CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 87557 of 2016

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-371-375-2016-17 dated 24.08.2016 passed by Commissioner (Appeals), Service Tax-II, Mumbai Zone.)

M/s.Watson Pharma Private Ltd. 21-22, Kalpataru Square, Kandivita Lane
Off Andheri Kurla Road, Andheri (East), Mumbai - 400059. **.....Appellant**

VERSUS

Commissioner, Service Tax-V, Mumbai
3rd Floor, Kendriya Utpad Shulk Bhavan
Plot No.24C, Bandra Kurla Complex,
Mumbai – 400051. **.....Respondent**

WITH

Service Tax Appeal No. 87558 of 2016

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-371-375-2016-17 dated 24.08.2016 passed by Commissioner (Appeals), Service Tax-II, Mumbai Zone.)

M/s. Watson Pharma Private Ltd. **.....Appellant**
21-22, Kalpataru Square, Kandivita Lane
Off Andheri Kurla Road, Andheri (East),
Mumbai - 400059.

VERSUS

Commissioner, Service Tax-V, Mumbai
3rd Floor, Kendriya Utpad Shulk Bhavan
Plot No.24C, Bandra Kurla Complex,
Mumbai – 400051. **.....Respondent**

AND

Service Tax Appeal No. 87559 of 2016

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-371-375-2016-17 dated 24.08.2016 passed by Commissioner (Appeals), Service Tax-II, Mumbai Zone.)

M/s.Watson Pharma Private Ltd. 21-22, Kalpataru Square, Kandivita Lane
Off Andheri Kurla Road, Andheri (East), Mumbai - 400059.
.....Appellant

VERSUS

Commissioner, Service Tax-V, Mumbai
3rd Floor, Kendriya Utpad Shulk Bhavan
Plot No.24C, Bandra Kurla Complex,
Mumbai – 400051.
.....Respondent

<u>AND</u>

Service Tax Appeal No. 87560 of 2016

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-371-375-2016-17 dated 24.08.2016 passed by Commissioner (Appeals), Service Tax-II, Mumbai Zone.)

M/s. Watson Pharma Private Ltd. 21-22, Kalpataru Square, Kandivita Lane
Off Andheri Kurla Road, Andheri (East), Mumbai - 400059.
.....Appellant

VERSUS

Commissioner, Service Tax-V, Mumbai
3rd Floor, Kendriya Utpad Shulk Bhavan
Plot No.24C, Bandra Kurla Complex,
Mumbai – 400051.
.....Respondent

<u>AND</u>

Service Tax Appeal No. 87561 of 2016

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-371-375-2016-17 dated 24.08.2016 passed by Commissioner (Appeals), Service Tax-II, Mumbai Zone.)

M/s. Watson Pharma Private Ltd.
21-22, Kalpataru Square, Kandivita Lane
Off Andheri Kurla Road, Andheri (East),
Mumbai - 400059.
.....Appellant

VERSUS

Commissioner, Service Tax-V, Mumbai
3rd Floor, Kendriya Utpad Shulk Bhavan
Plot No.24C, Bandra Kurla Complex,
Mumbai – 400051.
.....Respondent

Appearance:

Shri Vinod Awtani, Chartered Accountant for the Appellant
Shri Anand Kumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85480-85484/2023

Date of Hearing: 02.03.2023
Date of Decision:30.03.2023

PER : M.M. PARTHIBAN

These appeals filed by M/s Watson Pharma Private Limited, Mumbai (herein referred, in short, as the appellants) lies against the Order-in-Appeal No. MUM-SVTAX-002-APP-371-375-2016-17 dated 24.03.2016 (referred as impugned order) passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone, as a common order, against five appeals filed by the department in respect of five Orders-in-Original passed by the Assistant Commissioner of Service Tax (Refund), Mumbai-Vas detailed in the Table-1 below.

