CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 2958 of 2012
(Arising out of **Order-in-Appeal** No.179 / 2012 (H-IV) ST dated 20.07.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Bioserve Clinical Research Pvt Ltd., .. APPELLANT
6-56/6/1A,
Opp: IDPL Colony,
Balanagar,
Hyderabad,
Telangana – 500 037.

VERSUS

Commissioner of Central Tax .. RESPONDENT
Medchal - GST
H.No.11-4-649/B,
Opposite Mehdi Function Palaace,
Above SBI Bazarghat Branch,
Lakdikapool, Tilak Road,
Ramkoti, Hyderabad,
Telangana – 500 004.

AND

Service Tax Appeal No. 2967 of 2012
(Arising out of **Order-in-Appeal** No.149 / 2012 (H-IV) ST dated 22.06.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s QPS Bioserve India Pvt Ltd., .. APPELLANT
6-56/6/1A,
Opp: IDPL Colony,
Balanagar,
Hyderabad,
Telangana – 500 037.

VERSUS

Commissioner of Central Tax .. RESPONDENT
Medchal - GST
H.No.11-4-649/B,
Opposite Mehdi Function Palaace,
Above SBI Bazarghat Branch,
Lakdikapool, Tilak Road,
Ramkoti, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri B. Venugopal & Shri P. Sai Makrandh, Advocates for the Appellant.
Shri B. Subhas Chandra Bose, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30070-30071/2026

Date of Hearing: 27.01.2025
Date of Decision: 27.01.2025

[ORDER PER: ANGAD PRASAD]

Appeal No. ST/2967/2012

M/s QPS Bioserve India Pvt Ltd., (hereinafter referred to as appellant) are in appeal against the redemption of refund claim of Rs. 6,90,453/- by the Refund Sanctioning Authority (RSA) vide Order-in-Original dated 30.12.2011, which on appeal got upheld by the Commissioner (Appeals –II) vide order dated 22.06.2012 (impugned order).

2. The issue, in brief, is that the appellants are, interalia, engaged in providing certain "Technical Testing and Analysis" (TTA) service to their overseas clients falling under sub-clause zzh of Clause 105 of Section 65. This service would fall under Rule 3(1)(ii) of Export of Service Rules 2005 and therefore if such services are either performed outside India or are partly performed outside India then only it will qualify as export of service. The RSA felt that since the entire service has been performed inside India therefore it cannot be qualified as export of service. He also observed that there are certain discrepancies between the invoice for the export raised and the remittance corresponding thereto and hence he was unable to co-relate.

3. Learned Advocate's main submission is that they have provided a part performance outside India as the delivery of the report in relation to BE/BA studies has been made to the clients situated outside India. Further, as held in the case of Commissioner of Service Tax, Ahmedabad Vs B.A. Research India Ltd., [2010 (18) STR 439 (Tri-Ahmd)], the said act of delivery of report outside India would have to be treated as part performance outside India and accordingly they would be covered within Rule 3(1)(ii) of Export of Service Rules, 2005. He further submitted that there is no dispute as far as classification is concerned and the only issue is that in the given fact, there

has been a part performance which Department has not accepted the said activity of providing the reports to their clients outside India as export of service.

4. Learned AR on the other hand re-iterates the findings and submits that their activity has been performed inside India and therefore it should not be treated as export of service.

5. Heard both the sides and perused the records.

6. We find that the short question is whether in the facts of the case, the refund has been rejected unduly by not considering the said amount arising out of export of service, keeping in view the provisions of Export of Service Rules, 2005. We find that the issue is no longer res-integra that when the delivery of report is made to a client outside India and it is used and consumed outside India and such part performance has been made outside India has been held in catena of judgments including the judgment cited by the Learned Advocate which are as follows:

i) Commissioner of Service Tax, Ahmedabad Vs B.A. Research India Ltd., [2010 (18) STR 439 (Tri-Ahmd)],

ii) SGS India Pvt Ltd., Vs CST, Mumbai-III [2011 (2) TMI 54 – CESTAT, Mumbai]

iii) Commissioner of Service Tax, Mumbai-III Vs M/s SGS India Pvt Ltd, [2014 (5) TMI 105 – Bombay High Court]

7. We also note that similar issue by this Tribunal in the case of M/s Albany Molecular Research Hyderabad Research Centre (P) Ltd., in appeal no. ST/27817/2013 vide Final Order No. A/30340/2025 dated 08.09.2025 under the similar factual matrix, it was treated that a part performance of

service has taken outside India and therefore it will be treated as export of service. The relevant paras are cited below:

> 15. We also find force in the submissions that though the actual delivery was made by Courier Company but the facts reveals that they are the one who sent the material and reports through courier to the foreign buyer and hence they continued to be service provider and not the courier company deliver the material and report physically to the company in USA. Their contract includes delivery of material and report to the AMRI, USA. Reliance on Commissioner of Service Tax Vs SGS India [2014-TIOL-580-HC-MUM] and Vodaphone Essar Cellular Ltd., Vs CCE, Pune-III [2013 (31) STR 738 (Tri-Mum)] are relevant and in favour of appellant in so far as this service was not performed by appellant outside India and it was courier company who provided said service, is not correct.
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> 16. Therefore, having regards to the various judgments cited supra, what is essential to understand is that if the test and analysis reports etc., in relation to any activities contracted between overseas buyers and Indian entity, gets concluded only once the customers abroad are in receipt of the material so developed, as well as reports etc., then it has to be concluded that service was part performed outside India. Admittedly, AR, USA is not having any establishment in India and they are not receiving any material or report from the appellant in India. They are receiving material as well as report only in USA for consumption in USA. It is also to be noted that the material, per se, will have no meaning if it is not supported by it's analysis report as the ultimate purpose is to develop drug or analogue in USA. It is also not disputed that in this case, the invoice value has been received in convertible foreign currency. Therefore, in the facts of the case, even though, the lead chemicals and analogues were developed in India from basic chemicals and even the testing and preparation of report has been done in India, but this service has not been concluded till the time it has reached in the hands of the customers situated outside India i.e. AMRI, USA. Therefore, in view of the provisions under the export of Service Rules, and the case laws cited supra, a part of this TTA service has been performed outside India and accordingly, it will be deemed to have been performed outside India and therefore it will qualify as export of service and hence no Service Tax would be payable, and also no penalty under Section 78 would be imposable.
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> 17. Even for period post 01.04.2011, where 65(105)(zzh) was placed in ule 3(iii), since the location of recipient is outside India, no service tax would be payable, as it would be treated as export of service. The impugned order is therefore set aside.

Therefore, in so far as the rejection of refund is concerned, we find that it is not correct on merit and the refund is admissible. However, we find that refund has also been rejected on the ground that certain co-relation could not be made by the RSA based on the documents furnished by the appellant. We therefore, remand the matter only for the limited purpose of the co-relation of the documents to decide the quantum of refund by treating the provision of said service as export of service.

Appeal No. ST/2958/2012

8. In the present appeal, the appellants are in appeal against the order dated 20.07.2012, whereby, the Commissioner (Appeals-II) has not entertained their appeal against the order of Original Adjudicating Authority on the grounds that they have failed to comply with the provisions of Section 35F of Central Excise Act, 1944.

9. The brief fact of the case is that a demand of Rs. 52,05,686/- along with penalty under Section 78 was confirmed by the Original Adjudicating Authority demanding service tax on the activities falling under the category of TTA service by treating the same as taxable service by denying them the benefit of export of service.

10. We find that as per Section 35F, as it existed during the material time, the appellants were required to pay the duty demanded or penalty levied before being heard the appeal, however the Commissioner has the discretion to dispense with such deposit. This discretion was however subject to such condition as he may deem fit so as to safeguard the interest of Revenue. Apparently, in exercise of this discretionary power, he has fixed an amount of 50% of the duty involved which appellant could not pay at that time due to financial hardship. We find that in the interest of justice and especially

when the similar matter has also been decided on merit by us, we find that amount of pre-deposit is on higher side and therefore, we find that an amount of Rs. 4,00,000/- would be sufficient as pre-deposit and same is to be deposited and thereafter the Commissioner (Appeals) will hear the matter on merit.

11. Both the appeals are disposed of accordingly, as follows:

i) Appeal No. ST/2967/2012 is remanded to the Original Adjudicating Authority

ii) Appeal No. ST/2958/2012 is remanded to the Commissioner (Appeals)

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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