आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20240164SW000000D1F1

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1551/2023 / 101 – 105
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-001-APP-204/2023-24 and 22.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. 42/CGST/Ahmd-South/JC/SR/2022-23 dated 13.12.2022 passed by The Joint Commissioner, CGST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Veeda Clinical Research Ltd. Shivalik Plaza-A, Ambawadi, Ahmedabad

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid : -

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Veeda Clinical Reasearch Ltd., Shivalik Plaza-A, Ambawadi, Ahmedabad – 380015 (hereinafter referred to as "the appellant") against Order-in-Original No. 42/CGST/Ahmd-South/JC/SR/2022-23 dated 13.12.2022 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated the facts of the case are that the appellant are engaged in providing services viz." Event Management Service"; "Business Auxiliary Service"; "Transport of goods by Road"; "Sponsorship Service"; "Management Consultant Service"; "Manpower Recruitment Agency"; "Online Information and Data Retrieving"; "Technical Inspection and Certification"; "Maintenance and Repair" and "Scientific & Technical Consultancy Services" and are holding Service Tax Registration No. AACCC3633QST001. During the course of audit of the financial records of the appellant, conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad, it was noticed that the appellant had performed services (clinical study) from their registered premises in India and sent / deliver the clinical study reports to their foreign client through e-mail, courier or web sites. The appellant had not paid service tax on the amount shown against the heading "Export of services".

2.1 Therefore, the appellant were issued the following Show Cause Notices for non-payment of Service Tax on Technical Testing & Analysis of "OLD DRUGS".

Sr. No.	Show Cause Notice F. No. and date	Period	Amount of S.Tax (in Rs.)
1	STC/4-8/O&A/14-15 dated 13.11.2014	F.Y. 2012-13 to F.Y. 2013-14	2,37,33,426/-
2	STC/4-87/O&A/15-16 dated 06.04.2016	F.Y. 2014-15	61,48,065/-

2.2 In order to ascertain whether the appellant continued the same practice of not paying Service Tax on Technical Testing & Analysis of "OLD DRUGS", they were asked to provide details for the further period from April-2015 to March-2016 vide letter F.No. SD02/AR-V/AR-232/VEEDA/14-15 dated 24.11.2016. The appellant vide letter no. Nil dated 03.04.2017 have provided the requisite details.

2.3 On perusal of the details submitted by the appellant, it is observed that they have continued to follow the same practice of not discharging the service tax liability on Technical Testing & Analysis of "OLD DRUGS". Thus, on the basis of the details provided by the appellant it was seen that they did not pay Service Tax amounting to Rs. 1,64,63,183/- collected by them on account of Technical Testing & Analysis of "OLD DRUGS" amounting to Rs. 11,79,51,619/-.

2.4 Upto 30.06.2012, the service provided by the appellant is "Technical Inspection and Certification Service" as defined under clause (zzi) of Section 65(105) or under "Technical Testing and Analysis Service" as defined under clause (zzh) of Section 65(105) of the Finance Act, 1994, however, post 01.07.2012, since there is no service wise classification due to introduction of negative list, and the activity carried out by appellant falls under the purview of definition of "Service" in terms of Section 66B read with Section 66D read with Section 65(B)(44) of Finance Act, 1994, as the same is neither covered by negative list nor by any exemption notification. Further, as the service provided is Performance Based Service and actually performed in India and the same is come under purview of Rule 4 of Place of Provision Rules, 2012 w.e.f. 01.07.2012 which is relevant to establish taxability under the service tax. Hence the appellant are liable to pay service tax. The demand of Service Tax of Rs. 1,64,63,183/- is therefore legally sustainable.

2.5 Therefore, the appellant were issued Show Cause Notice No. STC/4-03/O&A/Veeda/2017-18 dated 28.01.2018 demanding Service Tax amounting to Rs. 1,64,63,183/- for the period F.Y. 2015-16, under provision of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 76 and Section 77(2) of the Finance Act, 1994.

2.6 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,64,63,193/- was confirmed under provision of Section 73(2) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further (i) Penalty of Rs. 16,46,319/- was imposed on the appellant under Section 76 of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant are engaged in the service of technical testing & analysis service, which involve following activities.

    1. Technical testing & analysis service for the old drugs domestically.
    2. Technical testing & analysis service for the old drugs exports.
    3. Technical testing & analysis service for the new drugs domestically.
    4. Technical testing & analysis service for the new drugs exports.

- For the service provided as per Sr. No. 1 and 3 is taxable & discharging service tax regularly under the category of "technical testing and analysis", while the appellant are

claiming exemption for service provided as per Sr. No. 4 from the service tax for the new drug vide old Notification No. 11/2007 & new Mega Exemption Notification No. 25/2012-ST. Further, the appellant are also claiming exemption for the service provided as per Sr. No. 2 being export of service.

- The department has denied for such exemption claimed by the appellant for technical, testing & analysis service for the old drugs exports on the basis that testing of drugs cannot be done in absence of physical possession or control of the goods for carrying out the service, Further, as per Rule-4, the place of provision is the place where the services are actually performed, so the department contended that such service is performed in India and the appellant is required to pay service tax.

- Against which, the appellant submitted that the new rule of the export of service for the service mention in Sr. No. 2 after the enactment of the Finance Act, 1994; which is as under:

- Since the Export Rules will cease to apply, the required provisions will be incorporated in Service Tax Rules. A transaction will qualify as export when it meets following requirements:

  i. The service provider is located in Taxable territory;
  ii. Service recipient is located outside India;
  iii. Service provided is a service other than in the negative list.
  iv. **The Place of Provision of the service is outside India;** and
  v. The payment is received in convertible foreign exchange

- Now the Place of Provision of the service as defined as under: The Central Government has notified vide Notification No. 28/2012 under Section 66C to determine when would the service be considered as provided in the taxable territory i.e. rules to determine the place of provision of service.

"Rule 4(b). Place of provision of performance based services.- The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) Services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

(b) Services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service."

- Therefore, from the above provision due to condition of services provided in respect of goods that are required to be made physically available by the recipient of service to the

provider of service or to a person acting on behalf of the provider of service, in order to provide the service; following questions may arise:

(i) Whether sample drugs sent by the service recipient for the technical testing and analysis purpose can be termed as goods or not.

(ii) Whether sample drugs can be termed as goods available with the service provider at the time of providing service to the service recipient or not.

(iii) Whether instead of sending back sample to a service recipient, if it is destroyed by the service provider or handed over back to the agent of service recipient, it is amounting to goods are not present with the service provider.

- Further, the appellant submitted that in terms of Rule 4, a lot of activities including technical testing, inspection, analysis of goods, certification services, etc. which are dependent on the activities to be physically performed on the goods provided by the service recipient, would be taxable in India.

- While it is to be noticed here in this case that whatever may be sent by the service recipient are not a goods, but one of the sample/molecule/or object of the diseases i.e. formula of medicine and appellant is not physically performing any activity on the goods. So the appellant is not treating the sample or molecule as goods, which has normally following characteristics:

  - It is movable.
  - It is marketable.
  - It has been available for sale.

- So, it is clear from the above that whatever has been received by the appellant, are not a goods. In service tax provision goods has been defined as a "goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of goods Act, 1930 (3 of 1930);" Hence, the appellant is able to fulfill the criteria of place of provision of service which is outside India and claiming the exemption from the service as an export of service.

- In the light of above rule the appellant submitted that as per rule 3 place of provision of service which is normally the location of the recipient of service even in rule 4 where place of provision of performance based service has been defined where also The appellant are fulfilling the all the conditions of the rule. The appellant are not in receipt of any goods physically, but on the basis of IP (drug formula)/ sample out of goods (to be manufactured in future subject to fulfillment of testing norms as prescribed by the regulatory authority) which is used for testing / analysis purpose which had been carried out by appellant and report of such testing is been sent to the respective service recipient located outside India, who are ultimate beneficiary for the result/ outcome of such test report. So, ultimate benefit of service accrues outside India. Based on earlier Circular No. 111/5/2009-S.T. dated 24-2-2009, when benefit accrued outside India, the appellant are eligible for the exemption from the service tax.

- In this regard, the appellant draw attention towards following recent Advance ruling judgment:

  TANDUS FLOORING INDIA PVT. LTD. Versus COMMR. OF SERVICE TAX, BANGALORE reported at 2014 (33) S.T.R. 33 (A.AR.)

- The appellant submitted that "Section 65(105) of the Finance Act as it stood during the relevant period defined "taxable services" to mean any service provided to and by persons specified under the various sub-clauses of that section. Section 66 of the Finance Act which was the charging section provided that Service Tax was to be levied on the value of taxable services referred to in the various sub-clauses of Section 65(105). Thus, undisputedly, the taxable event of Service Tax is the provisions of services. However, Section 64 of the Finance Act provides that the Chapter relating to Service Tax extends to the whole of India except the State of Jammu and Kashmir. Therefore, value of services will be taxable under Section 66 of the Finance Act only if the taxable event occurs in India i.e. only if the place of provision of service is in India. So, the position is that what is not taxable need not be exempted. In other words, the services rendered by the appellant were never taxable at all. Once they were not taxable at all, there is no question of exempting them.

- The appellant submitted that "Services" are intangible in nature and hence the place of provision of services has to be laid down by legislature or by judicial pronouncements. This proposition is supported by the decision of Hon. Supreme Court in the case of The Bengal Immunity Company Limited v. The State of Bihar and Ors (1995) 6 STC 446 (SC).

- Further C.B.E. & C. issued a circular on 25" April, 2003 to clarify the position with regard to the export of services. The C.B.E. & C. clearly stated that Service Tax was a destination based consumption tax and therefore it was not applicable on export of services.

- The appellant also relied upon the following case laws:

a) COX & KINGS INDIA LTD. Versus COMMISSIONER OF SERVICE TAX, NEW DELHI - 2014 (35) S.T.R. 817 (Tri. - Del.)

b) COMMISSIONER OF SERVICE TAX, MUMBAI-II versus SGS INDIA PVT. LTD. 2014 (34) S.T.R. 554 (Born.)

➢ The appellant submitted that when the appellant is not testing on goods and the appellant is using such goods/samples for providing export of service, whether it is covered under Rule 3 or Rule 4(a) of Place of Provision of Service Rules, 2012. They have correctly availed the benefit of export of service:

➢ Place of provision of service is required to be determined on the basis of Rule 3 and not Rule 4(a) of Place of Provision of Service Rules, 2012. The scope of Rule 4(a) of place of provision of service Rules has been clarified by CBEC in question no. 5.4.1 education guidance as follows:

> "5.4.1 what are the services that are provided "in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service" - sub-rule (1):
>
> Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered, are covered here. The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage

and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys."

- From the above explanation, it is clear that Rule 4(a) includes within its ambit such activity where the service is performed on the goods sent by the service receiver to the service provider. For example, when a machine is sent by the service recipient to the service provider for undertaking repair activities, the activity of repair is carried on by the service provider on such machine i.e. the goods supplied by the service recipient. Therefore, there is no doubt that such activity would fall under Rule 4(a) of the POPS Rules.

- Further, the guidance note also states that technical testing, inspection of goods would also to be covered under Rule 4(a). The Appellant humbly submit that this would only include within its ambit such activities where testing is carried on, on the goods in order to determine whether it complies with certain standards. For example, testing is performed on a car to determine whether it complies with pollution control norms. In such cases, the test is on the object provided by the service recipient.

- In the present case, no such testing is being carried on the goods of the customers in order to determine whether it complies with certain standards. Nothing is being done to the goods of the customers. This shows that nothing is being done to the goods of customer itself and therefore Rule 4 is inapplicable in the present case. Without Prejudice, the term "in respect of' is to be interpreted as "on" goods, and thus, the services in the present case are not performed on the goods.

- In the present case, the condition in Rule 4 that the services should be performed "on" the goods. In the present case, the services are not qua the goods and therefore the activity undertaken by the appellant cannot be considered as activity done on the goods. Therefore, the condition required in Rule 4 is not satisfied and accordingly Rule 4 cannot be applied in the present case.

- It is thus submitted that Rule 4 is not applicable in the present case and therefore Rule 3 must be applied. Accordingly, the place of provision of service will be outside India and the services were exported. Henceforth, the impugned order is liable to be set aside.

- It is seen that the two necessary conditions, for classifying the place of provisions of service under Rule 4 of POPS Rules are that the goods are to be 'made available' to the service provider and the services are to be provided in respect of the 'goods'. The essential characteristics of a service to be covered under this Rule is that the goods temporarily come into the physical possession or control of the service provider, and without that happening the service cannot be rendered. Further, it is also seen that the proviso to Rule 4 stipulates that the cases wherein the service is provided in respect of goods that are temporarily imported into India for repairs, reconditioning, etc.

and are reexported would not be covered under the said Rule. The illustrations given in the CBEC's Education Guide states that the services such as repairs, reconditioning or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service, testing / certification / analysis of goods, dry cleaning etc. are the services covered under Rule 4 of POPS Rules, since in all such cases, the services are being performed 'in respect of particular goods' and no new goods are produced after rendering of services and thus the place of provision of services would be where the services are actually performed. Even in such cases, provisions of Rule 4(a) of POPS Rules would not apply where the goods are temporarily imported into India for re-export after provision of services.

- The provision of Place of Provision of Service Rule is only to determine the place of provision of service and not for determination of consumption of service. The place of provision of service has been notified in terms of power conferred under Section 66C of the Chapter V of Finance Act, 1994. It is not for determining the place where services are used /consumed and purpose of consumption.

- Provision similar to Rule 4 of POPS Rules, 2012 also exists under different international taxing jurisdictions. There also consistent view has been taken that the aforesaid services will not fall under performance based category.

- In the instant case service are not performed on the goods. Further, the foreign customers are interested in the study report. The service provided by the appellant is in the nature of advice or information. Hence, provision of Rule 4(a) of POPS Rules, 2012 is not applicable.

- In the instant case, the services performed by the appellant is not performance based services i.e. the services that do not fall under Rule 4(a), then the same will fall under Rule 3 of POPS Rules, 2012 since the recipient of service i.e. the foreign customer is located outside in India.

- The appellant also wants to rely in support of the contention on the following citation:
  a) Hon'ble CESTAT in the case of CCE vs. Sai Life Sciences Ltd reported at 2016 (42) STR 882 (Tri-Mum)
  b) 2016(12)TMI/34-CESTAT -MUM, 2016-TIOL-3138-CESTAT -MUM In the case of Principal Commissioner of Central Excise Vs Advinus Therapeutics Ltd,

- The show cause notice covers the period from 01.04.2015 to 31.03.2016. The show cause notice has been issued on 28.01.2018 & whereas the fact was in the department's knowledge since long. Thus, the show cause notice has invoked the extended period of limitation. The show cause has baldly alleged that the appellant have suppressed the information from the department.

- The appellant submitted that the extended period of limitation cannot be invoked in the present case since there is no suppression, willful misstatement on the part of the appellant.

- The appellant submitted that the penalty under Section 76 & 77 is not imposable since there is no short payment of service tax. As per the merits of the case, the appellant is not liable for payment of Service tax.

- The present case is a fit case to be covered under section 80 of the Act, which expressly provides that no penalty shall be

imposed under section 76 if the appellant has a reasonable cause for default.

4. Personal hearing in the case was held on 18.12.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated the contents of the written submission and requested to allow their appeal. It is export of service.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record.

6. The main issue to be decided in the present appeal is whether the appellant have rightly claimed the exemption of export of service of technical testing & analysis for the old drugs as per the rules of place of provision of service or not.

7.. The main contentions of the appellant that (i) whatever may be sent by the service recipient are not a goods, but one of the sample/molecule/or object of the diseases i.e. formula of medicine and appellant is not physically performing any activity on the goods; (ii) when the appellant is not testing on goods and the appellant is using such goods/samples for providing export of service, their case is covered under Rule 3 of Place of Provision of Service Rules, 2012 and not under Rule 4(a) of Place of Provision of Service Rules, 2012.

8. I also find that the appellant submitted the same set of arguments before the adjudicating authority which is submitted by them in the appeal memorandum. The adjudicating authority has vide impugned order confirmed the demand of service tax along with interest and penalty. The relevant portion of the impugned order reads as under:

"45. I also find that in respect of the service provided to domestic recipients, according to the assessee himself, service tax was being

paid. But in respect of the service recipients located outside the territory of India, they claimed it as export of service and did not pay service tax. Therefore, the taxability of service is not disputed by the assessee and the only issue to be decided is whether the service provided to overseas clients can be treated as export of service or otherwise.

46. For the service provided after 01.07.2012, the matter needs to be examined in light of the provisions of Place of Provision of Service Rules 2012 which read as under:

....

