

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 442 of 2011

(Arising out of OIO-STC/10/COMMR/AHD/2011 dated 31/03/2011 passed by
Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Dishman Pharmaceutical & Chemicals Ltd

.....Appellant

Survey No. 47, Paiki Sub Plot No. 1,
Village : Lodariyal, Taluka : Sanand,
Ahmedabad
Gujarat

VERSUS

C.S.T.-Service Tax - Ahmedabad

.....Respondent

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat - 380015

APPEARANCE:

Shri R. Subramanya, Advocate appeared for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (Authorized Representative) for the
Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. P.ANJANI KUMAR**

Final Order No. A/ 10248 /2022

DATE OF HEARING: 16.11.2021
DATE OF DECISION: 14.03.2022

RAMESH NAIR

This appeal is against the Order-In-Original No. STC/4-56/O&A/Dn.II/2009/01 dated 31.03.2011 of the Commissioner of Service Tax, Ahmedabad. The appellant are engaged in the manufacturing of Bulk Drugs falling under the Chapter 29 of the Central Excise tariff Act, 1985 and registered with the department for payment of service tax under the category of GTA, BAS, Online Data Information Service etc. During the

course of audit, it was observed by the audit officers that appellant is receiving the taxable services from outside India and incurred the expenditure in foreign currency. Revenue initiated proceedings against them to demand and recover service tax not paid under reverse charge mechanism during the period 2006-07 to 2008-09. Proceedings initiated against the appellant culminated in the impugned order resulting in confirmation of Service tax liability of Rs. 45,42,521/-. A penalty under Section 76,77 and 78 of the Finance Act, 1944 was also imposed. Aggrieved, the appellant is before this forum.

2. Shri R. Subramanya, Learned Counsel appearing for the Appellant submit the expenses wise contentions as under:

(i) Acquisition Expenses:-These expenses are incurred for legal services availed and utilized for the purpose of acquiring various units outside the India. The entire activity of Service have been received outside India, in a non-taxable territory. Hence not taxable under reverse charge mechanism. Service tax on legal Service was brought into the statue from 01.09.2009. Prior to 01.09.2009, these services would not have been taxed.

(ii) Administrative Services: - The expenses incurred by Dishman Europe Ltd., a group company of the appellant located in London, United Kingdom and on the debit notes raised to the parent company i.e the appellant, the same have been reimbursed by the Appellant. Any

Expenditure incurred by them on behalf of another group company cannot be considered as provision of service by one person to any other person. He place reliance on the Judgment of the Hon'ble Gujarat High Court in the case of **CST Vs Arvind Mills Ltd** cited in **2014(35)STR496(Guj)**, wherein it is held that "subsidiary companies could not be said to be client of holding company". Further in the present matter place of provision of service is non-taxable territory, hence not liable for payment of Service tax.

(iii) Stock Exchange Fees : - Stock Exchange fees paid for securities trading and Singapore Stock Exchange at Singapore, being the statutory fees payable by any company cannot be taxable service under reverse charge mechanism. Further place of provision of service itself in in a non-taxable territory, so does not attract service tax under reverse charge mechanism.

2.1 He further submit that extended period of limitation cannot be invoked in the instant case for the period 2006-07 to 2008-09 as there has not been any willful suppression or misstatement of facts with intent to evade payment of tax. He placed reliance on the following judgments:

- Lakshmi Engineering Works Vs CCE [1989 (44) ELT 353 (T)]
- Pushpam Pharmaceuticals Company Vs CCE [1995 (78) ELT 401 (SC)]
- Jai Prakash Industries Ltd. Vs CCE 2002 (146)ELT 481 (SC)]

- Nestle India Ltd. Vs CCE 2009 (235)ELT 577 (SC)
- Padmini Products Vs CCE 1989(43) ELT 195 (SC)

2.2 He also submits that even if it assumed that in the present matter Appellant was liable to pay Service tax, it is the case of revenue neutral as credit of the taxes paid was available as cenvat credit. He relies on the following judgment:

- CCE Vs Indoeos ABS Ltd – 2010(254) ELT 628 (Guj)
- Matrix Telecom Pvt. Ltd. Vs CCE Vadodara-II -2013(32) STR 423 (Tri. -Ahmd.)
- Quippo Energy Pvt. Ltd. Vs CCE & ST. Ahmedabad-II 2016(331)ELT 617 (Tri. Ahm)

3. On the other hand, Shri Ghanshyam Soni, Joint Commissioner (AR) appearing for the Revenue reiterates the finding recorded in the impugned order. He submits that Ld. Commissioner rightly confirmed the demand of Service tax of Rs. 12,73,276/- on the ground that the Appellant could not produce the documentary evidences to prove that service provided by M/s Ernst & Young and Niedere Kraft & Frey were in nature of "Legal Consultancy Services". Further service tax demand of Rs. 32,68,395/- confirmed on the ground that Appellant has never produced any evidence to show that the

nature of expense incurred by M/s Dishman Europe Ltd. on their behalf for which reimbursements have been made to them. In the absence of any contrary evidence to prove that the said payment made by the appellant to M/s Dishman Europe Ltd., were not for sale of goods or any such activity demand is justifiable. Further he submits that Ld. Commissioner rightly confirmed the demand of Rs. 6,861/- on stock exchange service availed by Appellant. The provisions of Section 66A read with Rule 2(1)(d)(v) of Service tax Rules, 1944 are applicable in the instant case. Therefore under reverse charge mechanism, the recipient of service i.e. appellant is liable to pay service tax.

4. We have considered the submissions made by both the sides and perused the records. As regard the "Acquisition Expense" the Learned Commissioner has confirmed the demand on the ground that these are not in the nature of Legal Consultancy Service as the appellant could not produce any documentary evidence and therefore the service tax was confirmed under "Business Support Services". We find that the services received from the same service provider, part of the same accepted as a Legal Consultancy Service and demand there to was dropped. We find that in respect of the services availed for which the demand was confirmed, the appellant have not produced the documents which support their stand that the service is of Legal Consultancy service. Therefore, this issue needs

to be re-considered. As regard the demand on administration service it is the submission of the appellant that there is no service provided by the their group company i.e. Dishman Europe Ltd. to them but this is reimbursement of expenses to their group company. We find that though the appellant claimed that this expenses are reimbursement but no details were brought on record to ascertain whether this expenses are on account the activity amount to services to the appellant by their group company or by any other service provider. Therefore, to finally come to the conclusion whether any service is involved and same is liable to service tax, details of this administrative service needs to be verified on the basis of source documents.

4.1 As regard the service tax demand on stock exchange fees, we find that no documentary evidence was produced to show that this is a statutory levy and the appellant have paid as reimbursement. It appears that the Stock Exchange has charged fees to the appellant against the stock exchange service, therefore, in our considered view in the facts of this activity, the stock exchange- Singapore has provided the service to the appellant against stock exchange service therefore, this clearly covers under taxable service and appellant is liable to pay tax under Reverse Charge Mechanism in terms

of Section 66A read with Rule 2(1)(d)(iv) of Service Tax Rules, 1994. Accordingly, demand of service tax on stock exchange service is upheld.

5. As regard the demand of service tax on acquisition expense and administrative service, the matter is remanded to the adjudicating authority to re-consider afresh. In result, we pass the following order:

- (i) Demand of Service Tax on Stock Exchange Service is upheld.
- (ii) The matter relates to Service Tax on acquisition expense and administrative service remanded to the Adjudicating Authority.
- (iii) Appeal is disposed of in the above terms.

(Pronounced in the open court on 14.03.2022)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**P.ANJANI KUMAR
MEMBER (TECHNICAL)**