

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 2149 of 2012

[Arising out of Order-in-Original No. 17/AKM/CST/ADJ/2012 dated 30.03.2012
passed by the Commissioner (Adjudication), Service Tax, New Delhi]

M/s UOP Inter Americana

5th & 6th Floor, Tower-B, Building No.9,
DLF Cyber City, Phase-III, Gurgaon
Haryana-122010

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Delhi**

MG Marg, IP Estate, 17-B, IAEA House,
IP Estate, Delhi-110002

.....Respondent

WITH

Service Tax Appeal No. 56817 of 2013

[Arising out of Order-in-Original No. 1/ST/PKJ/CCE/Adj./2013 dated 04.01.2013
passed by the Commissioner (Adjudication), Central Excise, New Delhi]

M/s UOP Inter Americana

5th & 6th Floor, Tower-B, Building No.9,
DLF Cyber City, Phase-III, Gurgaon
Haryana-122010

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Delhi**

MG Marg, IP Estate, 17-B, IAEA House,
IP Estate, Delhi-110002

.....Respondent

APPEARANCE:

Shri Sujit Ghosh, Senior Advocate and Shri Ajinkya Tiwari, Advocate
for the Appellant

Shri S.K. Meena, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61674-61675/2025

DATE OF HEARING: 29.07.2025
DATE OF DECISION: 14.11.2025

P. ANJANI KUMAR :

M/s UOP Inter-Americana (or 'UOPIA'), assail the impugned order dated 30.03.2012, vide which service Tax demand of Rs 1,14,45,390, along with interest and penalty of Rs 1,50,00,000 under Section 78; penalty of Rs 200 per day for every day of default or @2% per month of tax amount, whichever is higher under Section 76; penalty of Rs. 5,000 under Section 77 Finance Act, 1994 was confirmed on the appellants.

2. Brief facts of the case are that the Appellant, a Company registered under the laws of State of Delaware, USA, entered into "License Agreement" outside India, with M/s Tamil Nadu Petrochemical Products Limited, Indian Oil Corporation Limited, Hindustan Petroleum Limited, Indian Petrochemical Corporation Limited (referred to as 'Petroleum Companies in India'), vide which it granted non-exclusive and non-transferable right to use the licensed technology, which was patented outside India, to Petroleum Companies in India; the Petroleum Companies in India had agreed to pay a fixed consideration, to overseas entity, at pre-determined intervals, in terms of the 'License Agreement'; the Intellectual Property rights, however are registered outside India; Appellant was

also registered with the Service Tax Authorities under the category of 'Consulting Engineering Services'; the liaison office of UOP Asia Ltd, a Group Company of the Appellant, was used by the Appellant for the specific purpose of collection and remission of Service Tax to the Authorities; the same was done with prior authorization from the Reserve Bank of India (or "RBI").

2.1. Alleging that the appellants are required to pay the service Tax on the services received by them from the overseas entity as per Rule 2(1)(d)(iv) of the Service Tax Rules ,1994 under the category of 'IPR services' as per the license agreements, for the period 01.04.2004 to 31.03.2007, and that extended period is invocable as the appellant did not intimate department regarding receipt of payments against the IPR services provided by it and the appellant misstated the facts pertaining to rendition of taxable services with an intent to evade payment of Service Tax, a show cause notice dated 21.08.2008 was issued to the appellants. The said Show Cause Notice came to be adjudicated as above.

3. Shri Sujit Ghosh, Learned Counsel for the appellants, submits that there are four agreements which are relevant; two Settlement Agreements dated 11.02.2002 and 26.06.2005, License Agreement dated 18.03.2004 and Royalty Payment Agreement dated 26.04.2004; Services are provided under License Agreement dated 18.03.2004; no liability to pay Service tax on consideration received for IPR services prior to its introduction as taxable event occurred much before the IPR services being introduced. He submits that it is

undisputed that the Appellant was located outside India i.e., USA, and the patent rights were licensed from outside India; it did not have any establishment, office, employee or any other assets in India from where the disputed services were provided; the registered premises (liaison office) in India was only for the purpose of collection of remittances from the customers in India; as per the Master Circular NO. 03/2011-12 dated 01.07.2011 issued by RBI, a Liaison office can only undertake liaison activities and is not allowed to undertake any business activity; the purpose of the Liaison office set up by the Group Company (UOP Asia Ltd.) was to undertake liaison activity only and not for provision of any services; liaison office was used by the Appellant for the specific purpose of collection and remission of Service Tax to the Authorities, and the same was done with prior authorization from the Reserve Bank of India (or "RBI"), vide letter dated 17.11.2000 granting permission to the Liaison Office of UOP Asia Ltd. to collect from the Indian customers the Service Tax component of invoices issued by UOP Companies and paying the amount so collected to the Government on behalf of UOP Companies.; UOP group companies included UOP Inter Americana (the Appellant herein).

4. Learned Counsel submits that Levy of Service Tax came in to effect only from 10.09.2004; a bare perusal of the definition makes it abundantly clear that the taxable event is 'transfer of' or 'grant of permission to use' and not the actual use or enjoyment of the intellectual property by the recipient of services; in the present case,

the transfer of 'patent rights' by the Appellant to Petroleum Companies in India was a 'perpetual transfer', which was a onetime event, and no further rights/processes/upgrades were provided to them; taxable event occurred prior to date of enforcement of IPR services under Service Tax, notwithstanding that the consideration was to flow even beyond the said date; the position of law is no more res integra that the taxable event of 'transfer' happens only once and cannot be treated as a continuous activity merely because the consideration for such transfer is paid in pre-determined intervals as per the terms agreed between parties. it was held in Modi Mundipharma Pvt Ltd CCE (2009-TIOL-968) that receipt of the know how is a one-time affair and not a continuous activity.

5. Learned Counsel submits further that Service Tax on import of services was legally permissible only after introduction of Section 66A in Finance Act. 1944 w.e.f. 18.04.2006 as held in Indian National Ship Owners Association 2009-TIOL-129-SC-ST; it was held in Foster Wheeler Energy Ltd 2007 (7) STR 443 that service provided outside territorial waters cannot be taxed in India; circular No. 36/4/2001 dated 08.10.2001: CBEC clarified that services provided beyond territorial waters of India are not liable to service tax as provisions of Services Tax have not been extended to such areas; above Circular was rescinded only on 10/05/2007 vide circular dated 93/4/2007 – ST; Hon'ble Tribunal had held in the case of Mitsui & Co. Ltd 2012 (28) STR 491 that no service tax can be levied on services rendered

prior to 18.04,2006 by a foreign service provider to a service received in India.

6. Learned Counsel submits in addition that UOPIA is a service provider and not service recipient; Prior to insertion of Rule 2(1)(d)(iv), i.e. before 15.08.2002, the liability to pay Service Tax was only on the service provider as there was no reverse charge mechanism; thus, where the taxable service was provided by a non-resident, Service tax could not be recovered on reverse charge basis; further the condition that "service provider does not have any office in India" as stipulated in *Explanation* inserted in Rule 2 (1)(d)(iv) w.e.f 16.06.2005 is not satisfied as UOPIA has a representative office in India; further, there was no liability under Rule 2(1)(d)(iv) to pay Service Tax under reverse charge prior to 18.04.2006; he relies on ABB Ltd. 2010(17)STR131 (Tri-Bang.).

7. Learned Counsel further submits without prejudice to the above, that the SCN suffered from errors in computation of demand in as much as "Cum-tax benefit not provided; R&D Cess abatement not given and erroneous rate of tax applied. He also submits that penalties under Section 76 and 78 of the Finance Act, 1994 cannot be simultaneously imposed.

8. Shri S.K. Meena, Learned Authorised Representative, reiterates the findings of the impugned order.

9. Heard both sides and perused the records of the case. We find that M/s UOP LLC is a Company registered in USA and the appellant is a

liaison office started to facilitate the collection of Service Tax from Indian Companies and paying the same to the Government on behalf of UOP Companies. During the impugned period, M/s UOP LLC rendered services to customers located in India by way of Grant of Patent, Supply of Engineering designs and Provision of Engineering Services. The appellant submits that the Services were provided entirely from outside of India and no part of the said Services were ever performed in India. The impugned order confirms the demands for the reasons that

- the Indian office is involved in collection of fee from the Indian customers and the fee is related to the period of use and goods produced by their clients; it cannot be said that the representative office is not involved in rendering services; they are not undertaking any separate activity independent of the services rendered in India; the Indian branch office is part of the service provider and they have taken the service tax registration for the services provided by the Noticee.
- services provided by the noticee were covered under IPR services for which the consideration was received by them from time to time; consideration was based on the time and production made by the Clients; as such, the services provided by the noticee under the agreements were not one time services but continuous services; the noticee has granted right to use the process and technical information for the same after expiry of the agreement unless and until they acquire fully paid license; the appellant was also required to supply the know how

developed by them from time to time including consulting services; it was not one time transfer of IPR and therefore, the appellant is liable to pay the service tax on the royalty income.

- Since the appellants were having representative office in India, the notice was not a foreign service provider covered under provisions of Rule 2(1)(d)(iv) but were covered under Section 66, 67, & 69 of the act and were liable to pay service tax accordingly; the noticee is liable to pay service tax on the consulting engineers services rendered by them during 2005-06, as they were having representative office in India as such their clients were not liable to pay service tax on the services received by them under provisions of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

10. The argument of the appellants on the other hand is that it is a well settled position of law that the services were provided entirely outside India were not taxable prior to introduction of the charging section under Section 66A of the Finance Act 1994 with effect from 18.04.2006; the Appellant was outside the jurisdiction of the Service Tax Authorities during the period in dispute; the Appellant did not have any establishment, office, employee or any assets in India where the disputed services were provided and the registered premises in India was essentially for the purpose of collection of remittances from the customers in India; the category of "Intellectual property service" was included in the list of taxable services by amendment made in Section 65(55b) w.e.f. 10.09.2004; CBEC

clarified vide Circular No. 36/4/2001 dated 08.10.2001 that services provided beyond territorial waters of India are not liable to service tax as provisions of Services Tax have not been extended to such areas.

11. We find that it would be beneficial to have a look at the relevant agreements. We find that the agreements dated December 13, 2004 and February 23, 2004 indicate the following:

11.1 This agreement, dated DECEMBER 13, 2004,

is between UOP LLC, a limited liability company of Delaware, U.S.A. ("UOP") with offices at 25, East Alogonquin Road, Box 50017, Des Plaines, Illinois 60017-5017 United States of America and **HINDUSTAN PETROLEUM CORPORATION LIMITED**, a Government of India Company registered under the Companies Act, 1956, ("LICENSEE") having its registered office at 17, Jamshedji Tata Road, Churchgate, Mumbai-400020, India, and which expression shall include its successors, executors and permitted assigns.

Article 1. Background

LICENSEE would like UOP to provide engineering services for a UOP Naphtha Hydrotreating Process Unit including a naphtha splitter column ("NHT Unit") and a CCR Platforming g Process Unit ("CCR Unit"), which LICENSEE intends to install in its refinery at Visakhapatnam, India, for operation of the aforesaid CCR Unit under a UOP Platforming Process License of even date herewith between UOP and LICENSEE.

Article 5. Payments

LICENSEE will pay UOP according to Attachment I for the services provided by UOP under this agreement.

1.0 Charges

1.1 LICENSEE will pay UOP a lumpsum fixed price of US\$1,070,000 (One million, seventy thousand US Dollars Only), net of taxes, for the services specified in Attachment II, other than the training services specified in Attachment II, paragraph 9.0. This price will be paid by LICENSEE as follows:

- a. 15% within 60 days of receipt of UOP's invoice issued upon the execution of this agreement; and
- b. 20% within 60 days of receipt of UOP's Invoice issued upon receipt or deemed receipt by LICENSEE of the heat and material balances and the Process Flow Diagrams for the Unit; and
- c. 20% within 60 days of receipt of UOP's invoice issued upon receipt or deemed receipt by LICENSEE of the Piping & Instrument Diagrams for 2121484 the Unit, and
- d. 30% within 60 days of receipt of UOP's invoice issued upon receipt or 2.12NE7 deemed receipt by LICENSEE of the Engineering Design Specifications for the Unit; and
- e. 5% within 60 days of receipt of UOP's invoice issued upon receipt or 2 121494 deemed receipt by LICENSEE of the UOP Operating Manuals for the UOP Naphtha Hydrotreating Process, the CCR Platforming Process and the Cyclemax CCR Regenerator section; and
- f. 10% within 60 days of receipt of UOP's invoice issued upon the successful commissioning of the Unit and the conduct of a Guarantee Test Run (GTR) of the Unit, with such GTR to be conducted not later than 3 months after

successful commissioning of the Unit, it being understood that "successful commissioning" means the successful production of on-specification products without process limitation of the Unit.

11.2 Engineering Agreement between ESSAR Oil Limited and UOP LLC For Penex Process Unit

LICENSE/ENGINEERING / GUARANTEE
AGREEMENT

This Agreement, dated February 23, 2004, is between UOP LLC, a corporation of the State of Delaware, U.S.A. having its principal place of business at 25 East Algonquin Road, Des Plaines IL, 60017-5017, U.S.A. ("UOP", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include successors and permitted assigns) and RELIANCE INDUSTRIES LIMITED; a company organized, registered and existing under the laws of India having its principal place of business at Maker Chambers IV (4th Floor), 222 Nariman Point, Mumbai 400 021, India ("RELIANCE", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns.

UOP Services

UOP will provide the services specified in Attachment II (the "Services"). Except as otherwise specified in this agreement, the aforesaid services to be provided by UOP **will be performed outside of India.**

Payments

7.1 RELIANCE will pay UOP according to Attachment IV for the services provided by UOP under this Agreement.

7.2 RELIANCE will pay royalties and provide statements of operations of the Unit to UOP according to Attachment V.

Payments

Unless otherwise specified, UOP's charges are designated in U.S.A. Dollars, and RELIANCE will pay UOP's charges in U.S.A. Dollars upon receipt of UOP's invoice.

12. it is clear from the agreements that M/s UOP LLC provided the services related to Grant of Patent, Supply of Engineering designs and Provision of Engineering Services. It is not dispute that said patents and IPR are registered in USA. The terms of the agreement indicate that the payment for such transfers is to be made in USD. The liaison office of UOP Asia Ltd, a group company, is registered in India, collected the payments from Indian Petroleum companies and remitted the same to the parent company. We find that neither the Show Cause Notice nor the impugned order established that the liaison office in India has provided the services on their own to the Indian Petroleum companies. In case the liaison office India provided the services, the consideration for the same should have been in Indian Rupees. It is not established that such consideration was paid in Indian Rupees. It is not the case of the department that the payment was made in Indian Rupees and RBI has permitted for the same. Therefore, the only foregone conclusion is that the services were rendered by the appellant from USA, a place outside India. In such a scenario, the taxability of service should be seen from that perspective alone.

13. We find that taxability on forward or reverse charge depends on the provisions of the statute existing during the occurrence of taxable

event. It is pertinent to note that the category of "Intellectual property service" was included in the list of taxable services by amendment made in Section 65(55b) w.e.f. 10.09.2004; a perusal of the definition makes it clear that the taxable event is 'transfer of' or 'grant of permission to use' by the service provider; the statute does not refer to actual use or enjoyment of the intellectual property by the recipients. In the instant case, the transfer of patent or right to use has occurred much before 10.09.2004. A perusal of the invoices shows that all the invoices were raised prior to 18.04.2006 i.e., before the date of insertion of Section 66A of the Finance Act, 1994. Understandably, the use is perpetual and the remuneration depended upon the production of goods by Indian Petroleum Companies over the years. Just because the usage continued long after the transfer, it cannot be said that the taxable event is perpetual. It is seen in the present case that the transfer of 'patent rights' by the Appellant to Petroleum Companies in India, though a onetime event and that no further rights/ processes/upgrades were provided to Petroleum Companies in India. Revenue has not brought forth any evidence at least to this extent. The adjudicating authority misconstrued the continuous usage and periodical payment of remuneration to be the occurrence of taxable event. We find that such a construction is absurd and makes the provisions of the statute to tax amount paid or payable as consideration for the service, meaningless and redundant. We find that the taxable event of 'transfer' happens only once and cannot be treated as a continuous activity merely because the consideration for such transfer is paid in pre-determined intervals as

per the terms agreed between parties. We find support in the decision of the tribunal in the case of Modi Mundipharma 2009 (15) STR-713. Tribunal held that since services were rendered in 1990, the liability to pay Service Tax would not arise merely because the payment installments were received after 10.09.2004. We find that it was similarly held by apex Court in 20th Century Finance Corporation Ltd 2009 [119] STC 18 and by Tribunal in the cases of Art leasing Ltd 2007 (8) STR 162 and Reliance Industries Ltd 2008 -TIOL- 283-CESTAT AHM.

14. We further find that when the services are provided by a service provider located outside India, there was no way to tax the same for the lack of Jurisdiction. The same was clarified by Circular No. 36/4/2001 dated 08.10.2001 stating that the services provided beyond territorial waters of India are not liable to service tax as provisions of Services Tax have not been extended to such areas to a service recipient in India. The presence of a liaison office in India would not have made any such difference. The only way such services could have been taxed was after the insertion of Section 66A with effect from 18.04.2006. we find that CBEC clarified, vide Circular No. F. No. 276/8/2009 CX 8A dated September 26, 2011, in view of the decision of Hon'ble Bombay High Court as affirmed by Hon'ble Supreme Court in Indian National Shipowners Association 2009 (13) S.T.R. 235 (Bom.), that Service tax liability on any taxable services provided by a non-resident or a person located outside India to a recipient in India would arise only with effect from 18 April 2006.

15. We find that the decision in the case of Indian National Shipowners Association 2009 (13) S.T.R. 235 (Bom) was followed in a number of cases. Tribunal in the case of Mitsui & Co. Ltd. vs. C. Ex & ST Jamshedpur 2012 (28) STR 491 held that no service tax can be levied on services rendered prior to 18.04,2006 by a foreign service provider to a service recipient in India. Tribunal held that

7.17. From these judgements, it is clear that levy of Service Tax on the service provided foreign service provider and availed by an Indian receiver has been introduced by an amendment to Section 66 of Finance Act, 1994 i.e., by inserting a new Section 66A in the Finance Act, w.e.f. 18.04.2006. The Service tax, it is held, cannot be charged for service rendered for the period prior to 18.04.2006 by a foreign service provider to a service receiver in India irrespective of the fact whether the service is received in India or outside India on the basis of a Rule prescribed in the Service Tax Rules, 1994.

16. We also find that Tribunal held in the case of Bosch Rexroth (I) Ltd 2011 (23) STR 259, that

5. On an appeal against the above order of the adjudicating authority, respondents filed an appeal there against before the Commissioner (Appeal), who by following the Hon'ble Bombay High Court decision held in favor of the respondents. For better appreciation of. Para 7 of the Commissioner (Appeals) order is reproduced below:

7. From the impugned Order it is clear that the amount in question was paid by the appellants to the service provider which was a non-resident or from outside India and does not have any office in India hence the appellants who are receiver of services were liable to pay service tax in term of Rule 2(d)(i)(iv) of the Service Tax Rules, 1994. The main issue in this case is whether the services provided from outside India and received in India were taxable prior to insertion of Section 66-A with effect from 18-4-2006 or otherwise. The appellants during the course of personal hearing have cited the judgement in the case of Indian Shipowners

Association v. UOI wherein the Hon'ble Supreme Court of India had dismissed the petition filed by Central Government challenging the order of the Hon'ble Bombay High Court. The Hon'ble Bombay High Court – 2009 (13) S.T.R. 235 (BOM), held that "it appears that it is first time when the Act was amended and Section 66A was inserted by Finance Act, 2006 with effect from 18-4-2006, the respondents got legal authority to levy service tax on the recipients of taxable service. Now, because of the enactment of Section 66A, a person who is resident in India or business in India becomes liable to be levied service tax when he receives service outside India from a person who is non resident or is from outside India. Before enactment of Section 66A it is apparent that there was no authority vested by law in the Respondents to levy service tax on a person who is resident in India, but who received services outside India... Thus, in view of the above decision of Hon'ble Bombay High Court it becomes clear that reverse charge tax shift mechanism operating under Rule 2(1)(d)(iv) of the Service Tax Rule, 1994 read with Section 66 A of the Finance Act, 1994 is effective only from 18.06.2006

6. Revenue in their memo of appeal have sought to distinguish the Hon'ble Bombay High Court judgement in the case of Indian Shipowners Association v. UOI, on the ground that in that decision the services were received outside the India, whereas in the present case, the services were received inside India from the period he has his office in India. We do not find any merit in the above distinction being made by the Revenue. Section 66A having been inserted in the Finance Act with effect from 18-4-2006 clearly laying down that recipient of services in India from outside India shall be liable to pay tax, cannot be made applicable retrospectively..."

17. We find that another argument advanced by the commissioner is that the appellant has obtained registration to pay service Tax. We find that Reliance merely because the Appellant had obtained registration under the Service Tax Act, cannot be made the basis for fastening of tax liability. We find that Tribunal held in the case of Jet Lite Ltd 2011 (21) STR 119, that

"43. Another piece of evidence which is relied upon is the registration certificate. Merely on the basis of registration certificate, one cannot conclude about the liability of service tax. Merely because a firm has enrolled under the said Act that does not mean that the firm is necessarily carrying out all or some or even any one type of service for which registration has been obtained. Just because there is certification of registration, there is no presumption that the firm registered under the said Act for a particular service is necessarily rendering such service. Whether a firm is engaged in rendering a particular type of service or not is not a pure question of law. Before arriving at any conclusion on that respect, the department has to place on record factual matrix which would disclose the basic information revealing the activity on part of the firm which could reveal rendering of services to other."

18. In view of the above, we find that the services were rendered before 10.09.2004 prior to the date when the services of IPR came under service tax net. Taxable event occurred prior to introduction of IPR services under the category of taxable services. Further, the Services were provided by the appellant from a place outside India and there was no way they could be taxed before 18.04.2006. Thus, by no stretch of imagination can the Appellant be obligated to discharge Service Tax on such services provided by it from outside India. We further find that the impugned order tries to confirm a demand of Rs. 1,64,789, on account of out-of-pocket expenses recovered prior to 18.04.2006, in terms of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006. We find further that in the case of *Intercontinental Consultants and Technocrats P. Ltd* 2012-TIOL-966-HC-Del, it was held that Rule 5(1) of the Rules was ultra vires the provisions of Finance Act. In any case, if the services *per se*

were not taxable prior to 18.04.2006, the expenses recovered in relation thereto can also not be taxed.

19. In view of the above, we are of the considered opinion that the impugned order cannot be sustained. Accordingly, both the appeals are allowed.

(Order pronounced in the open court on 14/11/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK