as 'Management underwriting commission and selling commission', but the core service provided by the Lead Managers is that of underwriter service and not managerial service for the issue of Bonds as is evident particularly clause 4.1.33 where under it is mentioned that none of the managers has to provide any legal, accounting, regulatory and tax advisors; clause 9 mentions the expenses that are to be borne by the issuer and the Lead Managers. Once, it is concluded that the service provided by the Respondent fall under the category of "underwriter service", the amount paid by the Respondent to the Lead Managers for the services performed outside India would come under the scope of Rule 3(iii) of Taxation of Services (provided from outside India and received in India) Rules, 2006 and accordingly not chargeable to service Tax as held by the Chennai Bench of this Tribunal in their own case vide Order No.42262/2017 dt. 25.9.2017."

10. Regarding the demand on underwriting service the learned counsel also reiterated the findings in the matter of **Indian National**

Shipowners' Association (supra) and submitted that creation of new entry is not by way of amending the earlier entry. Therefore, the services rendered by the appellant cannot be brought to tax under that entry.

11. Regarding '**Merchant Banking Service'** learned counsel submits that merchant banking service means banks and financial institutions including NBFC providing merchant banking services governed by the Securities and Exchange Board of India (Merchant Bankers) Rules, 1992 and Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992. In the absence of any registration under these rules and regulations the services provided by the overseas customers cannot be considered as falling under the category of 'Merchant Banking Service'. Ld. Counsel further submitted that to bring under the ambit of 'Merchant Banking Service' registration is compulsory and as per Chapter 2 of the Registration of Merchant Bankers Application for grant of certificate, Section 3(1) application by a person for grant of certificates shall be made to the Board in Form 'A'. The learned counsel in support also drew our attention to the order of this Tribunal in the case of **M/s.TCS E-Serve Ltd Vs. Commissioner of Service Tax, Mumbai** where while considering the taxable service related to leased circuit, Tribunal considered the requirement of license under Telegraph Authority in relation to telecommunication service and held that *for getting classified under Telecommunication service, Section 65(105)(zzzx) of the Finance Act, 1994 provides that the service should be provided by a Telegraph authority. Telecommunication service as defined under Section 65(109a) covers services which are provided by a person who has been granted a licence under the first proviso to sub-section (1) of Section 4 of the Indian Telegraph Act, 1885. In this situation in the instant case since the service provider is located abroad, he is not covered under the definition given in Section 65(109a). Thus, the service provided by foreign vendors cannot be taxed under Telecommunication service."* Applying the ratio of the above decision merely if the incidental service rendered is related to Merchant Banking Service, to bring said activity under the ambit of 'Merchant Banking Service' registration is compulsory and as per

Chapter 2 of the Registration of Merchant Bankers Application for grant of certificate.

12. As regards the Chartered Accountant (C.A.) Service where an amount of Rs. 17,02,742/- was demanded against which Service Tax Appeal No. 881/2012 was filed. Learned counsel draws our attention to the invoice produced by the appellant and submits that once the service is subject to tax abroad, no tax can be demanded in India as it amounts to double taxation.

13. Regarding '**Business Exhibition and Sponsorship Service'** where an amount of Rs.16,86,685/- was demanded against which Service Tax Appeal No.28080 of 2013 was filed, learned counsel submits that taxable services provider is from outside India and services received in India shall in relation to said taxable service is applicable only if such services are performed in India either fully or partially.

14. Regarding revenue neutrality, learned counsel submitted that the refund claim of Rs.8,91,55,168/- covered under Service Tax Appeal No.1025/ 2011 is not pressed since the entire amount is exhausted through CENVAT credit. Learned counsel draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **Nirlon Ltd. Vs. Commissioner of Central Excise, Mumbai reported in 2015 (320) E.L.T. 22 (S.C.),** wherein it is held that:-

> *"9. We have ourselves indicated that the two types of goods were different in nature. The question is about the intention, namely, whether it was done with bona fide belief or there was some mala fide intentions in doing so. It is here we agree with the contention of the learned Senior Counsel for the appellant, in the circumstances which are explained by him and recorded above. It is stated at the cost of repetition that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty.*
>
> *10. Therefore, it was not permissible for the respondent to invoke the proviso to Section 11A(1) of the Act and apply the extended period of limitation. In view thereof, we confirm the*

demand insofar as it pertains to show cause notice dated 25-2-2000. However, as far as show cause notice dated 3-3-2001 is concerned, the demand from February 1996 till February 2000 would be beyond limitation and that part of the demand is hereby set aside. Once we have found that there was no mala fide intention on the part of the appellant, we set aside the penalty as well."

15. Regarding limitation, the learned counsel submitted that the entire demand of service tax is barred by limitation as there is no suppression or misstatement or fraud on the part of appellant with an intent to evade payment of duty. The appellant submits that the issue regarding leviability of service tax against the service received from abroad was under dispute and the same was resolved only after the outcome of the decision of the Hon'ble High Court in the case of **Indian National Shipowners' Association (supra).** Learned counsel also draws our attention to the order of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Delhi Vs. Ishaan Research Lab (P) Ltd. reported in 2008 (230) E.L.T. 7 (S.C.),** wherein it was held that where there is a dispute prevailing in the matter of classification of products, the appellant cannot be held guilty of suppression or misstatement and hence charge of suppression is not sustainable and extended period cannot be invoked. Similarly in the matter of **Jayaprakash Industries Ltd. Vs. Commissioner of Central Excise, Chandigarh reported in 2002 (146) E.L.T. 481 (S.C.)** the Hon'ble Apex Court held that when there is a *bona fide* doubt about the tax liability on the goods due to diverging views of the courts, extended period of limitation is not invocable.

16. As regards Appeal no. ST/2447/2011, the appellant had availed services from the consultants, advisers and legal experts located outside India for development of software products which are sold and for maintenance of the same on annual basis. They have also participated in exhibition outside, and they have paid service tax along with interest. However, the refund claim was rejected by Adjudication Authority. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and the Commissioner (Appeals) considered

the issue and held that the issue is settled in the matter of **Indian National Ship Owners Association** and agreed to the contention that the appellant is eligible for refund up to the period of 18.04.2006. however, it is held that appellant is liable to pay service tax from 19.04.2006. Since, the demand made for the amount claimed by the appellant is pending Adjudication before the Commissioner (Appeals), appeal was disposed subject of the Adjudication of the issues. Aggrieved by the said order the present appeal is filed before this Tribunal.

17. Further, Appeal No. 20612/2022 was filed by the Appellant with regard to 'Business Exhibitions' conducted outside India where a demand of service tax of Rs. 17,06,315/- along with interest of Rs.1,92,377/- was confirmed and these amounts were appropriated from the amount of Rs. 23,05,697/- paid by the appellant. The appellant in the appeal has contended that the demand of service tax towards business exhibitions and the sponsorships towards business events held outside India are not liable to service tax; further the entire demand is barred by limitation; the adjudication authority erroneously held that the Business Exhibitions services(BES) are partly performed in India as the activity of finalizing the necessity modalities and planning as to duration/variety of products and service to display etc., are made in India without considering the provision of taxable service under the head 'Business Exhibitions' service which imposes service tax on the service of Exhibitions / product of service and not on finalizing the contract or agreement, further the department is aware of the entire fact in the year 2007 itself. However, the notice was issued on 21.05.2009. Further the entire amount of service tax has entirely been paid voluntarily in the month of February 2008. The appellant is not liable to pay service towards business exhibition conducted outside India and performance of the impugned service has happened completely outside India. Business Exhibitions service are liable to service tax under section 65 (105)(zzo) and in terms of section 66A of Finance Act, 1994 r/w Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, the service of Business Exhibitions falls Rule 3(ii) of Import of Service Rules, wherein

the recipient is liable to service tax only if the service of Business Exhibitions are either fully or partly performed in India. Since Clause (zzo) falls under the second category which mandates performance of service in India to be taxable in the hands of the recipient of service and since the Business Exhibitions services were entirely performed outside India and same are not liable to service tax under RCM and only participation fees are paid from India. The fact that the said business exhibitions have been conducted is accepted by the department in the show cause notice as well as the Order of the respondent which clearly states that exhibition services have been provided by various service providers located outside India and the payments towards various business exhibition events namely GSM in Central and Eastern Europe-2004, Trade Show on GSM America's Congress-2004, Booth for Tele-Management World Nice-2005, Telecom Africa-2005, Annual Meeting and Conference, Annual Exhibition, Conference on Revenue Assurance Summit-2005, Telco Prov, UK Trade etc., the assessee has received various services in relation to 'Business Exhibition Service' (BES) for promotion of their products in various exhibitions held abroad which attracts Service Tax with effect from 10.9.2004. There is no dispute that all the above referred business exhibitions on which service tax is demanded has been held outside India and therefore the entire performance of the service is outside India. Therefore, it is clear that the appellant is not liable to service tax on receipt of 'Business Exhibition' services even after enactment of Section 66A. It is submitted that both the original authority as well as Commissioner Appeal have erroneously held that the impugned services have taken place in India without giving any reason or evidence for the same. On this ground also, the proceedings may be set aside.

18. The Learned counsel further submits that with regard to Appeal No. ST/2447/2011 as per the impugned order, Commissioner (Appeals) categorically held that the appellant is eligible for refund of service tax paid prior 18.04.2006 and refund for said period was kept in ambiance only due to pendency of the issue regarding demand made by the Respondent. Since, demand referred by the Commissioner (Appeals)

in the impugned order is covered in Appeal Nos. ST/1921/2010, ST/880, 881/2012 and ST/28080/2013, appellant is entitled for refund till 18.04.2006.

19. As regards the dispute after 18.04.2006, Learned Counsel submits that the refund claim for the period post 19.04.2006 has been erroneously rejected without considering the fact that service received by the appellant are not at all taxable in terms of provisions of Section 66A read with provisions of Taxation of Services (Provided from outside India and received in India) Rules, 2006. Learned Counsel further submits that for the issue of Global Depository Receipts, the appellant had availed services from various consultants, advisories and legal experts who are located outside India. In addition, appellant participated in various 'trade shows', 'exhibitions' organized outside India and also sponsored such exhibitions, trade shows and seminars. The payment for such trade shows or sponsorships are made in foreign exchange. After 18.04.2006, appellant made service tax payment as per the following chart and appellant is seeking refund of said amount also:-

Sl. No.	Date of Payment	Amount Paid	Remarks
1	18.09.2007	1,00,00,000/-	Advance payment towards service tax on services received in relation to business acquisition
2	24.10.2007	7,52,93,087/-	Final amount after detailed calculations paid towards service tax on services received in relation to business acquisition
3	13.11.2007	49,94,487/-	Interest on delayed payment of the above service tax
4	22.02.2008	17,43,743/-	Service tax towards business exhibition services received from outside India
5	22.02.2008	5,62,224/-	Service tax towards Sponsorship services for sponsoring events outside India.

20. Learned Counsel further submits that the refund was rejected only on the ground that a separate demand for the same amount which is claimed as refund in the present appeal is pending before the Commissioner of Service Tax. Learned Counsel submits that the both the issues are entirely different and linking of the same is not legally tenable. Learned Counsel further submits that inspite of remanding the issue for quantification for the period prior to 18.04.2006, the respondent kept the matter in the call book rather than considering the issue as directed even after the issue has attained finality as per the judgment of the Hon'ble Supreme Court in similar cases.

21. As regards Appeal No. ST/20612/2022, the issue in the appeal is for the same period as covered under Appeal No. ST/28080/2013-DB. For the period from 01.01.2005 to 31.10.2007, demand was made against show cause notice dated 21.05.2009 and Adjudication authority confirmed the demand vide Order No. 67/2010 dated 30.07.2010 and on appeal, as stated in Appeal No. ST/28080/2013-DB, Appellate authority partially allowed the appeal and remanded the matter for denova adjudication. Aggrieved by said order, an appeal was filed before this Tribunal in Appeal No. ST/28080/2013. However, without considering the pendency of the appeal and without considering the request for keeping the matter in abeyance, considering the remand order, Adjudication authority passed an order on 29.06.2016, re-quantifying the demand for the period from 18.04.2016 and appropriated the amount paid by the Appellant. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) in Appeal No. 127/2017, and the Commissioner (Appeals) issued the impugned order on 13.06.2022. Aggrieved by said order, present appeal was filed. When the appeal ST/20612/2022 came up for hearing, the Ld. Counsel for the Appellant submits that the entire issue is infructuous, since the demand for the above period is already covered by the Appeal No.ST/28080/2013. Accordingly, without considering the merits of the case, appeal is disposed. As regards Service Tax Appeal No. ST/1025/2011, learned counsel submits that the appeal is infructuous

since the entire credit claimed as refund has been utilized by the appellant, subsequently.

22. As regards Appeal Nos. ST/1921/2010, ST/880,881/2012 and ST/28080/2013, Learned AR reiterated the finding in the impugned orders and also draws our attention to the condition in the agreement where it is specifically mentioned that on the basis of the representations, warranties and covenants contained in this Agreement, the Company agrees to issue and UBS agrees to purchase or UBS and/or RP&C agree to use their reasonable endeavors to procure purchasers for the Bonds at a price equal to 100 per cent of the principal amount of the Bonds (the "Bond Issue Price"), which on reasonable endeavors failing, UBS shall purchase any of such Bonds in respect of which purchasers have not been so procured. Learned AR also draws our attention to the decision of the Tribunal in the matter of **M/s. Axis Bank Ltd Vs Commr. of S.T., Mumbai -I (2015 (40) STR 993 (Tri. - Mumbai))** where it is held that :-

> *"A perusal of above provisions do not indicate that for charging Service Tax, merchant bankers or body corporate or commercial concern is required to be registered with SEBI. As long as the said service is being provided, Service Tax will be chargeable. Further, a perusal of the said definition indicates that services received by the appellant from M/s. Citi and M/s. Goldman Sach Ltd. will get covered by the scope of the service. We therefore hold that services by the appellant is covered by the scope "Banking and other financial services".*

23. The Learned AR also submits that those services relating to business of issue management either by making arrangement regarding selling, buying or subscribing to securities or acting as manager, consultant, advisor or rendering corporate advisor service in relation to such issue management will be covered under the services of Merchant Bankers. The services of Merchant Bankers are covered under Section 65(12) of the Finance Act 1994. The Section 65(12) of the Finance Act,1994 reads, "Banking and other financial services" covers, among others, the merchant banking services provided by

banking companies, financial institutions including a non-banking financial company, other body corporates and any other commercial concern. Section 65 (105) (zm) of the Act defines the taxable service as those services provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services. Thus, the Adjudication Authority rightly confirmed the demand as per the impugned order. Learned AR further submits that issue was considered by the Tribunal in the matter of "**Commissioner of Central Excise, Madurai Vs. M/s. Sakthi Sugars Ltd., and Vice Versa reported in 2018 (2) TMI 156 - CESTAT Chennai**. The issue considered by the Tribunal was whether the appellant raised funds through issue of Foreign Currency Convertible Bonds (FCCB) in capital markets through overseas lead arrangers to whom they paid charges in the form of upfront fee, management fee, commitment fee, underwriting fee, out-of-pocket expense, legal fee, etc., will fall under the category of 'Banking and Other Financial Services' as defined under section 65(12) of the Finance Act, 1994 and that the assessee should pay service tax under reverse charge mechanism as provided under section 66A of the Finance Act, 1994. After considering the issue it is held that except legal fee, demand is sustainable under 'Banking and Other Financial Services'. Learned AR relied on the following decision of the Tribunal in the matter of **M/s. Paramount Communications Ltd., Vs. CCE, Delhi [2018 (9) TMI 503-CESTAT New Delhi, M/s. Tata Steel Ltd., Vs. Commissioner of Service Tax, Mumbai – I [2015 (11) TMI 1049-CESTAT Mumbai (LB)] and Hindustan Petroleum Corporation Ltd., Vs. Commissioner of Service Tax, Mumbai [2017 (4) TMI 855-CESTAT Mumbai.** As regards invoking the extended period of limitation learned AR submits that the appellant who had availed the services from overseas agencies is well aware about the statutory requirement and by suppressing the facts, they evaded payment of service tax, thus the Adjudication Authority rightly invoked the extended period of limitation. Learned AR to support his contention draws our attention to the following decisions :-

1. **Vivimed Labs Ltd., Vs. Commissioner of Central Excise, Customs and Service Tax, Hyderabad-III-2020 (7) TMI 320- CESTAT Hyderabad,**
2. **M/s. Paramount Communications Ltd., Vs. CCE, Delhi -2018 (9) TMI 503 – CESTAT New Delhi**
3. **Tata Steel Ltd., Vs. Commissioner of Service Tax, Mumbai-I -2015 (11) TMI 1049 – CESTAT Mumbai (LB)**

24. As regarding Refund claim in Appeal No. ST/2447/2011 and ST/1025/2011, Learned AR reiterated the finding in the impugned orders and submits that the refund application was submitted without attaining finality of the demand post 19.04.2006 and therefore the impugned order was issued, accordingly. As regards Appeal No. ST/20612/2022, Learned AR submits that the entire issue is infructuous, since the demand for the above period is already covered by the Appeal No.ST/28080/2013.

25. Heard both sides and perused the records.

26. As regards Appeal Nos. ST/1921/2010, ST/880, 881/2012 and ST/28080/2013, the issue was considered by the Tribunal in the matter of **M/s. Jubilant Life Science,** where it is held that the argument to consider the entire contract and further classifying it as single service is unsustainable since the services availed by the appellant are from different sources and consideration was also paid to different service providers. Considering the demand made against each service and consideration paid by the appellant against each service, the contract cannot be considered as a whole and classified considering it as a single service and subjected it to tax. This is because the services are distinct in nature, and the contract lays down the services as distinct services with separate remuneration fixed for each service. Further if at all it is to be considered as one single bundle, we do not agree with the contention of Revenue that the dominant nature of the service is that of 'banking and another financial services'. As per the invoices produced by the appellant, it is evident that considerable amount was paid as legal consultancy directly by the appellant. Further, service tax was made applicable to legal consultancy service

only with effect from 01.09.2009. Thus, considering the ratio of the judgments in the matter of **M/s. Indian National Ship Owners Association (supra)**, prior to introduction of 'legal consultancy' service, the services received by the appellant were not taxable under legal consultancy service. Creation of new entry is not by way of amending the earlier entry nor it is not a carve out of the earlier entry. Therefore, the services received by the appellant cannot be brought to tax under 'Banking and other financial services'. Similarly, as regards '**Underwriting service'** service tax was made applicable to Underwriting service only with effect from 15.05.2008 as per Notification No. 11/2006-ST dated 19.04.2006. Thus, considering the ratio of the judgments in the matter of **M/s. Indian National Ship Owners Association (supra)**, prior to introduction of Underwriting service, the services received by appellant cannot be brought to tax under 'Banking and other financial services'. Thus, as held in the matter **of Sesa Goa Ltd., (supra),** there is no apparent conflict in the judgments of the Tribunal in **Jubilant Life Science Ltd's case** and **Axis Bank Ltd's** case on the concept of underwriter service or what constitutes an underwriter service. As regarding **Business Exhibition and Sponsorship Service'** and **'Chartered Accountant service',** the taxable services provider was from outside India and services received in India shall in relation to said taxable service is applicable only if such services are performed in India either fully or partially. Thus, demand under said service is also unsustainable.

27. As regards limitation, we find that the activity relates to period from Jan 2007 to May 2007 and remittance were made during April to June 2007. However, show cause notice (SCN) was issued only in the month of May 2009. It is further observed that investigation into the activities relating to business acquisition and rising the funds from outside India through issue of GDRs and FCCBs were started in Dec 2006 and various documents and information were submitted from Dec 2006 to April 2007. We further find force in the submission of the appellant that even if the entire service tax was paid by the appellant as assessed by the Adjudication Authority at the time of carrying out the transaction, appellant is eligible to claim input service credit for the

entire amount, and it is only a revenue neutral situation. As held in the matter of **M/s. Textile Corporation reported in 2008 (231) ELT 195 SC** and considering the decision of the Tribunal in the matter of **Vivimed Labs Ltd., (supra),** if the appellant had paid the service tax they could have immediately taken the CENVAT credit of the entire amount so paid and utilized it. By delaying the payment, the appellant would only be liable to pay interest which also cannot be claimed as CENVAT credit. Thus, by not paying Service Tax in time, the appellant would have lost something but gained nothing. Further as per the judgment of Hon'ble Supreme Court in the case of **Ishaan Research Lab (P) Ltd (supra),** where there is a dispute prevailing in the matter of classification of products, the appellant cannot be held guilty of suppression or misstatement and hence charge of suppression is not sustainable and extended period cannot be invoked. Similarly in the matter of **Jayaprakash Industries Ltd. (supra),** Hon'ble Apex Court held that when there is a *bona fide* doubt about the tax liability of the goods due to diverging views of the courts, there is no ground to invoke extended period of limitation. In the present case, the activity relates to period from Jan 2007 to May 2007 and remittance were made during April to June 2007. It is further observed that investigation into the activities relating to business acquisition and rising the funds from outside India through issue of GDR and FCCB were started in Dec 2006 and various documents and information were submitted from Dec 2006 to April 2007. Fact being so, issuing a SCN in the month of May 2009, after two years by invoking extended period of limitation is unsustainable. Following the above, demand by invoking extended period of limitation and penalty imposed by Adjudication Authority is also unsustainable.

28. As regarding refund claim in Appeal No. ST/2447/2011, issue is regarding refund of service tax paid by the Appellant. The refund prior to 19.04.2006 attained finality as per the impugned order and appellant is eligible for the refund. As regarding the refund claim post 18.04.2006 as evident from chart and considering the findings in Appeal Nos. ST/1921/2010, ST/880, 881/2012 and ST/28080/2013, appellant was not liable for payment of service tax and eligible for

refund as claimed by them. Accordingly, the Appeal no. ST/2447/2011, is allowed with consequential relief, if any, in accordance with law. In Appeal No. ST/1025/2011, the entire credit claimed as refund has been utilized by the appellant during pendency of the dispute. Hence disposed accordingly.

29. In view of the above discussion, the impugned orders in Appeal Nos. ST/1921/2010, ST/880/2012, ST/881/2012, ST/28080/2013 are set aside and the appeals are allowed with consequential relief, if any, as per law. The Appeal nos. ST/20612/2022 and the refund claim in Appeal No. ST/1025/2011 are disposed as infructuous. The refund claim in Appeal No. ST/2447/2011 is allowed.

(Order pronounced in the Open Court on 29.10.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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