47. Assessee contended that as per rule 3, place of provision of service is normally the location of the recipient of service. Even in rule 4 where place of provision of performance based service has been defined, there also the assessee is fulfilling all the conditions of the rule. The assessee was not in receipt of any goods physically, but on the basis of IP (formula) / sample out of goods on which testing / analysis had been carried out by as and report sent to the respective service recipient located outside India, who are ultimate beneficiary for the result/ outcome of test report. So, the ultimate benefit of service accrues outside India based on earlier Circular No. 111/5/2009-S.T. dated 24-2-2009, when benefit accrue outside India, the assessee is eligible for the exemption from the service tax. Further the assessee has relied upon the advance ruling as reported at 2014 (33) S.T.R. 33 (A.A.R.) TANDUS FLOORING INDIA PVT. LTD. and submitted that they had complied with the rule 6A of EOS & POPs rule & rightly claimed exemption from the service tax under the rule. They submitted that value of services will be taxable under Section 66 of the Finance Act only if the taxable event occurs in India i.e. only if the place of provision of service is in India.

48. In this regard, I find that, for the services to be treated as export of service post 2012, the service provided needs to be tested in terms of rule 6A of the Service Tax Rules, 1994 read with POPS Rules. As per (d) of Rule 6A(1), for service to be export of service, the place of provision of service should be outside India. Assessee has argued relying on the provisions of the POPS Rules and para 5.4.1 of the Education Guide that place of provision of the service in their case is outside India.

49. The contention of the assessee regarding the conduct of testing/analysis on drugs, is that whatever may be sent by the service recipients are not goods but one of the sample/molecules/or object i.e. medical formula and hence, rule 4 of Place of Provision of Service Rules is not applicable. This contention is not justifiable in as much as even a sample or molecule is to be considered as goods and testing is being done on such sample or molecule itself. Further, it has been admitted by the assessee himself that they are importing such samples/molecules/formula and claiming exemption from Customs Duty. Therefore, it cannot be disputed that the goods/compounds supplied by the clients are not abstract material but are movable objects or things that can be touched, felt or possessed as clarified in the Education Guide 5.4.1. On analysing the contents of the aforesaid guidance note issued by the CBEC, I find that services in the nature of 'technical testing/ inspection/ certification/ analysis of goods' is very much covered within the ambit of Rule 4 of the PPS Rules. In fact, I find that the services provided by the assessee are in the nature of research and analysis of sample/compounds/formula supplied by the clients with reference to the drug and thereafter, transferring the outcome of the research effort to the foreign based client(s). Further, 1 find that it cannot be disputed that the services are conducted with reference to these sample/compounds/formula supplied by the client(s) and therefore, these sample/ compounds/formula are the essence for provision of these services and without which, no research/ study could be performed and the intended services rendered and delivered. In view of the above, the assessee's contention is not acceptable and I hold that the services provided by the assessee are performed on the goods supplied by their foreign based clients and hence, this service activity of the assessee is covered under Rule 4 of the PPS Rules. In this regard, I find support in Final Order No. A/86090/2019 dated 12.06.2019 of Mumbai Bench of Hon'ble Tribunal in respect of M/s Sai Life Science Ltd."

9. For ease of reference, I hereby produce the relevant provisions of Place of Provision of Services Rules, 2012 as amended, which reads as under:

*"3. **Place of provision generally**- The place of provision of a service shall be the location of the recipient of service:*

Provided that in case "of services other than online information and database access or retrieval services"(Inserted vide Notification 46/2012- Service Tax) where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

***4. Place of provision of performance based services.-** The place of provision of following services shall be the location where the services are actually performed, namely:-*

(a) Services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

(b) Services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

....

14. Order of application of rules.- Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs among the rules that merit equal consideration."

9.1 On plain reading of the above provision of the Place of Provision of Services Rules, 2012, I find that Rule 4(a) applies in the present case, as the sample drugs sent by the service recipient for the technical testing and analysis purpose termed as goods and without the said goods the appellant cannot performed the service. The service provided by the appellant is performance based service. I also find that the CBEC in the Question No. 5.4.1 of the Education Guide, wherein also it has been clarified that *"The essential characteristic of a service to be covered under this rule is that the goods temporarily come into physical possession or control of the service provider, and without this happening the service cannot be rendered."*. It is also clarify in the said that the *'Examples of such services are ..... technical testing/inspection/certification/ analysis of goods'*. The relevant portion of the Education Guide reads as under:

> ***"5.4.1 what are the services that are provided "in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service" - sub-rule (1):***
>
> *Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered, are covered here.* ***The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed. Examples of such services are*** *repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo),* ***technical testing/inspection/certification/ analysis of goods,*** *dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on*

a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys."

