

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, HYDERABAD**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 26923 of 2013

(Arising out of Order-in-Original No. 09/2013-ST-HYD-III-ADJN (TRF)/COMMR dated 21.03.2013 passed by the Commissioner of Central Excise & Service Tax, Hyderabad-III)

M/s Aurobindo Pharma Ltd. Appellant

Plot No. 2, Maitrivihar, Sanjeeva Reddy Nagar,
Ameerpet, Hyderabad - 500038

Versus

**Commissioner of Central Excise & Respondent
Service Tax, Hyderabad-III**

Kendriya Shulk Bhawan, L.B. Stadium Road,
Basheerbagh, Hyderabad – 500004

Appearance:

ShriS. Thirumalai, Advocate for the Appellant

ShriA. Rangadhan, AuthRepresentative for the Respondent

CORAM:

**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 30919/2020

Date of Hearing: 20.01.2020

Date of Decision: 09.09.2020

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 09/2013-ST-HYD-III-ADJN (TRF)/COMMR dated 21.03.2013 passed by the Commissioner of Central Excise & Service Tax, Hyderabad-III.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of bulk drugs and also registered under Service Tax Rules for providing various

services. During the course of audit, it came to the notice of the Department that service tax was not paid under reverse charge mechanism on the deductions made by the foreign banks while delivering the inward remittance in foreign currency to the Indian Banks and the net amounts received by the appellant generally relating to sale proceeds of exports sale of finished goods; as well as sale of dossiers/licenses. It is alleged that the services provided by the foreign banks covered under the category of "Banking and other Financial Services" defined under Section 65(105)(zm) of the Finance Act, 1994 and accordingly service tax amounting to Rs.45,02,307/- was demanded for the period 2006-07 to 2011-11. The appellants had received certain services from two foreign consultants namely, M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban. It is alleged that such services are covered under the taxable category of "Scientific or Technical Consultancy Services" defined under Section 65(92) of Finance Act, 1994 read with Section 65(105)(za) of the Finance Act, 1994. Consequently, service tax amounting to Rs.78,06,183/- was demanded with interest and penalty. On adjudication, both the demands of Rs.45,02,307/- and Rs.78,06,183/- were confirmed with interest and penalty. Hence, the present appeal.

3. Learned Advocate Shri S. Thirumalai with Mr. Harish Bindu Madhvan, Advocate for the appellants has submitted that on the issue of Service Tax demand relating to the amounts deducted by foreign bankers while delivering the inward remittance in foreign currency received by the appellant from their Indian

Bankers against sale proceeds of export sales as well as sale of dossiers/licenses under the category of “Banking and other Financial Services”, the service tax demand confirmed cannot be sustained as the appellant receive the net amount from the Indian Bankers; the charges against foreign remittance is incurred by the appellant’s banker, hence in absence of a relationship of service providers and service recipient between the appellant and the Foreign Bankers, service tax cannot be levied and collected from the appellant under reverse charge mechanism. He has submitted that the issue is covered by the judgments of this Tribunal in the case of *Green Ply Industries Ltd. Vs. Commissioner of Central Excise, Jaipur – 2015 (38) STR 605 (Tri-Del)* and *Raj Petro Vs. CCE&ST, Silvasa – 2018 (8) TMI 1179 (CESTAT-AHMD)*. Also, referring to the Trade Notice No. 20/2013-14-ST dated 10.02.2014 issued by the Mumbai Commissionerate, learned Advocate has further submitted that in the said Trade Notice clarification has been issued mentioning that when foreign bankers have recovered certain charges for processing import/export documents regarding remittance of foreign currencies, the banks in India would be treated as recipient of service. It is his contention that therefore Service Tax on the charges paid by the appellant’s banker in India to foreign banks cannot be demanded and confirmed against the appellant under reverse charge mechanism under the category of “Banking and other Financial Services”.

4. On the issue of confirmation of Service Tax under the taxable category of ‘Scientific or Technical Consultancy Services’

for the period from 2006-07 to 2010-11, he has submitted that their dispute in the present case is confined to the period 2006-07 as they have already paid Service Tax for the period from 01.06.2007 onwards under the category of 'Management of Business Consultancy Service' and such payment is not disputed by the Department. They are challenging the classification of regulatory consultancy service under Scientific or Technical Consultancy Services received from the consultants namely, M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban. The learned Advocate has submitted that the appellants have engaged M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban for compilation of data on clinical overviews and non-clinical overviews, which are compiled on the basis of relevant published scientific literature as well as relevant parts of dossiers and information with regard to product composition, product impurity specification, analytical result during the stipulated test and impurity specification of the goods, substance including residual solvents. He has submitted that such written overviews are required to be enclosed as part of application to be filed before the Regulatory Authority in foreign countries for marketing their pharmaceutical manufactured products marketable in the European Union. M/s Dada Consultancy and M/s Pharphe Dr. D.R. Iban provide the services which are in nature of overviews and do not involve application of pure sciences for conducting research on samples of pharmaceutical products. Such services are not used for any scientific or development purposes but to meet the regulatory objective of the European Union in marketing their products. Further, he has submitted that M/s

Dada Consultancy is not a Technology or Scientific organization but is a consultant firm engaged in providing regulatory compliance related services in Europe. He has vehemently argued that the Regulatory Consultancy firm cannot be termed as a Scientific or Technology organization even under a broad and common understanding from a scientific organization. He has submitted that M/s Dada Consultancy is a Biomedical Information and Regulatory firm specifically dealing with information and documentation required for filing regulatory approvals with appropriate Regulatory Authorities there under and to liaison of marketing in such European countries for the pharmaceutical goods manufactured by the appellant in India. He has further submitted that the appellant has paid Service Tax on service charges paid to the said overseas service provider since 1.6.2007 under the category of 'Management or Business Consultant' when the scope of management consultancy service was expanded to include business consultancy. Accordingly, the Service Tax for the period 2007-08 and 2008-09 was paid with applicable interest on 22.2.2009 and thereafter from 2009-10 onwards the appellant paid Service Tax on monthly basis under reverse charge mechanism. The appellant in the present case disputes the demand of Service Tax on the payments made to the overseas service provider during the period 2006-07 only. On the issue of classification of services rendered by M/s Dada Consultancy and M/s Pharphe Dr. D.R. Iban, the learned Advocate referred to the judgment of this Tribunal in the case of *Kumud Drugs Pvt. Ltd. Vs. CCE – 2015-TIOL-2141-CESTAT-MUM, CCE, Kolhapur Vs. Kumud Drugs Pvt. Ltd. 2019 (22) GSTL*

280 (Tri-Mum), and Ipca Laboratories Ltd. Vs. CCE 2019(21) ELT 502(Tri.-Mum).

5. Learned Advocate has further submitted that invoking extended period of limitation cannot be sustained in the present case as there has been no mis-declaration, willful suppression or mis-statement of facts on their part relating to the receipt of aforesaid services. The Books of Accounts of the appellant have been periodically audited from time to time from 2006-07 onwards. During the course of audit, the appellant had provided all the clarifications/documents and copy of ST-3 returns, financial statements and Ledger extracts etc. for the relevant period of Audit. Particularly, during the course of audit of payments made to non-residents had been duly examined by the Audit Officer and objections relating to payment of Service Tax under reverse charge mechanism for payments made to M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban were raised and the appellants filed their written reply from time to time clarifying their stand. Also, opinion of the Consultant obtained by the appellant on the said issue had been submitted along with their reply to the Audit queries. Therefore, there is no suppression of facts by the appellants; they have started discharging duty on such consultancy charges w.e.f. 1.6.2007 on receiving the said services from the foreign service-provider namely, M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban. In support, he has referred to the judgment of Hon'ble Supreme Court in the case of CCE Vs. Chempher Drugs and Liniments – 1989 (40) ELT 276 (SC), Padmini Products Vs. CCE – 1989 (43)

ELT 195 (SC), Pushpam Pharmaceuticals Company Vs. CCE, Bombay – 1995 (78) ELT 401 (SC), Anand Nishikawa Co. Ltd. Vs. CCE, Meerut – 2005 (188) ELT 149 (SC).

6. Learned Advocate has further submitted that no mala fide intention can be attributed for not discharging Service Tax payable on the consultancy charges paid to M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban and whatever Service Tax payable as alleged by the department would have been availed as CENVAT Credit by the appellant.

7. Learned AR for the Revenue reiterates the findings of the learned Commissioner.

8. Heard both sides and perused the records.

9. The issues involved in the present appeal for determination are : -

- (i) Levy of Service Tax on the Appellant under the category of “Banking and other Financial Services” on the amounts/value charged by the foreign bankers while delivering their inward remittance in foreign currencies to the Indian Bankers of the Appellant;
- (ii) Whether the services received by the appellant from M/s Dada Consultancy and M/s Phara Dr. D.R. Ivan fall under the category of “Scientific or Technical Consultancy Services” ;and
- (iii) Whether the demand is barred by Limitation.

10. The undisputed facts on the first issue are that the export sale proceeds from their overseas customers are collected by the Appellant's Indian Banker. The Indian Banks, who collect the said amount for the appellant, in the process are required to pay certain charges to the foreign banks who transfer the funds to Indian Banks.

11. It is the contention of the Appellant that even though the appellants do not receive the entire amount of sale proceeds, but certain charges are deducted in receiving the sale proceeds as collection charges by the foreign bankers having tie-up with the Indian Banks, such charges cannot be said to be service charges recovered from the appellants by the foreign banks. Thus, there is no relation of service provider and service recipient in the present case, hence levy of Service Tax on the amount deducted by the foreign banks in transferring the funds from the overseas customers to the Indian Bank, who ultimately passed on the amount to appellant cannot be chargeable to Service Tax under the category of "Banking and other Financial Services". This view has been expressed by the Tribunal in the case of Green Ply Industries Ltd. (supra).

12. We find that the learned Commissioner did not accept the principles laid down by the Tribunal in Green Ply Industries' case (supra) observing that the opinion of the Tribunal was expressed while disposing the stay application being not a final order, hence not a binding precedent. The said reasoning cannot be a sound one as in the final disposal of the appeal, this Tribunal reiterated the same principles as expressed while disposing the

stay application. Therefore, following the principles laid down in *Green Ply Industries Ltd.*'s case and also in the case of *Raj petro (supra)* in identical facts and circumstances, we do not find merit in confirming the Service Tax demand for the charges deducted by the foreign banks under the category of "Banking and other Financial Services". Thus, the demand on this count is liable to be set aside.

13. The next issue relates to payment of Service Tax on the consultancy charges paid to M/s DADA Consultants and M/s Pharphe Dr. D.R. Iban for compiling clinical and non clinical overviews. The contention of the learned Advocate is that the said clinical and non-clinical overviews was compiled on the basis of relevant published scientific literature as well as on relevant parts of the dossier and information with regard to the product, such as product composition, product impurity specification and analytical result during the stability testing, impurity specification of the active substance including residual solvent. Such written overviews are required to be enclosed as part of the application to be filed before the Regulatory Authorities in various European countries for the purpose of marketing the pharmaceutical goods manufactured and exported by the appellant. We find that the learned Commissioner in the impugned order, even though accepted that the overseas firms are providing consultancy services, which meant to be used in obtaining marketing right of the appellant to their manufactured pharmaceutical products, but proceeded to observe that the said consultancy of clinical and non-clinical overviews of the literature were scientific in nature,

therefore, the consultancy service provided fall under the category of Scientific and Technical Consultancy Services. We need not dwell on the issue any longer as the Tribunal in the case of IPCA Laboratories – 2019 (21) GSTL 502 (Tri-Mum) on similar circumstances held that when such services are provided for marketing of the product in the overseas market to meet the regulatory requirement, the same cannot fall under the category of Scientific or Technical Consultancy Services. The Tribunal observed as follows: -

‘4.1 The second issue relates to demand under the head of “Scientific and Technical Consultancy Services”. It has been argued by the Learned Chartered Accountant that the services are in the nature of getting permissions/registration for their product and not in the nature of “Scientific and Technical Consultancy Services”. He argued that regulatory services obtained for getting service of their product registered/approved by authorities abroad cannot be classifiable under the head of “Scientific and Technical Consultancy Services”. Learned CA relied on the decision of Tribunal in the case of *Administrative Staff College of India* - [2009 \(14\) S.T.R. 341](#) (Tri.-Bang.). In the said decision following has been held as under :-

“13. As regards the leviability under the category of ‘Scientific and Technical Research,’ we find that even though the appellants had registered with the council of ‘Scientific and Industrial Research,’ they do not come out the activity of a scientist or technocrat. When we go through the project research activity undertaken by the appellants they are broadly in the field of social sciences for e.g. Health Policy Research, Bio-mass Project, Change Management, Water and Sanitation Material Development, City Consultation in Hyderabad, Energy Management. These activities come within the areas of ‘Research in Social Sciences’ which in our view would not fall within the purview of ‘Scientific and Technical Consultancy’. Whereas when we go through the definition of ‘Scientific and Technical Consultancy’ let us reproduce it again :

“Scientific or technical consultancy” means any advice, consultancy, or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organization, to a client, in one or more disciplines of science or technology;

Section 65(105)(za) of the Act defines the taxable service as follows :

65(105) taxable service means any service provided or to be provided

(za) to a client by a scientist or a technocrat, or any science or technology institution or organization, in relation to scientific or technical consultancy.

14. It is very clear that in order to assert that an organization is providing scientific or technical consultancy, two basic ingredients have to be established. The organization must be a science or technology institution. The consultancy must

relate to one or more disciplines of science or technology. By no stretch of imagination Administrative Staff College of India can be called as a 'science or technology' institution. Since their research activities are all related to social science, we are of the view that they would not come within the ambit of 'Scientific or Technical Consultancy'. So service tax cannot be leviable under the category."

The said decision is approved by Hon'ble Apex Court reported at [2010 \(20\) S.T.R. J117](#). We are of the view that the regulatory services are not in the nature of "Scientific and Technical Consultancy Services" and therefore no Service Tax under the said head, the demand is also set aside."

In view of the above, the contention of Revenue that the consultancy charges paid to M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban be taxable under the category of 'Scientific or Technical Consultancy Services' is devoid of merit and cannot be sustained.

14. Further, we find that the judgment of the Tribunal in IPCA Lab.'s Case, though appealed by the Revenue before the Hon'ble High Court, but on other issues, not on the finding of the Tribunal on 'Scientific or Technical Consultancy Services'. The substantial questions of law framed are reproduced below:

"1. **P.C. :** Heard.

2. Appeal is admitted on the following substantial questions of law :-

(i) Whether the Tribunal was right in holding that the business or commerce in Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 is not intended to tax services that are rendered in connection with business or commerce outside the territory of India?

(ii) Whether the Tribunal was right in relying upon decision of *Genom Biotech Pvt. Ltd. v. CCE, Nashik* – [2016 \(42\) S.T.R. 918](#) (Tri. - Mumbai), in the facts and circumstances of the present case?

(iii) Whether the Tribunal was right in setting aside the service tax on Online Database Access & Retrieval Services when the details in the Invoice mentions that the amount paid to service provider is for data access, fees towards database access for information on pharmaceutical products etc.?

3. To be heard along with Central Excise Appeal No. 17 of 2017."

[*Commissioner v. IPCA Laboratories Ltd. - 2019 (29) G.S.T.L. J177 (Bom.)*]

15. Besides there is also force in the arguments of the learned Advocate for the appellant that the demand is barred by limitation as during the course of audit by the Department, specifically the issue of applicability of Service Tax for payments made to M/s DADA Consultancy and M/s Pharphe Dr. D.R. Iban have been examined by the Department to which the appellant filed a reply enclosing the opinion of legal experts on the subject. Also, it is not in dispute that the appellant has started discharging Service Tax on the said services w.e.f. 01.06.2007 under the category of 'Management and Consultancy Services' to which the Department did not raise any objection and the ST-3 returns have been assessed from time to time. We also find merit in the contention of the learned Advocate that since they would be eligible to avail credit of the Service Tax paid on reverse charge mechanism, hence there could not be any incentive/intention to evade payment of Service Tax. In these circumstances, the demand for the period 2006-07 is not sustainable being barred by limitation.

16. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court on 09/09/2020)

(Dr. D.M. Misra)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)