CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPLICATION (MISC) NO: 85721 OF 2023
(on behalf of appellant)
IN
SERVICE TAX APPEAL NO: 88200 OF 2018

[Arising out of Order-in-Appeal No: PK-200-MC-2017 dated 30th October 2017 passed by the Commissioner of GST & Central Excise (Appeals), Mumbai.]

PPD Pharmaceutical Development India Pvt Ltd
101-A Wing, Fulcrum, Hiranandani Business Park
Sahar Road Andheri East, Mumbai - 400099 … ***Appellant***

versus

Commissioner of Central Goods and Service Tax
Mumbai East
3rd Floor, CGST Bhavan, Plot No. C-24, Sector E
Bandra East, Mumbai-400051 ***…Respondent***

WITH

SERVICE TAX APPLICATION (MISC) NO: 85753 OF 2023
(on behalf of appellant)
IN
SERVICE TAX APPEAL NO: 88210 OF 2018

[Arising out of Order-in-Appeal No: PK/201/ME/2017 dated 30th October 2017 passed by the Commissioner of GST & Central Excise (Appeals-II), Mumbai.]

PPD Pharmaceutical Development India Pvt Ltd
101-A Wing, Fulcrum, Hiranandani Business Park
Sahar Road Andheri East, Mumbai - 400099 … ***Appellant***

versus

Commissioner of Central Goods and Service Tax
Mumbai East
3rd Floor, CGST Bhavan, Plot No. C-24, Sector E
Bandra East, Mumbai-400051 ***…Respondent***

APPEARANCE:

Shri Prakash Shah, Senior Counsel with Shri Mihir Deshmukh, Shri Shamik Gupte and Shri Jai Tottani, Advocates for the appellant

Shri Dhananjay Dahiwale, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86810-86811/2025

DATE OF HEARING: 13/11/2025
DATE OF DECISION: 13/11/2025

PER: C J MATHEW

M/s PPD Pharmaceutical Development India Pvt Ltd, aggrieved by rejection of their claim for refund of ₹ 4,54,13,810 under rule 5 of CENVAT Credit Rules, 2004 for the period from July 2012 to September 2015 and for ₹ 1,52,60,960 for the period from October 2015 to March 2016, is before us, impugning order[1] [2] of Commissioner of Central Excise (Appeals-I), Mumbai, contending that validation of order of original authority on the two grounds, *viz.*, inadmissibility of availment of credit to the extent of ₹ 3,61,15,586 and further ineligibility to refund of the entire claim for not having exported services as per rule 6A of Service Tax Rules, 1994, is in breach of settled law barring consideration of both, credit entitlement

[1] [order-in-appeal no. PK-200-MC-2017 dated 30th October 2017]
[2] [order-in-appeal no. PK-201-MC-2017 dated 30th October 2017]

and taxability, while disposing off such refund claims.

2. According to Learned Senior Counsel appearing for the appellant, the entire premise of the proceedings for denial of the claim, and as stemming from service having been rendered in 'taxable territory', was based on the erroneous presumption that they had undertaken 'clinical research' service for pharmaceutical and biotechnological companies. He submitted the appellant was merely involved in coordinating procurement of 'clinical research' services in conjunction with PPD Pharmaceutical Development (S) Pte Ltd and that both the affiliated entities merely acted on behalf of pharmaceutical/biotech clients abroad to identify appropriate 'clinical research' organization in India and following up on contractual compliance. He submitted that the 'taxable service' in 'taxable territory' is, effectively, rendered by a 'clinical research organisation' in India to 'sponsor' based outside India and that, in accordance with rule 4 of Place of Provision of Service Rules, 2012, the 'clinical research organisation' discharges tax liability. He submitted that the 'taxable service' rendered by the appellant, and under contract with their affiliate in Singapore, is not 'clinical research' service and that the consideration received by them is solely for service that, unequivocally, has been exported.

3. He further submitted that the original authority had, contrary to

empowerment under law, also proceeded to deny credit to the extent of ₹ 3,61,15,586 and, by conflating with other grounds to reinforce ineligibility, had erred in proceeding to examine the nexus of the disallowed credit with the activity of export. He contended that the impugned order has incorrectly rendered a finding that samples of the clinical drug to be tested was furnished to the appellant. According to him, the scope of rule 4 of CENVAT Credit Rules, 2004 was settled by the Tribunal in *Principal Commissioner of Central Excise, Pune-I v. Advinus Therapeutics Ltd [2017 (51) STR 298 (Tri - Mumbai)]* in which refund of accumulated credit allowed by the original authority was confirmed by first appellate authority leading to the dispute before the Tribunal and the contention of the appellant-Commissioner therein was that the physical availability of the goods with the provider of service precluded the activity from privileges attending upon export of service. It was further contended that the decision of the Tribunal, in *MedGenome Labs Ltd v. Commissioner of Central Tax, Bengaluru South* [*2022-TIOL-283-CESTAT-BANG]* holding independently that, without the goods being physically made available to the provider of service by the recipient of the service, rule 4 of Place of Provision of Service Rules, 2012 would not apply, was upheld by the Hon'ble High Court of Karnataka in *Commissioner of Central Tax, Bangalore v. Medgenome Labs Ltd [(2023) 5 Centax 273 (Kar.)]*. Learned Senior Counsel further contended that non-

taxability of their service for the period prior to 1st July 2012, being 'business auxiliary service' as settled by the Tribunal, in their own dispute in *PPD Pharmaceutical Development India Pvt Ltd v. Commissioner of CGST, Mumbai East* by final order[3] disposing off appeal[4] against order[5] of Commissioner of Central Excise & Service Tax (Appeals), Mumbai – IV and with no scope for redescription in the 'negative list' regime, though significantly relevant was erroneously discarded by the first appellate authority as restricted only to activities undertaken before 1st July 2012.

4. Learned Authorized Representative reiterated the findings in the impugned order.

5. In *Maersk Global Services Centres (India) Pvt Ltd v. Commissioner of CGST, Navi Mumbai [2019 (10) TMI 959 CESTAT MUMBAI]* and in *BNP Paribas India Solutions P Ltd v. Commissioner of CGST, Mumbai East [2022 (58) GSTL 539 (Tri. - Mumbai)*], the Tribunal had held that the proceedings for processing of claim for refund under rule 5 of CENVAT Credit Rules, 2004 offers no authority for re-visiting eligibility to claim CENVAT credit on 'inputs' and 'input services' procured by the claimant; it is only by recourse to rule 14 of CENVAT Credit Rules, 2004 that such disallowance is permissible. Accordingly, the impugned order, to the

[3] [no.87482-87488/16/STB dated 7th April 2016]
[4] [ST/85552-85553/2015]
[5] [order-in-appeal no. PD/718-720/ST-I/2014 dated 30th July 2014]

extent of such inadmissibility having been upheld, is not in accordance with law.

6. We now turn to the second aspect, *viz.*, denial of the refund on the ground of activities having been undertaken in the 'taxable territory' solely from the goods purportedly used for clinical trials determining service as having been provided within India. It is fairly conceded by Learned Senior Counsel that separate proceedings, for such recovery of tax not discharged on the said activity during the relevant period, had already been initiated and concluded by the adjudicating authority following which an appeal of theirs is pending before the Tribunal while pressing for applicability of the decision of the Tribunal in *re Advinus Therapeutics Ltd*, as having attained finality despite contrary view, in *Sai Life Science Ltd v. Commissioner of Central Excise, Pune-I [2019 (6) TMI 572 CESTAT MUMBAI]* which does not constitute binding precedent inasmuch as the observation therein

> *'5.10 ……. From the facts of the present case we find that appellant have conducted DMPK Studies in respect of the NCE's provided to them by the overseas client. Rule 4 do not put any conditions in respect of alteration or alternation of the goods provided by the service recipient. Reading anything beyond what has been provided in the rules/ statue cannot be proper interpretation put to rules. Both the decisions in case of Sai Life Sciences and Advinus*

> *Therapeutic have proceeded mainly on the principle that taxes should not be exported.'*

had chosen to place an interpretation on the decision of the Tribunal thereof contrary to established judicial convention of coordinate benches not sitting on a judgment upon issues already decided except, in the event of dissonance, by exercising the option of having the matter considered by a Larger Bench of the Tribunal, and that appeal against decision of the Tribunal in *re Sai Life Science Ltd* before the Hon'ble High Court of Bombay contended that very point of law.

7. The case of the appellant is that their activity, prior to the paradigm shift subsuming existing services in 'negative list' regime, remained unchanged throughout and that the transition from the erstwhile regime to the 'negative list' regime merely expanded the scope of taxability of service beyond that enumerated in section 65(105) of Finance Act, 1994. It would thus appear that the lower authorities proceeded on premise of '*new law new assessment'* without considering the manner in which the activity of 'clinical research' service was to be fastened on the appellant under the new regime. We are not privy to the adjudication proceedings in which the tax liability was fastened on the very same activity. However, the findings therein, now available to the lower authority, merits consideration in disposing the application for refund.

8. Place of Provision of Service Rules, 2012, as a mechanism converging both the erstwhile Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, was necessitated by ‘service’, as set out in section 65(44) of Finance Act, 1994, being the object of tax pivoted on having been rendered in ‘taxable territory’ which required ascertainment insofar as the destination of service, whether inward or outward was concerned, but the *schema* of erstwhile rules, nonetheless, was continued, though re-designed to conform with the generality of section 65B(44) of Finance Act, 1994, for contingencies and, except for those special circumstances, to be governed by rule 3 of Place of Provision of Service Tax Rules, 2012. Hence the grafting of these rules, for the purpose of determination of export transaction, on to rule 6A of Service Tax Rules, 1994. The *factum* of ‘goods’ which, in this case, are samples of the product to be researched upon and ‘handling’ thereof within the framework of rule 4 of Place of Provision of Service Rules, 2004, as far as appellant is concerned, has not been dealt by the lower authorities. It would not be appropriate for us to determine compliance with ‘export of service’, a necessary pre-requisite for consideration of claim under rule 5 of CENVAT Credit Rules, 2004, in absence of such consideration by the lower authorities.

9. Consequently, it would be appropriate to set aside the impugned order and restore the application before the original

authority for consideration of the claim afresh in accordance with the facts as pleaded by the appellant and the provisions of rule 5 of CENVAT Credit Rules, 2004.

10. Appeals are, thus, allowed by way of remand.

(Operative part or the order pronounced in the open court on 13th November 2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*