9.2 In view of the above discussion, I find that the contention of the appellant is not acceptable that there is not goods and therefore, I hold that the services provided by the appellant are performed on the goods supplied by service recipient and the service provided by the appellant correctly covered under Rule 4(a) of the Place of Provision of Services Rules, 2012 and hence the appellant not fulfilled the condition number (d) of Rule 6A of the Service Tax Rules, 1994, as amended and their services cannot be treated as Export of Services.

10. I also find that for the prior period the Show Cause Notices F.No. STC/4-8/0&A/14-15 dated 13.11.2014 and F.No. STC/4-87/0&A4/15-16 dated 06.04.2016 were issued to the appellant for the period FY 2012-13 to FY 2013-14 and FY 2014-15 respectively, by the Commissioner, Service Tax, Ahmedabad, demanding Service tax amounting to Rs 2,37,33,426/- and Rs 61,48,065/- respectively. These two Show Cause Notices were adjudicated by the Principal Commissioner, CGST, Ahmedabad South, vide Orders-in-Original No. AHM-EXCUS-001-COM-014-015-21-22 dated 29.11.2021, upholding the Service tax demand. Being aggrieved the appellant filed appeal before the CESTAT and the matter is pending at CESTAT.

11. I also find that the appellant contended that the show cause notice has invoked the extended period of limitation and when the fact was in the department's knowledge since long the extended period cannot be invoked and the show cause notice is time barred. In this regard, I find that the show cause notice covers the period

from 01.04.2015 to 31.03.2016. I also find that the due date for filing the ST-3 Returns for the period April, 2015 to September, 2015 was 25th October, 2015 and thus last date for issuance of the Show Cause Notice falls on 24.04.2018 in terms of the provisions of Section 73 of the Finance Act, 1994. I also find that the SCN was issued on 28.01.2018. Therefore, the demand is issued within the time prescribed and without invoking extended period and the contention of the appellant not sustainable.

12. As regard, the appellant placed reliance on decision of the advance ruling in the case of M/s. Tandus Flooring India Pvt. Ltd. Vs. CST, Bangalore, I find that the said decision of the advance ruling in respect of Marketing and Sale Support Service, where no physical goods available, whereas in the present case the physical goods i.e. sample of drugs available with the appellant and the service provided by the appellant is performance based service, therefore, the said decision of advance ruling not applicable in the present case.

12.1 I also find that the appellant place reliance on decision in the case of The Bengal Immunity Company Limited v. The State of Bihar and Ors reported at (1995) 6 STC 446 (SC), however, I find that both the same are for the time period prior to the Place of Provision of Service Rules, 2012 and hence not applicable in the present case.

12.2 As regard, the appellant placed reliance on decision in the case of Cox & Kings India Ltd. Vs. CST, New Delhi reported in 2014 (35) S.T.R. 817 (Tri. - Del.) in respect of Tour Operator Service, where no physical goods available, whereas in the present case the physical goods i.e. sample of drugs available with the appellant and the service provided by the appellant is performance based service, therefore, the said decision is not applicable in the present case.

12.3 I also find that the appellant place reliance on decision in the case of Commissioner of Service Tax, Mumbai-II Vs. SGS India Pvt. Ltd. reported in 2014 (34) S.T.R. 554 (Born.) however, I find that the same are for the time period prior to the Place of Provision of Service Rules, 2012 and hence not applicable in the present case.

13. In view of the above discussion, I uphold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

14. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

The appeal filed by the appellant stands disposed of in above terms.

ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 22.12.2023

Attested

(अमरेंद्र कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद

By RPAD / SPEED POST

To,
M/s. Veeda Clinical Reasearch Ltd.
Shivalik Plaza-A,
Ambawadi, Ahmedabad – 380015..... Appellant

The Joint Commissioner,
Central GST,Ahmedabad South..... Respondent

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad South
3) The Joint Commissioner, Central GST, Ahmedabad South
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (For uploading the OIA)
5) Guard File
6) PA file


आयुक्तालय, केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD