CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 27457 of 2013

(Arising out of Order-in-Original No. 26/2013-Adjn (Commr) ST dt.06.05.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV)

Tecumseh Products India Pvt Ltd
Balanagar Township,
Hyderabad, Telangana **.....Appellant**

VERSUS

Commissioner of Central Tax Medchal - GST
Posnett Bhavan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001 **.....Respondent**

Appearance
Shri Pranjal Gupta, CA for the Appellant.
Shri V. Srikanth Rao, AR for the Respondent.

Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30565/2025

Date of Hearing: 26.06.2025
Date of Decision: 12.12.2025

[Order per: A.K. JYOTISHI]

M/s Tecumseh Products India Pvt Ltd (hereinafter referred to as appellant) are in appeal against the Order-in-Original dt.06.05.2013, whereby a demand of Rs.1,39,67,290/- was confirmed by the adjudicating authority under 'Technical Testing and Analysis service' (TTA). The period of dispute is between October, 2006 and September, 2011.

2. The brief facts of the case relevant to the appeal are that the appellants, who are engaged in manufacture of compressors and parts thereof and having registration for providing services under various categories including testing, inspection and certification services, were found to have provided the TTA to their customers located outside India. On thorough verification of records, invoices, purchase orders and other relevant information by the department, in course of the audit, it appeared that they were rendering TTA in their service division (CADEM) for their

customers located outside India. It was also noted that for rendering the said services the appellants were receiving various drawings and designs in respect of compressors/welded roof panels and have been testing and analyzing the same for various parameters like material properties, stress/strain, modal analysis, spectrum analysis, drop test analysis and have been sending the analysis reports to their clients situated outside India. Based on further scrutiny of information furnished by the appellant, the department felt that the said service would fall under section 65(105)(zzzh) as 'Technical Testing and Analysis service' and accordingly, the demand was raised. It was also noted by the department that the said service was under the second category i.e., clause (ii) of Rule 3(1) of Export of Services Rules, 2005, which was shifted to the third category i.e., clause (iii) of Rule 3(1) w.e.f. 01.04.2011 and in view of the same, the services were not performance based. It was also noted that the appellant had not brought to the notice of the department about rendering of such service in respect of compressor/welded roof panels for various parameters and the said fact of non-payment of service tax on Technical Testing and Analysis service had come to the notice of the department only during the course of verification at the time of auditing of records in their premises and but for the said audit and verification, the same would not have come to light.

3. The appellant had primarily taken a defense that in their CADEM center they were providing various design analysis service to their customers in India and abroad, apart from in house work, using computer technology i.e., Computer Aided Design (CAD) and Computer Aided Engineering (CAE) and that the said activity is basically in the nature of advice or technical assistance in engineering in respect of compressors/ welded roof panels and therefore, it appropriately falls under 'Consulting Engineer service'. They also relied on the Department's Trade Notice No. 07/97-ST dt.04.07.1997 clarifying the scope of Consulting Engineer service, which, inter alia, provided that consulting engineer shall include self-employed professionally qualified engineer, who may or may not have employed others to assist him or it could be an engineering firm, whether organized as a sole-proprietorship, partnership, a private or a public limited company. They have also vigorously submitted that they had a bonafide belief that their services would qualify as Consulting Engineer service and therefore, covered under the export of service as per Export of Service

Rules, 2005, especially because of the fact that the entire sales proceeds were being received in foreign exchange and the fact that the recipients of said services were located outside India. Both these points have not been disputed by the department.

4. The adjudicating authority has mainly relied on the definition of both the services viz., Consulting Engineer services as well as Technical Testing and Analysis service falling under Sec. 65(105)(g) and (105)(zzh) of Finance Act, 1994 and thereafter, held that consulting engineer is confined only for advice or consultancy and the said consultancy engineering could not take up any test or analysis of the product, whereas, in the technical testing and analysis basically the person rendering the service has to undertake testing or analysis of the products and submit his reports. He has also relied on the purchase order submitted by their client to come to the conclusion that it was not in the nature of consultancy service as they were also undertaking technical testing and analysis. He has gone through some of the invoices and purchase orders wherein it has been shown as 'Design Services for Stimulation of Draft test', 'Design Services analysis reports and drawings' etc., to come to the conclusion that they were not doing any consultancy service and were in fact undertaking technical testing and analysis of the product. Further, on the claim made by the appellant that the CADEM center was not providing any services in the nature of technical testing and analysis of any goods or material, the adjudicating authority held that the said affirmation is not borne by the facts of the case as discussed by him as the purchase order/invoice clearly show that they are undertaking technical testing and analysis of the products and that they have not adduced any evidence to show clearly that they are rendering consultancy services and that they have not produced any copy of the agreement entered into with the clients to render the so called consultancy service and therefore, did not entertain the claim that their activities would be covered under consultancy service. The adjudicating authority has also examined the provisions of Rule 3 of Export of Services Rules to rebut the alternative claim of the appellant that even if their services are classifiable under technical testing and analysis, the same are exempted as export of service, keeping in view that in terms of amendment w.e.f. 01.03.2008, the services covered in sub-clause (zzh) providing in relation to any goods or material, as the case may be, situated outside India at the time of provision of service through internet

or an electronic network including a computer network or any other means then such taxable service, whether or not performed outside India shall be treated as taxable service performed outside India. He distinguished this by holding that in the present case, it was clear that the services are not provided by them through electronic network or computer network and only reports are being transmitted through the electronic network and therefore, disallowed their claim of the said service as export of service.

5. On the grounds of limitation, the adjudicating authority has gone through the facts as well as various case laws cited by the appellant and primarily held that since they had not disclosed to the department about nature of service being provided by them at any point of time and it was the departmental officer who, on the basis of their audit, etc., came to know about the said service and based on further documents submitted by the appellant, the case was detected. Therefore, the claim that there was no suppression of facts is not true. As far as their belief that the said services would be entitled as export of service, he felt that they had neither made any effort to ascertain whether services are taxable nor they had approached the department to ascertain exact classification/taxability and in the absence of this, it is difficult to accept their contention. He has relied in the case of Nizam Sugar Factory Vs CCE, Hyderabad [1999 (114) ELT 429 (Tri-LB)], wherein it was held that acquiring knowledge by the department does not take away the period of five years by the law makers in the Act itself and that we must not lose sight of the fact that extended period of limitation has been provided by the law makers with the clear intention that if on account of fraud, willful misstatement or contravention of the act or Rules with an intent to evade payment of duty, the department can deprive him of his legal benefit and/or demand duty due to the government within a period of five years from the relevant date. He also denied the plea of waiving the penalty in terms of section 80 of the Finance Act, 1994 on the said ground by holding that there was no evidence to show that there was some reasonable cause because of which the service tax could not be paid.

6. Learned Advocate for the appellant has mainly contested that in this case they are not receiving any goods or material from their customers located abroad. They are basically receiving various drawings and designs in respect of compressors/welded roof panels through email electronically and

the physical product itself was never provided by the client to the appellant nor tested upon by them. Thereafter, the appellant analyses the product in terms of various parameters set by the client on the computer itself with the help of various software installed in the computer system. The appellants are analyzing these drawings and designs for various parameters like material properties, stress/strain, modal analysis, spectrum analysis, drop test analysis and furnish test analysis report to their customer outside India. It is also to be noted that the appellants do not have any laboratory etc., to test the product and it is only with the help of software installed in the system and the designs of the product sent by email, advice/technical assistance is provided by the appellant. He further submitted that once the product is analyzed for various parameters with the help of software, it generates a test report mentioning detailed analysis of the product in respect of parameters set by the client and the test report furnished by the appellant to their customers abroad is basically in the nature of engineering advice in respect of compressors/welded roof panels, etc.

7. The learned Advocate also pointed out that as per Rule 3 of Export of Services Rules, the Consulting Engineer services fall under the third category where the primary requirement for service to qualify as an export is that the recipient of the service should be situated outside India and the other condition is that consideration should be received in foreign currency and both these conditions are met in their case.

8. Learned AR reiterates the findings of the Adjudicating Authority.

9. This matter was heard on 26.06.2025 and the Order was kept reserved, however, it was noticed that certain factual details were not clear from the submissions made by the appellant and contested by the department and therefore, the matter was posted for hearing for clarification on 13.11.2025 and subsequently on 27.11.2025.

9.1 In the course of hearing, learned Advocate was asked to clarify as to how the department has taken the view that the testings were done on physical goods and not on simulated models, etc. Learned Advocate clarified that their service is falling under Consulting Engineering service and not under Technical Testing and Analysis service. Further, even for the sake of argument, if the service is considered to be Technical Testing and Analysis

service, as alleged in the SCN, the fact remains that no physical goods were tested in their facility.

9.2 Per contra, learned AR pointed out that there are certain documents and invoices, a perusal of which would reflect that physical goods were also received in the appellant's premises in relation to conducting of technical testing and analysis. He has invited our attention to purchase order placed by Zamil Air Conditioners dt.16.01.2008, where there is a clear indication that there was supply of 25 prototype base pan samples. Similarly, in the case of debit note issued in relation to invoice dt.22.08.2006 to M/s Vairex, there is an indication that physical goods were handled. While the learned Advocate has vehemently opposed the argument of the learned AR that in certain cases, physical goods have also been received and used in relation to testing and has submitted that while in some cases, the goods might have been received but the said goods were never got tested, per se, and a simulated models of the said goods were created using CADEM software and the same were thereafter analyzed, keeping in view the objective of the tests and the requirement of the customer. She has submitted certain documents relating to M/s Zamil Air Conditioners and M/s The TORO Company in support that they have not dealt with physical goods and have only used CADEM software to analyze the drawing and various analyses like static analysis, modal analysis, spectrum analysis and drop analysis, however, she agreed that in order to develop these models certain inputs, such as physical properties and design attributes of base pan, mass and center of gravity of base pan, mass and center of gravity of lumped components, geometric parameters, etc., are required and though ordinarily such data is expected from customer, however, in some cases, certain customers often lack specialized instruments and in such cases, customers send a specimen component solely for the limited purpose of obtaining mass, weights, center of gravity, etc. These inputs are thereafter fed into CAD/FEA model to build a realistic simulation.

10. Heard both the sides and perused the records.

11. We find that the following core issues are involved in this appeal.

a) Whether the activities/services provided by the appellant would fall under 'Consultant Engineer services' (CES) or it would fall under 'Technical Testing and Analysis service' (TTA).

b) Irrespective of activity falling under TTA or CES, whether it would be entitled to be treated as export of service and hence exempted from payment of service tax or otherwise.

c) Whether in the facts of the case, the limitation has been rightly invoked by the department or otherwise.

12. We find that as far as the definition of 'Technical Testing & Analysis service' as proposed by the department and upheld by the adjudicating authority is concerned, it is obvious that it would require that the services to be taxable under this head only if there is analysis of goods or materials or information technology software or any immovable property being carried out and it does not include or encompass the analysis of any other items.

13. For ease of reference, 'Technical Testing & Analysis service' under section 65(106) and that of 'Consulting Engineer service' under section 65(105)(g) are cited below:

From 01.05.2006 to 15.05.2008:

*"(106) "**technical testing and analysis**" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals.*

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause, "technical testing and analysis" includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals;"

From 16.05.2008 onwards:

*"(106) "**technical testing and analysis**" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals."*

Section 65(105)(g):

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

(g) to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more

disciplines of engineering including the discipline of computer hardware engineering."

14. The first issue that needs to be decided in this matter is whether the definition of Technical Testing and Analysis covers the activity being carried out by the appellant or otherwise. We note that the adjudicating authority has primarily negated the claim of the appellant that their service is falling under Consulting Engineer services on the ground that on going through various invoices and the description given in said invoices, which was in the nature of study and analysis support. For example, they have quoted Invoice No. EXP/CADEM/09/10-11 dt.31.08.2010 where the description of the work is shown as 'CRF Buckling Analysis Support' and invoice dt.31.05.2007 where description of goods is mentioned as 'UM data study'. Similarly, he observed that all the purchase orders raised by various clients the description has been shown in various categories such as design services for stimulation of draft test, design services analysis report and drawing, etc., which would clearly show that they are not doing any consultancy services and were in fact undertaking technical testing and analysis of the product.

15. The adjudicating authority has also rejected their claim under Rule 3 of Export of Service Rules, w.e.f. 01.03.2008 on the grounds that the said technical testing and analysis provided in relation to any goods or material, as the case may be, situated outside India at the time of provision of service through internet or an electronic network including computer network or any other means then such taxable service, whether or not performed outside India, shall be treated as taxable service performed outside India. The adjudicating authority held that the services were not provided by them through electronic network or computer network but only reports are transmitted through electronic network and therefore, they would not be eligible.

16. We have noted that the adjudicating authority has observed at Para 12.6 of OIO that the contention that their CADEM center was not providing any services in the nature of testing of goods or material is not correct. In order to substantiate his observation, he has pointed out that perusal of purchase order/invoices would clearly show that they are undertaking technical testing and analysis of products and that they have not adduced any evidence to show clearly that they are rendering consulting services and

they have not produced certain documents in support that they were providing consultancy services nor have they provided any copy of agreement entered between them and their client for so called consultancy services. We find that from the limited information furnished by the appellant, they have not been able to establish that their services were more in the nature of CES and not in the nature of TTAS. However, there is still no clarity as to whether the physical goods were actually used, as such, or were used only on some occasions for carrying out such testings or while offering any consultation, if any, based on said tests. It is obvious that they were given certain work seeking certain technical opinion, advice, etc., and it is also apparent from some of the specimen reports submitted by them in relation to the work performed by them. Therefore, while department is proposing classification under TTAS, for which one of the essential ingredients would be testing on physical goods, the appellants are clearing it under CES, for which there has to be a technical advice or consultancy as the core of the service provided. While all the relevant facts could be culled out of invoices, purchase orders, test reports, etc., for the relevant period, the adjudicating authority has brushed aside the contention of the appellant based on perusal of one or two invoices, purchase orders, etc. Similarly, even the alternative classification claimed cannot be upheld unless all the reports and the related purchase orders or agreements/contracts, etc., are examined by the adjudicating authority. Only when these are analyzed thoroughly, the classification could be confirmed under either head or partly under one head and partly under another. This will have bearing on demanded amount as for services considered under CES, demand to that extent will not stand. Similarly, for services where physical goods are not involved, demand under TTAS will not stand. Moreover, once the demand is ascertained under TTAS, its eligibility under export of service will also have to be redetermined keeping in view the condition for export under the said Rules. If the reports are delivered abroad and consumed abroad, a part of service has to be considered as provided outside India. We, however, keeping this issue as well as issue of limitation open, hold that adjudicating authority will be required to examine this aspect also after considering various case laws and submissions made by the appellant.

17. Therefore, it would have to be seen that in respect of all the purchase orders whether there was scope for rendering certain technical advice or

consulting or otherwise. If the purchase orders/contracts indicate that clients are seeking their technical opinion or advice based on certain activity including tests and the reports by appellant supports the same, it would be under the category of CES. Moreover, in order to establish department's claim that it will fall under TTAS, it would be necessary to establish by the department that physical goods were actually received in all cases and thereafter, the testing and analysis were carried out in respect of physical goods either directly or after making a CADEM model. We, therefore, hold that, from the limited reports perused by us, it would essentially be a service of CES if they are giving very specific opinion with regard to particular query raised by their customers. However, in order to substantiate their claim they would have to establish that similar reports have been given in respect of all the clients duly corroborated by the purchase orders, agreement, etc. If it is found that those reports are somewhat similar to the reports that have been analyzed by us, supra, then services would be in the nature of CES. However, to the extent it is established that physical goods were involved on which the testings were performed by the CADEM center, then to that extent, it will be in the nature of TTAS, irrespective of whether the said report also contains certain technical opinion or observation. Essentially, it would require them to establish with the help of supporting documents including copies of purchase orders, invoices, agreement, etc., that they are falling under CES and not under TTAS, in view of the factual matrix of the case born out of evidence to be submitted by them. The adjudicating authority shall examine their submissions and documents keeping in view the observations made by us in the foregoing paras and come to the conclusion whether certain services would be outside the purview of CES and would fall under TTAS or otherwise. This may lead to recalculation of entire demand also. The adjudicating authority will also take into account the argument of the appellant that even in the case of TTAS, it would still be covered within the scope of export of service as it is not disputed that recipients of service are located abroad and remittances have been received in foreign exchange and the fact that services have been provided through internet. This aspect will also have to be examined.

18. With these observations, the impugned order is set aside and the matter is remanded back to the original authority to redetermine the classification and consequential demand, keeping in view the observations

above subject to submission of necessary documents, etc., by the appellant in their support. Further, since this is an old matter, the adjudication has to be completed within a period of three months subject to appellants providing the necessary documents and appearing for hearing as and when called for by the adjudicating authority.

19. Appeal allowed by way of remand.

(Pronounced in the Open Court on 12.12.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda