IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/Misc./41108/2017 and ST/445/2011

(Arising out of Order-in-Appeal No.54/2011 (MST) dated 25.4.2011 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Cassel Research Laboratories (P) Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai South Commissionerate Respondent

Appearance

Ms. S. Sridevi, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **13.04.2018**

Final Order No. **41174 / 2018**

Per Bench

The appellants are manufacturers of P or P medicaments and are registered with the Service Tax Department under various services. The appellant obtained registration under 'Technical Inspection and Certification Service' and were paying service tax under the said category for services rendered to their customer M/s. Lessac Research Laboratories (P) Ltd.

Puducherry (herein referred to as LRL). Later on, on receiving legal advice that the services rendered to LRL does not amount to Technical Inspection and Certification Service, the appellant stopped paying service tax. Show cause notice was issued proposing to demand service tax under the category of Technical Inspection and Certification Service on the income received by the appellant from LRL. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Ms. S. Sridevi submitted that the appellant was paying service tax under Technical Inspection and Certification Service for two years on the wrong belief that the income received from LRL would fall under the category of Technical Inspection and Certification Service. She adverted our attention to the definition of Technical Inspection and Certification Service as contained in Section 65(105)(zzi) wherein the services rendered by a Technical and Certification Agency in relation to Technical Inspection and Certification Service would only be covered by the taxable service of Technical Inspection and Certification Service. The appellant is not a Technical and Certification Agency and therefore the service does not fall under the said category. The appellant had contested the show cause notice

stating that if at all the activity would fall only under Scientific or Technical Consultancy service. She argued that the demand has been confirmed by both the authorities merely on the ground that the appellant had initially paid the service tax under Technical Inspection and Certification Service. The appellant being a manufacturer of P&P medicaments is not a Technical and Certification Agency and therefore the demand under the said category is without any legal basis.

3. The ld. AR Shri S. Govindarajan reiterated the findings in the impugned order. He adverted to the discussions made by the Commissioner (Appeals) and submitted that the appellant have been paying service tax for a prolonged period of two years under the category of Technical Inspection and Certification Service. This is pure admission of the liability of service tax and therefore they cannot contend that it does not fall within the said category.

4. Heard both sides.

5. For better appreciation of the relevant provisions, the same are reproduced as under:-

> ***Technical Inspection and Certification under Section 65(108):-***
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> *"Technical Inspection and Certification" means inspection or examination of goods or process or material or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionality or utility or safety or any other characteristics or parameters, but does not include any service in relation to inspection and certification of pollution levels"*

Technical and Certification Agency under Section 65(109):-

"Technical and certification agency" means any agency or person engaged in providing service in relation to technical inspection and certification".

Section 65(105)(zzi), "Taxable Service" means any service provided or to be provided

To any person, by a technical inspection and certification agency, in relation to technical inspection and certification

6 From the definition, it is clear that when services of Technical Inspection and Certification Service is rendered to any person by a Technical and Certification Agency, the same would be taxable under the category of Technical Inspection and Certification Service. In the present case, the appellant is not a Technical and Certification Agency but is a manufacturer of P&P medicaments. There is nothing in the show cause notice as to how the appellant would fit into the classification of Technical Inspection and Certification Service. In para 6 of the show cause notice, it is alleged that the appellant have not disclosed their receipts in regard to technical consulting fees. Thus, the department themselves are not fully clear whether the appellants are rendering Technical Consultancy Service or Technical Inspection and Certification Service. Show cause notice is the foundation of all charges and when nothing is brought out in the show cause notice as to how the appellants are liable to pay service tax under the particular category of service, the demand proposed in the said show cause notice cannot sustain. Merely because they obtained registration and

paid service tax for a short period, they cannot for forced to pay service tax under a category which is not applicable to the appellant or their activity rendered by them.

7. From the discussions made above, we are convinced that the income received from LRL does not fall under the category of Technical Inspection and Certification Service. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

8. The application filed by the Revenue for change of cause title is allowed.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex