CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86011 OF 2019

[Arising out of Order-in-Appeal No. PK/1015/ME/2018 dated 31st December 2018 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.]

Roche Products (India) Pvt Ltd
1503, 15th Floor, The Capital, Bandra-Kurla Complex,
Bandra (East) Mumbai, Maharashtra – 400 051 … ***Appellant***

versus

Commissioner of CGST & Service Tax
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai – 400 012 ***…Respondent***

APPEARANCE:

Ms Disha Gur Sahaney, Advocate for the appellant

Shri Vinod Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A /85931/2022

DATE OF HEARING: 04/10/2022
DATE OF DECISION: 04/10/2022

This appeal lies against order-in-appeal no. PK/1015/ME/2018 dated 31st December 2018 of Commissioner of CGST & Central Excise (Appeals-II), Mumbai which has upheld the order of the original authority rejecting their claim for refund of ₹ 18,06,176/-

under notification no. 27/2012-Central Excise Act, 1944 dated 18th June 2012 for the second quarter between October 2015 to December 2015 and the last quarter of 2016.

2. Learned Counsel for the appellant submits that the denial of refund has been premised on the assumption that they had themselves conducted 'clinical trials' on goods supplied by their holding-company, *viz.*, M/s F Hoffmann-La Roche AG (FHLR) based in Switzerland, which would render the said activity to be that of providing of services within the 'taxable territory' by operation of rule 4(a) of Place of Provision of Services Rules, 2012. It was contended that their plea before the lower authorities of being barred from doing so in the absence of approval from the Drugs Controller General of India (DCGI) and of the Central Drugs Standards Organisation (CDSO) was not even taken into consideration. It was submitted that description as 'clinical trial expenses' in several of the invoices was insufficient to conclude that they had rendered service within the ambit of rule 4 of Place of Provision of Services Rules, 2012.

3. Learned Authorised Representative contends that, in the agreements of the appellant with other entities in India, the definition of 'clinical trials' in their respective agreements requires supply of the formulation and drugs implying that rule 4 of Place of Provision of Services Rules, 2012 had been correctly invoked. He further submits that the Tribunal in *Arcelor Mittal Projects India Pvt Ltd v.*

Commissioner of Service Tax, Mumbai-II [2019 (28) G.S.T.L. 315 (Tri. - Mumbai)] had made a reference to the Hon'ble President for constitution of Larger Bench in view their disagreement with the existing decision that excluded taxability of such overseas money transactions.

4. Having heard both sides and perused the submissions, it would appear that the denial of refund of the accumulated CENVAT credit arose from the presumption of taxability of the said activity within rule 4 of Place of Provision of Services Rules, 2012. The contention of Learned Authorised Representative on the reference for constitution of a Larger Bench is not tenable as the very same precedent, which binds the bench making the reference till set aside, is binding to the extent of entertaining no reason to disagree. Moreover, the reference for constitution of the Larger Bench is only an interim order which does not bind coordinate benches.

5. It is seen from the records that no demand has been raised in relation to the alleged 'taxable service' owing to which the present claim for refund has been denied for not being export within the meaning of rule 6A of Service Tax Rules, 1994. It is only by raising such demand that taxability can be asserted and exports held as not having taken place.

6. Rule 4 of Place of Provision of Services Rules, 2012 is a

deviation from the default principle set out in rule 3 of Place of Provision of Services Rules, 2012, which, itself, has been structured to conform to the new paradigm of taxing all services other than in 'negative list' and omnibus declaration in section 65B(44) of Finance Act, 1994 that does not identify the beginning and end of specific services. Essential to invoking of rule 4 of Place of Provision of Services Rules, 2012 is the providing of goods upon which service can be rendered. No records are available of such having been done and there is also no reference in the show cause notice to such. Accordingly, notwithstanding the submission of Learned Authorised Representative that the agreements should be subject to a fresh consideration by the original authority which amounts to permitting the scope of the show cause notice to be expanded, the absence of any findings in the orders of lower authorities, or even an allegation, that goods had been furnished to the appellant herein for rendering any service to the overseas entity renders the denial of refund as improper. Accordingly, the impugned order is set aside and the refund application is restored to the original authority for proceeding in accordance with the provisions of the said notification on the finding that it is rule 3 of Place of Provision of Services Rules, 2012 which applies. Appeal is, accordingly, disposed off.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*