

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. IV**

Appeal No. ST/90039/14

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APP-37-14-15 dated 8.9.2014 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik).

M/s Genom Biotech Pvt. Ltd.	Appellant
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Vs.

Commissioner of Central Excise & Customs, Nashik	Respondent
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Appearance:

Shri Dayananda K, C.A.	for Appellant
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Shri Dilip Shinde, AC (AR)	for Respondent
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CORAM:

SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 24.08.2018

Date of Decision: 12.10.2018

ORDER NO. **A/87754/2018**

Per: Raju

This appeal has been filed by M/s Genom Biotech Pvt. Ltd. against imposition of penalty.

2. Learned C.A. for the appellant argued that they are an EOU. In 2008, another EOU adjacent to factory premises was established. He pointed out that they were registered as service receiver for receiving service under GTA w.e.f. 2005. They did not

obtain separate registration for the new unit which came into existence adjacent to the existing unit, which was already registered. He argued that they were paying Service Tax on GTA service on reverse charge basis under one registration of the original unit. He argued that penalty under section 77(1) was imposed on the ground that the appellant did not get new unit registered. He argued that there was no requirement of new unit since Rule 4(3) of the Service Tax Rules, 1994 prescribed that no centralized registration is necessary. If office or premises having centralized billing or centralized accounting system prior to 02.11.2006. He argued that in terms of sub-rule 3(a) of the Rule 4 of the Service Tax Rules, 1994 separate registration is necessary only when they did not have centralized billing system or centralized accounting system. He argued that the appellant have centralized billing and accounting system and therefore they were not required to take separate registration for the new unit. He further argued that they also have trading unit located at Mumbai where also they were registered as GTA and were paying taxes. He pointed out that originally demand of Rs.39 lakhs was arose against them based on the balance amount figures. However, in the adjudication proceedings, after granting benefit of activities, no taxable or exemption from Service Tax, the liability of Rs.88,084/- (FY 2006-07), Rs.41,553/- (FY 2007-08) and Rs.14,812 (FY 2008-09) was crystalized against them in para 4.7 of the order. However, para 4.8 of the order which consolidates to total demand for the entire period, total liability has been worked out as Rs.2,74,302/-. Learned C.A. argued that they had paid Rs.1.29 lakhs while filing the ST-3 returns from time to time and therefore, the said amount should have been

confirmed again. He argued that penalty under Section 78 has been imposed on the ground that the appellant have suppressed the value of clearance. He denied that they have mis-declared the value of clearance. He argued that the activities of the trading unit located in Mumbai were exempted vide Notification No 41/07-ST. The said notification grants exemption by mechanism where the appellants are first required to pay the duty and later on claim the refund. He argued that in these circumstances, failure to pay the duty cannot be considered as evasion of Service Tax.

3. Learned AR relies on the impugned order. He argued that the learned C.A. has not presented the correct picture. After granting all the benefits, there was short payment of duty which has been confirmed in the impugned order. He argued that the operation of the new premises, which were not registered separate in 2008, the appellant had not filed the complete figures in ST-3 return and therefore there was evasion of Service Tax.

4. I have gone through the rival submissions. I find that initially the demand of Rs.39,58,406/- was raised which was reduced to Rs.2.74 lakhs in the Order-in-Original. While reducing the demand to Rs.2.74 lakhs the calculation shown in para 4.7 and 4.8 of the Order-in-Original does not match. While the total differential duty payable as per para 4.7 of the Order-in-Original works out to Rs.88,084/- + 41,553/- + 14,812/- = Rs.1,44,449/- whereas the demand confirmed is Rs.2,74,302/-. The table given in para 2.0 also shows that part of the tax was paid from time to time along with return. In these circumstances, the duty demand

needs to be revised after excluding the amount of duty already paid at the time of filing the returns. For this calculation, the impugned order is set aside and the matter is remanded to the original adjudicating authority.

4.1 In so far as penalty under Section 77(1) of the Finance Act, 1994 is concerned, it is seen that the appellant was registered as Service Tax assessee from 2005 onwards. The new unit came into existence in 2008. In these circumstances, the provisions of Rule 4(3) will have no application as the said provisions apply only to units which were already availing the benefit of common registration prior to 2.11.2006. However, considering the nature of offences, the penalty under Section 77(1) is reduced to Rs.10,000/- only. Penalty under Section 77(2) is upheld. Penalty under Section 78 is to be revised after arriving at the actual amount short paid by the appellant.

5. Appeal is partly allowed in the above terms.

(Pronounced in Court on 12.10.2018)

(Raju)
Member (Technical)

Sinha