Table-1

Amount of refund involved in the orders-in-original and Order-in-Appeal

S. No.	Order-in-Original No. & Date	Appeal No. & Date	Period of refund	Amount of Refund sanctioned by original authority	Amount of Refund Rejected by original authority	Amount of Refund Rejected by Commr. (Appeals)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Refund/EVM/35/2015 dt. 21.4.2015	ST/87557/2016	July, 2012 – Sept.2012	25,61,312	29,141	25,61,312
2	Refund/EVM/36/2015 dt. 21.4.2015	ST/87561/2016	Oct. 2012 – Dec.2012	40,29,208	9,959	40,29,208
3	Refund/EVM/37/2015 dt. 21.4.2015	ST/87558/2016	Jan.2013 – March, 2013	42,56,100	27,406	42,56,100
4	Refund/EVM/38/2015 dt. 21.4.2015	ST/87559/2016	April,2013 – June, 2013	58,11,376	19,813	58,11,376
5	Refund/EVM/39/2015 dt. 21.4.2015	ST/87560/2016	Jan.2013 – March, 2013	30,96,123	98,318	30,96,123

The said Commissioner (Appeals) as the First Appellate authority had rejected all the above five orders-in-original passed by the Assistant Commissioner, by allowing all the five appeals filed by the department and disposing them off by concluding that the services provided by the appellants to M/s Watson Laboratories Inc., a Nevada Corporation with principal place of business at 311, Bonnie circle, Corona, CA 92880, cannot be treated as export of services as provided under Rule 6A(1) of the Service Tax Rules, 1994. Aggrieved against the above Order in Appeal, M/s Watson Pharma Private Limited, Mumbai, have filed this appeal before this Tribunal.

2. The issue involved herein is whether the appellants are eligible for the refund of unutilized CENVAT credit under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE(N.T.) dated 18.06.2012, and whether the place of provision of service herein is to be decided under Rule 3 or Rule 8 &9 of Place of Provision of Services Rules, 2012.

3. The facts of the case in brief are as follows:

3.1 M/s Watson Pharma Private Limited, Mumbai, the appellants, are engaged in providing service of research and product development, and for this purpose have registered with the jurisdictional Service Tax department under a centralized registration no. AAACW6074DST007 for providing various taxable services. The appellants had entered into an agreement with M/s Watson Laboratories Inc., USA and Arrow No.7 Limited, UK on 2nd of February 2008 and 10th August 2012 respectively, for providing research and product development services. The detailed scope of the services include product identification, analytical research and formation development, scale-up/manufacturing of samples, stability study, bio–equivalent study, compilation with Regulatory Filing, Regulatory Filing and Submission etc.

3.2. The appellants had filed various refund claims for different periods in the prescribed form under notification No. 27/2012-C.E.(NT) dated 18.06.2012, on the ground that they have exported the output services without payment of service tax during the relevant period under Rule 6A of the Service Tax Rules, 1994; and that they were not in a position to utilize the CENVAT credit of duty taken on inputs or input services used in providing taxable services exported without payment of service tax. On going through various documents submitted in respect of five refund claims, the Department observed that the appellants had availed CENVAT credit on certain specified services mentioned therein, which seemed to have no nexus with output services exported by the appellants. Accordingly the Department issued letter dated 10.02.2015 seeking the explanation of the appellant on how they have fulfilled the conditions set out at Rule 6A(1)(f) of Service Tax Rules, 1994.

3.3. After going through the case records, written and oral submissions made by the appellants, Original adjudicating authority found that the appellants had fulfilled all the conditions specified in Rule 5 of the CENVAT Credit Rules, 2004, as well as Rule 6A(1)(f) of Service Tax Rules, 1994 and on that basis sanctioned the refund for the amounts as indicated in column (5) of Table-1 and rejecting certain amount of claims which are related to certain ineligible input services for the reasons recorded therein for the total amount as indicated in column (6) of said Table-1. Subsequently, in exercise of the powers conferred under Section 84 of the Finance Act, 1994, the Commissioner of Service Tax-V had found that these orders passed by the Original adjudicating authority were not correct, proper and legal on certain grounds and thus filed appeals before the Commissioner (Appeals) on such grounds. After providing personal hearing to the appellants and on going through the product development agreement dated 02.02.2008 and 10.08.2012 entered into by the appellants, the Commissioner (Appeals) had concluded that the service recipient is a 'contactor' and being a legal owner of intellectual property right created in India, the said recipient of service is running his business establishment through the 'developer' i.e., the appellant. Intellectual Property Rights created in India being intangible in nature, physical presence of the person who owns intellectual property right is not required in India. Therefore the Commissioner (Appeals) had concluded the process of development of intellectual property rights in India becomes an intermediary services. Accordingly he concluded that the place of provision of service provided by the appellant to their foreign service recipient 'contractor' shall be the location of the service provider, i.e., inside India, in accordance with Rule 9 of Place of Provision of Services Rules, 2012 (POPS). Therefore he concluded that the services provided by the appellant cannot be treated as exported under 6A of Service Tax Rules, 1994 and rejected all the five orders-in-original which sanctioned the refunds to the appellants.

3.4. Being aggrieved against the impugned order, the appellants have filed these appeals on the following grounds: (i) the impugned order is beyond the scope of appeal filed by the department and review order, and therefore it is required to be set aside (ii) the impugned order has travelled beyond the scope of show cause notice as well as the review order, and therefore is not sustainable (iii) services cannot be treated as rendered as an intermediary and thus the place of provision is not covered under Rule 9 and services are export of services. The appellant is not the agent of the foreign service recipient; the transaction of intermediary services involves three parties and therefore the appellants cannot be considered as an intermediary; Research and Development activities cannot be treated as services of an intermediary; the appellants provides the main services itself and therefore it cannot be covered under the category of 'intermediaries services' (iv) Principles of natural justice have been violated, as appellant were not to notice before the classification of the services as an intermediary (v) findings of the Commissioner (Appeals) are factually incorrect as the appellant does not undertake any registration of Intellectual Property Rights (IPR) on behalf of the foreign service recipient (vi) services provided by the appellants do not result in creation of IPR to the foreign service recipient (vii) without prejudice to the above, even if IPR is created, the same is created outside India and therefore the basis of confirmation of the demand is not proper (viii) without prejudice to the above, services cannot be treated as provided within India on the ground that the IPR have been created in India as actual place of performance of service is not relevant in the instant case (ix) findings of the Commissioner (Appeals) that appellants are working on behalf of the foreign service recipient is incorrect. On the basis of above submissions, the appellant contended that the services provided by them are export of services and therefore service tax is not applicable, and they are eligible for refund of CENVAT credit in respect of inputs and inputs services used in providing the output services which are ultimately exported.

4.1. Shri Vinod Awtani, learned Chartered Accountant appearing for the appellants submits that the rejection of refund claims filed under Rule 5 of the CENVAT Credit Rules, 2004, on the ground that the service is not "export of services" cannot be sustained, as the Order of Commissioner (Appeals) is beyond the scope of review order and the appeal filed by the Department. He submits that it is settled law that the Commissioner (Appeals) cannot travel beyond the scope of the show cause notice proceedings and review order. In this regard, the appellant relies on the following judgements:

(i) Western India Plywood 2001 (130) ELT (Tri.- Chennai)
(ii) Essar Steel Ltd. 2004 (177) ELT 550 (Tri. – Mumbai)
(iii) Basawa Technologies Ltd. 2017 (352) ELT 227 (Tri. – Delhi)

4.2. He further submits that notice of the Department for denial of refund was issued only on two grounds i.e., (i) absence of nexus of some of the input services with output service (ii) appellant has not fulfilled the condition set out in Rule 6A(1)(f) of the Service Tax Rules, 1994; the notice for denial of refund sent by the Department did not contain any allegation for treating the services of the appellant as an intermediary services. Further, the appellants are not acting as the agent of the Foreign Service recipient (referred in the agreement as contractor) or is an 'intermediary' in respect of service is exported. According to the learned Chartered Accountant for the appellants, they are engaged in providing product development services such as conduct of contract development, as directed by foreign service recipient and to provide necessary support to those activities to be performed by the contractor, in the fields of Formulation development, Bio-Chemical research, Bio-study research, Bio-equivalent study, clinical study and Active Pharmaceutical Ingredient (API) development etc., as detailed in the agreement dated 02.02.2008 and 10.8.2012. The appellants are not an employee of the Foreign Service recipient, neither are working under the control of such service recipient. The appellants are providing the services on principal to principal basis, as specifically provided in section 7.1 and 8.1 of the said agreements dated 02.02.2008 and 10.8.2012, respectively. Thus they provide the main services itself and therefore it cannot be covered under the category of 'intermediary services'. However, the Commissioner (Appeals) had made out a new case treating the appellant as an intermediary in the impugned order. Thus, the findings in the impugned order clearly are beyond the scope of notice and the order in original, and therefore the impugned order is legally not sustainable. In support of the above, the Appellant relied on the following judgements:

