CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. II

Service Tax Appeal No. 88221 & 88226 of 2018

(Arising out of Order-in-Appeal No. MKK/35-36/RGD/APP/18-19 dated 18.04.2018 passed by the Commissioner of Central Tax (Appeals), Raigad).

M/s Indeus Life Sciences Pvt. Ltd. .... Appellant

Versus

Commissioner of CGST, Navi Mumbai .... Respondent

Appearance:

Shri Neerav Mainkar, Advocate for the Appellant

Shri S.B. Mane, AC, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86915-86916/2019

Date of Hearing: 24.01.2019

Date of Decision: 24.01.2019

Per: S.K. Mohanty

The appellant herein is engaged in the business activities of providing research related services in pharmaceutical development. The appellant undertakes research projects, which are bio-equivalent to brand products available in EU/US market. The appellant is registered under the Service Tax statute for providing the taxable services under the category of "Scientific and Technical Consultancy", Manpower Recruitment" and "Rent-a-cab" services, defined under Section 65 of Chapter V of the Finance Act, 1994. During the disputed period, the appellant had filed refund applications before the jurisdictional Service Tax authorities under Rule 5 of the

Cenvat Credit Rules, 2004 read with Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012, claiming refund of service tax paid on the input services. The applications were filed on the ground that the output services were exported and that the appellant was not in a position to utilise the Cenvat credit of service tax availed on the input services. The original authority had rejected the refund applications on the ground that the place of provision of service is India and as such, such services cannot be treated as export of service in terms of Rule 4 of the Place of Provision of Services Rules, 2012 read with Rule 6A(1) of the Service Tax Rules, 1994. On appeal, the learned Commissioner (Appeals), Central Tax, Central Excise & Service Tax, Navi Mumbai vide the impugned order dated 18.04.2018 has upheld rejection of refund applications. Feeling aggrieved with the impugned order, the appellant had preferred these appeals before the Tribunal.

2. The learned Advocate appearing for the appellant submitted that the issue arising out of the present case is no more *res integra*, in view of the order Nos. A/87545-87551/2018 dated 28.09.2018 and A/92311/2017 dated 13.07.2017 passed by this Tribunal, in the appellant's own case for the earlier period.

3. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. The period in dispute in the present case is from October'2015 to March'2016. I find from the available records that for the earlier period i.e. October'2013 to September'2015, based on the same service contract entered into between the appellant and the overseas service recipient M/s Disphar International BV, Netherlands, this Tribunal vide Final order dated 28.09.2018 (supra) has allowed the appeal in favour of the appellant, holding that the services rendered by the appellant are in the nature of export of service and thus, eligible to cash refund of accumulated Cenvat credit. Since, on the same issue for earlier period, the Tribunal has allowed the appeal in favour of the appellant, I do not find any justification to accept the findings recorded in the impugned order, in support of rejection of the appeals filed by the appellant.

6. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellant.

(Operative portion of the order pronounced in court)

(S.K. Mohanty)
Member (Judicial)

Hemant