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

Division Bench – Court No. – I

Service Tax Appeal No. 1660 of 2012

(Arising out of Order-in-Original No. VIZ-STX-001-COM-047-12 dt.15.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I)

Commissioner of Central Excise &
Service Tax, Visakhapatnam - I ......**Appellant**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

VERSUS

M/s Actimus Bio-Sciences Pvt Ltd
Varun Towers, 4th Floor, Kasturibha Marg,
Siripuram, Visakhapatnam, Andhra Pradesh ……**Respondent**

WITH

Service Tax Appeal No. 1661 of 2012

(Arising out of Order-in-Original No. VIZ-STX-001-COM-046-12 dt.15.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I)

Commissioner of Central Excise &
Service Tax, Visakhapatnam - I ......**Appellant**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

VERSUS

M/s Actimus Bio-Sciences Pvt Ltd
Varun Towers, 4th Floor, Kasturibha Marg,
Siripuram, Visakhapatnam, Andhra Pradesh ……**Respondent**

AND

Service Tax Appeal No. 1798 of 2012

(Arising out of Order-in-Original No. VIZ-STX-001-COM-046-12 dt.15.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I)

M/s Actimus Bio-Sciences Pvt Ltd
Varun Towers, 4th Floor, Kasturibha Marg, ...**Appellant**
Siripuram, Visakhapatnam, Andhra Pradesh

VERSUS

Commissioner of Central Excise &
Service Tax, Visakhapatnam - I ……**Respondent**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

Appearance

Shri V. Srikanth Rao, AR for the Revenue

Shri Manohar Chowdhry, Advocate for the Respondent/Assessee.

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

FINAL ORDER No. A/30241-30243/2026

Date of Hearing: 07.01.2026
Date of Decision: 22.04.2026

[Order per: A.K. JYOTISHI]

The Department has come in appeal against OIO No. VIZ-STX-001-COM-047-12 dt.15.03.2012 vide Appeal No. ST/1660/2012 and against OIO No. VIZ-STX-001-COM-046-12 dt.15.03.2012, vide Appeal No. ST/1661/2012. Similarly, M/s Actimus Bio-Sciences Pvt Ltd (hereinafter referred to as Respondent) has also come in appeal against OIO No. VIZ-STX-001-COM-046-12 dt.15.03.2012, vide Appeal No. ST/1798/2012.

2. Department is in appeal against the order passed by the adjudicating authority, wherein, the classification of service provided to both domestic as well as international clients by the respondent, has been upheld as 'Technical Testing and Analysis Service' (TTAS) under Sec. 65(105)(zzh). The respondents are in appeal against the same OIO, whereby, they have not been granted the benefit of cum-duty while computing the service tax in relation to domestic clearances and also against invocation of extended period for demand.

3. The issue is primarily whether the activity performed by them is classifiable under TTAS or under 'Scientific or Technical Consultancy Service' (STCS). Further, whether the services provided to their clients abroad can be treated as export of service under Export of Service Rules, 2005, as amended from time to time (Rules). Insofar as classification is concerned, the adjudicating authority has ultimately held that the services would fall under TTAS and there is no dispute on the said classification of the service by the respondents in the appeal. Therefore, the only issue left was allowing the benefit of export by the adjudicating authority. Department felt that the benefit of export of service could not be extended for the services covered under S.65(105)(zzh) at least for the period beyond 2008, when the amendment was made in rule by which second proviso was also added to Rule 3(1)(ii).

4. Learned Advocate for the respondent pointed out that the Commissioner has clearly held the following points:

a) That part performance of service has taken place outside India when the outcome report has been delivered to the foreign client;
b) That the remittances have been received in foreign exchange;
c) That the services have been consumed outside India; and on the basis of these factors, he has held that services provided would be covered as export of service and therefore, not leviable to service tax. Adjudicating authority has relied on the judgment in the case of BA Research India Ltd [2010 (18) STR 604 (Tri-Ahmd)] by the Ahmedabad Bench, which has been further upheld by Hon'ble High Court of Gujarat as reported in [2013 (31) STR 663 (Guj)] in support that such delivery of report, outside India, constitutes part performance.

5. Per contra, learned AR pointed out that after amendment in 2008, whereby, further proviso was added, the goods are supposed to be abroad and services are to be provided from India, then only it will be treated as export of service and in this case, admittedly, the goods have been received from abroad on which certain activities, etc., have been performed in India. Therefore, by virtue of this amendment, the services classifiable under S.65(105)(zzh) cannot be treated as covered within the purview of export of service under Rule 3(1)(ii). He mainly contested that it is now settled position that once the proviso is brought in the Rules or the Act, then the earlier proviso has to be read along with the newly inserted proviso. Learned Advocate for the appellant points out that while a new proviso has been inserted, the fact remains that even the earlier proviso allowed that when there is part performance outside India, it is to be treated as export of service. The new proviso only clarifies that services provided through internet or electronic means to a recipient situated outside India and in a situation where material and goods are situated outside India is also to be treated as performed outside India irrespective of computer, machinery and internet being situated in India.

6. Learned Advocate fairly concedes that they have not challenged the classification as they were under the impression that Commissioner has allowed them the export of service benefit irrespective of its classification

under TTAS or STCS. However, their nature of work is clearly falling under STCS as is evident from the agreement. Further, he has also challenged the invocation of extended period on the grounds that they have disclosed everything and the issue involved is a matter of interpretation.

7. Learned AR points out that as far as cum-duty benefit is concerned, respondents have not claimed this benefit before the lower authority.

8. Heard both sides and perused the records.

<u>Appeal No. ST/1660 & 1661/2012</u>:

9. We find that insofar as the departmental appeals are concerned, they have mainly challenged that demand to the extent dropped in the impugned orders is not correct as in terms of Export of Service Rules, 2005, no performance or even part performance has taken place outside India and therefore, the same cannot be treated as export of service. We find that the respondents are engaged in conducting certain BE/ BA studies for developing critical component for drug formulations, etc., as per the orders placed on them by customers/ clients located outside India. Appellants are essentially a scientific research organization providing medicinal and pharmaceutical chemistry services, including Bio-Equivalence (BE) studies, Bio-Availability (BA) studies, etc., which are part of integrated global drug-discovery programmes and the resulting scientific outputs like research reports, data sets, analytical conclusions and regulatory-grade documentation are delivered exclusively to their clients situated outside India. The respondents received consideration in convertible foreign exchange and the respondent company's output has been used entirely outside India in relation to offshore regulatory filings and global clinical and commercial strategies, etc. We find that the respondents have mainly contended that in view of the judgments in the case of CST Vs BA Research India Ltd (supra), such activities would fall squarely within the purview of export of service in terms of Export of Service Rules, 2005. They have also relied on the judgment in the case of Sai Life Science Ltd Vs CCE, Pune-I [Final Order No. A/86090/2019 dt.12.06.2019 (Tri-Mum)], in support that they have exported services notwithstanding the certain physical performance in India. Similarly, in the case of CST, Mumbai-II Vs SGS India Pvt Ltd [2014 (34) STR 554 (Bom)], it was held that inspection/ testing

services performed in India but whose results and deliverables were used abroad, constitute exports based on the destination principle holding that service tax is destination based levy. Therefore, essentially, what they have contested is that in an admitted position, where it is not in dispute that delivery of final reports has been made to the foreign entity and it has been considered outside India, there is part performance, which has occurred outside India and therefore, it has to be treated as export of service in terms of provisions under Rule 3(1)(ii) of Export of Service Rules, 2005, and since their service is falling under TTAS, therefore, it would fall under Rule 3(1(ii). We also note that this issue has been discussed in detail by the Tribunal in the case of BA Research India Ltd (supra), which was later on affirmed by the Hon'ble Gujarat High Court, wherein, it has been held that delivery of clinical trial reports abroad constitutes part performance outside India for export purposes. We also note that Board Circular No.111/05/2009-ST dt.24.02.2009 is also relevant and supports this view.

10. We also note that department has tried to explain that there is difference in the terminology used in the Export of Service Rules, insofar as it uses the term 'performance of service' and 'delivery of service'. Therefore, the correct appreciation of the provisions would indicate that the law never contemplated to treat delivery of service as part performance of service as these two terms have been used simultaneously in the Export of Service Rules and in view of the same, reliance placed on the judgment of BA Research India Ltd (supra) is not correct. We find that the judgment of the Tribunal, as upheld by the Hon'ble Gujarat High Court, has already examined this issue and has clearly taken a view that delivery of report outside India would constitute part performance and therefore, in terms of provisions of Export of Service Rules, it would be deemed to be a performance outside India, making it eligible as export of service.

11. We have gone through some of the agreement copies submitted by the respondent, wherein, the orders have been placed on the said respondent company for certain activities and all these orders also include 'deliverables' like reports on QSAR, virtual screening, molecular dynamics, compound amount, final report indicating method of analysis, etc. In other words, while various research activities are carried out as per the work requirement in India, they are bound to provide the deliverables to clients,

which require them to submit various outcome reports, samples and other related documents to the foreign entity outside India and therefore, delivery of the deliverable activities outside India is an integrated part of the overall work order given by the foreign entity to them. Therefore, we find merit in the submissions made by the respondent that issue is no longer res integra in terms of various judgments cited by them in support that if there is a part performance outside India, then in terms of Export of Service Rules, it has to be deemed to be export of service.

12. We also note that insofar as the classification issue is concerned, neither respondents are contesting nor the Revenue is contesting and therefore, the classification of service in the given factual matrix would be TTAS, as held by the adjudicating authority. We also find that it is also not being disputed that in this case, consideration has been received in convertible foreign exchange and therefore, the essential ingredient of performance related requirement under Export of Service Rules is fulfilled, which requires that the said taxable services have been delivered outside India for use in business outside India and also that payment for such services provided was received by the respondents in convertible foreign exchange. Therefore, in terms of Rule 4 of Export of Service Rules, 2005, said services could have been exported without payment of service tax. Therefore, there was no liability to pay any service tax on such export of service. The impugned order to that extent is correct and department's appeal is not allowed to that extent.

13. Insofar as grounds taken by the department that the adjudicating authority has wrongly reduced the mandatory penalty to the extent of Rs.3,78,698/-, we find that this amount was paid by the respondent before initiation of the investigation. We, however, find that as per the statutory provisions, equal penalty has to be imposed in terms of total duty confirmed and merely because part payment has already been made before and appropriated later, there cannot be proportionate reduction in the mandatory penalty. Therefore, to that extent, the impugned orders are not correct and accordingly, the mater is required to be remanded back for limited issue of re-computation of the penalty amount.

14. Appeals filed by the Department are allowed partly.

Appeal No. ST/1798/2012:

15. In this appeal, the issue is regarding allowing the cum-duty benefit while confirming the demand. We find that the adjudicating authority has not allowed the said benefit, however, in the absence of any supporting document, the matter is required to be remanded back to the Original Adjudicating Authority to consider the submissions of the appellant for allowing the cum-duty benefit in respect of demand confirmed vide the impugned order.

16. Insofar as appellant's plea for non-invocation of extended period and non-imposition of penalty, we find that in this case, the statutory provisions were quite clear and they were providing certain taxable services in India and despite having provided such services, they have failed to discharge service tax liability thereon as also failed to reflect the receipt of said consideration in their statutory returns. In fact, barring certain amount of penalty, they have paid the service tax but they paid only after the investigation started. While we agree that there could be some interpretational issue in respect of leviability of service tax on the provision of service to their foreign clients, however, insofar as said service being provided to domestic clients, there should not have been any interpretational issue. Therefore, we find that the upholding the invocation of extended period as also imposition of penalty by the adjudicating authority in the facts of the case is sustainable and to that extent, appeal filed by the appellant is not tenable.

17. Appeal allowed by way of remand only for the limited purpose of calculating cum-duty benefit for computing total demand in terms of section 67 of the Finance Act, 1994 and consequent reduction in penalty.

(Pronounced in the Open Court on 22.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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