(i) Carrier Aircon Ltd 2005 (184) ELT 113 (SC)
(ii) Commercial Body Builders 2002 (147) ELT 1236 (Tri. – Delhi)
(iii) A.P. Industrial components 2002 (148) ELT and 246 (Tri. – Chennai)

4.3. The learned Chartered Accountant for the appellants submits that the appellants are engaged in research and development of genetic drug for the Foreign Service recipient. The appellants undertakes the activities to research the original drugs, develops a generic drug, study and analysis at each stage of manufacture, its shelf life, administer the dosage of the drug to document the reaction in comparison to original drug, documents the findings for filing the necessary documents to the FDA of respective country. The appellant hands over the said research work to the foreign service recipient and charges them for the said work by raising the debit note. The Foreign Service recipients become the owners of the said research work, and files the Abbreviated New Drug Application (ANDA) before the respective FDA authorities in abroad. The appellants are engaged for undertaking the research and development work and is not paid for grant of any IPR. The contract entered into by the appellants with the Foreign Service recipient is to conduct the research and development for them and not to grant any rights in relation to any IPR. The IPR belongs to the service recipient. Thus the taxability cannot be determined on the basis of creation of an IPR or the location of IPR, as was decided in the impugned order. The judiciary has consistently held that services of research and development provided to foreign customers is export of services and refund is admissible. The refund of CENVAT credit cannot be denied without raising demand of service tax, on the ground that the services are not export of services. In support of the above the appellant relied upon the following judgements:

(i) Advinus Therapeutics Ltd. 2017 (51) STR 298 (Tri. – Mumbai)
(ii) Indeus Life Sciences Pvt. Ltd. 2018 (10) TMI 1254 – CESTAT Mumbai
(iii) Idex India Pvt. Limited Vs. Commissioner of CGST, Mumbai East 2023 (2) TMI 482 – CESTAT Mumbai
(iv) Black Rock Services India P Ltd. Vs. Commissioner of CGST, CX & ST, Gurgaon, Haryana 2022 (8) TMI 874 – CESTAT Chandigarh

5. Learned Authorised Representative reiterated the findings of the Commissioner (Appeals) in the impugned order and contended that the legal

provisions in Rule 9 of Place of Provision of Services Rules, 2012 has been rightly invoked for treating the location of service provider as the place of provision of service and thus justified in the impugned order in denying the credit of CENVAT, treating the services provided by the appellants, that are not export of services.

6. We have heard the learned Chartered Accountant appearing for the appellants and the learned Authorised Representative for the Revenue, and perused the case records including the compilation filed by the appellant.

7. In order to appreciate the contentions, it would be appropriate to refer the specific findings of the impugned order wherein the Commissioner (Appeals) have come to the conclusion for rejecting the orders passed by the Original authority:

> *"8. On going through the agreement, I find that the respondent was into the development of product on behalf of their contractors. As per the agreement the respondent had done research activity for the potential drug candidate to aid in development of direct synthesis and then scale up/manufacture of sample drugs by doing stability study of drugs, bio equivalent study. On completion of the study of new or modified product patent was to be filed by the respondent on behalf of their contractor to regulatory authority in USA for abbreviated new drug application (ANDA) approval. Therefore, the respondent had carried out the R&D activity on behalf of the contractor who had permanent establishment located outside India……The contention of appellant department is that the output services provided by the respondent will fall under Rule 8 of Place of Provision of Services Rules, 2012. I find that as the said rule is applicable in place of provision of services where the location of the provider of service as well as that of the recipient of service is in the taxable territory, and the services provided are provided outside the taxable territory is not the case here. Therefore I do not agree with the appellant Department claim that the respondent had created the intellectual property right in India and that both the respondent and contactor were located in India therefore Rule 8 of Place of Provision of Services Rules, 2012 is not applicable in this case. Even though, the contract had to the permanent establishment outside India and the IPR was also registered outside India but the IPR was created by the respondent in India. Therefore the place of performance of service is relevant in the present case.*
>
> *9. Section 66B envisages taxation of service is rendered in the taxable territory. Whether a particular service is rendered in the taxable territory*

> *or not is a matter to be determined in terms of Place of Provision of Services Rules, 2012…. I find that the respondent was working as an agent of the contractor. Therefore, the process of development of intellectual property right created in India becomes an intermediary services. Therefore the place of provision of service to be provided by the applicant to their foreign contractor shall be the location of service provider, i.e., inside India, in accordance with the rule 9 of POP Rules.*
>
> *I find that the respondent therefore has not satisfied the conditions required under Rule 6A(1) of the Rules ibid for qualifying an activity as amounting to export of service as intellectual property right was created within the taxable territory as its business premises in India even though the recipient of services are located outside India….consequently, the bar under clause (f) above would not apply to their case. Therefore, the services, in question, cannot be taters exported. I therefore accept the appellant department's contention and reject the impugned orders of the adjudicating authority.*"

8. We find that the term "intermediary" has been defined under Rule 2(f) of Place of Provision of Services Rules, 2012 which is reproduced as under:-

> "2. In these rules, unless the context otherwise requires,-
>
> …….
>
> (f) 'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account; ".

A plain reading of the aforesaid provision makes it clear that to attract the said definition there should be two or more persons besides the service provider. In other words an "intermediary" is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus necessary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (main supply) and one arranging or facilitating the said main supply. Therefore, an activity between only two parties cannot be considered as an intermediary service. An intermediary essentially arranges or facilitates the main supply between two or more persons and does not provide the main supply himself. The intermediary does not include the person who supplies such goods or services or both on his own account. Therefore, there is no doubt that in cases wherein the person supplies the main supply either fully or partly, on principal to principal basis, the said supply cannot come within the ambit of "intermediary". Sub-contracting for a service is also not an intermediary service. The supplier of main service may decide to outsource the supply of main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof and does not merely arrange or facilitate the main supply between the principal supplier and his customers and therefore clearly not an intermediary. Who is an "intermediary" and what is "intermediary service" has been clarified by Central Board of Indirect Taxes and Customs (CBIC) vide Guidance Note dated 20.06.2012 and under GST regime also a clarification has been issued by CBIC on 20.09.2021 both of which are in line with the discussions made hereinabove about "intermediary".

9. We also find from the perusal of the agreements as well as submission of the learned Chartered Accountant for appellants that the Product development Services in relation to creation of new generic drug is limited to the performing of various services by the appellant on Formulation development, Bio-Chemical research, Bio-study research, Bio-equivalent study, clinical study and Active Pharmaceutical Ingredient (API) development as detailed in the agreement dated 02.02.2008 and 10.8.2012, and that too as a backend process. The appellants are required to perform these services on behalf of the Foreign Service recipient (contractor) and for performing all these services on behalf of them, the appellant receives a pre-agreed consideration from foreign service recipient in convertible foreign exchange. There is nothing on record to show that the appellant is liasioning or acting as intermediary between the foreign service recipient and any other person. Therefore, the finding of the Commissioner (Appeal) that the appellants are an "intermediary" is misplaced. In view of the facts involved herein, we find that the appellants cannot be termed as an 'intermediary' and their services provided to Foreign Service recipient cannot be termed as 'intermediary services'.

10. We are surprised to notice that although the Commissioner (Appeals) had concluded that Rule 8 of Place of Provision of Services Rules, 2012 is not applicable in this case by differing with the grounds of appeal claimed by the department; but without putting the appellants on notice or without giving

reasonable opportunity of personal hearing, he had gone ahead in classifying the services as "intermediary services" for applying the Rule 6A(1) of Service Tax Rules, 1994 treating the services as 'not export of services' by denying the CENVAT credit refunds. One of the reasons for rejecting the refund claim of the Appellants as proposed before the original authority is whether the appellants have fulfilled the conditions set out at Rule 6A(1)(f) ibid. The Original authority has concluded that the bar under clause (f) of Rule 6(A)(1) of Service Tax Rules, 1994 would not apply in this case, as output services provided by the appellant to Watson Laboratories Inc., USA and Arrow No.7 Limited, Malta, UK are located outside India and is covered under 'export of services' as per Rule 6A ibid. The Commissioner (Appeals) had also concluded that the appellants and foreign service recipients are independent legal entities, and not merely establishments of a distinct person, and consequently the bar under clause (f) of Rule 6A(1) would not apply in this case. Hence, we find that there is no basis for rejecting the refund claims by the Commissioner (Appeals) on this ground.

11. Further, we find that on perusal of the Abbreviated New Drug Applications (ANDA) made before the office of the Generic Drugs, FDA by M/s Watson Laboratories, Inc. USA, the service recipient, upon payment of prescribed fees by them and indicating the drug/product manufactured and tested by M/s Watson Pharma Private Limited, the appellants, it is clear that the Intellectual Property Rights (IPR) will accrue only to the foreign service recipients. Hence, we agree with the submission of learned Chartered Accountant for appellants, that the appellants does not apply or own the IPR. Hence, we find that the conclusion arrived at by the Commissioner (Appeals) in the impugned order is without any basis, and merely on the basis of assumptions and presumptions. We also observe that the learned Commissioner (Appeals) in the impugned order has also taken up the case, that it is being covered under Rule 9 of Place of Provision of Services Rules, 2012 and therefore the place of provision of services is in India, without placing reliance on any fact or document, and without confronting the appellant with such fact or document, which is completely in violation of the principles of natural justice and also beyond the scope of show cause notice proceedings and the grounds of appeal preferred by the department before him.

12. Admittedly the refund claims have been filed by the appellants under Rule 5 ibid read with Notification No. 27/2012-C.E.(NT) dated 18/06/2012. The said rule provides for refund of accumulated CENVAT Credit in respect of goods and services exported under bond or undertaking. This rule is very specific and lays down how to determine the quantum of admissible refund from the accumulated CENVAT credit. It cannot be considered to be a proceeding for denial of CENVAT Credit available in the account of the claimant and therefore even if the refund is denied, then also the amount continues to remain in the CENVAT account of the claimant. If the Revenue is not in agreement with the claims of the appellants and if, according to Revenue, the services in issue do not fall within the ambit of export of service then the Revenue ought to have initiated the proceedings against the appellants for demanding the Service Tax in respect of taxable service provided by the appellants. Admittedly no such proceedings have been initiated by the Revenue as borne out from the records of the case and therefore in a way Revenue itself has allowed this taxable service provided by appellants as export of service. If that is so then in the proceeding under Rule 5 ibid revenue cannot deny refund by treating the service provided not to be export of service. Same principle has been followed by the Tribunal in the matter of JFE Steel India Pvt. Ltd. v/s Commissioner CGST, Gurugram; 2021 (44) GSTL-292 (Tri-Chan.); M/s. BlackRock Service India Pvt. Ltd. Commissioner, CGST vide Final Order No. 60111-60112/2022 dated 08.08.2022; and also in Final Order No. 60959-60960/2021 dated 07/10/2021 in Service Tax Appeal Nos. 60024-25 of 2020 in Macquarie Global Service Pvt. Ltd v/s Commissioner C.E. & ST, Gurgaon-1. We also find force in the submission of learned Chartered Accountant about applicability of Rule 3 of Place of Provision of Services Rules, 2012 which provides that generally the place of provision of service is the location of service recipient. Since in the instant case the location of service receiver M/s. Watson is located outside India i.e. M/s Watson Laboratories Inc., a Nevada Corporation having its principal place of business at 311, Bonnie circle, Corona, CA 92880 USA and Arrow No.7 Limited, having its principal place of business at 7, Cavendish Square, London, WIG OPE, England, UK therefore the place of provision of service is outside India and hence the services provided in this issue qualify as 'export of services' in terms of Rule 6A of Service Tax Rules, 1994.

13. In view of the discussions and findings recorded in the preceding paragraphs, we are of the considered view that the impugned order of Commissioner (Appeals) denying refund of CENVAT credit on impugned services are not sustainable in law and therefore the appeals filed by the appellants deserve to be allowed.

14. In view of the above, we set aside the impugned order passed by the Commissioner (Appeals), Service Tax-II, Mumbai Zone, and allow the appeals of appellants with consequential relief.

(Order pronounced in the open court on 30.03.2023)

(S. K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sm/yr