आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599	फैक्स/ FAX : 079-2754 4463	E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. STC/15-47/O&A/Denovo/2022 **DIN : 20230664WT000000D17E**

आदेश की तारीख़ / Date of Order : 13.06.2023

जारी करने की तारीख़ / Date of Issue : 13.06.2023

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 02 /2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैंचार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय:- कारण बताओ सूचना:

Subject: Denovo Proceedings initiated vide CESTAT, Ahmedabad's Final Order No. A/10248/2022 dated 14.03.2022, arising out of Order In Original No. STC/10/COMMR/AHD/2011 dated 31.03.2011 passed by the Commissioner, Service Tax, Ahmedabad (SCN F.No. STC/4-56/O&A/Dn. II/2009 dated 23.10.2009) against M/s. Dishman Pharmaceuticals & Chemical Ltd (100% EOU), Survey No. 47, Village: Lodariyal, Tal. Sanand, Dist: Ahmedabad – 382220.

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-- 02 /2023-24

M/s Dishman Pharmaceuticals & Chemical Ltd (100% EOU), Survey No. 47, Village: Lodariyal, Tal. Sanand, Dist: Ahmedabad - 382220. (hereinafter referred to as the 'Assessee' for the sake of brevity), were issued SCN F.No. STC/4-56/O&A/Dn. II/2009 dated 23.10.2009 by the then Commissioner, Service Tax, Ahmedabad, for demanding service tax of Rs. 1,09,70,971/-. The said SCN was adjudicated by the then Commissioner of Service Tax vide Order-In-Original No. STC/10/COMMR/AHD/2011 dated 31.03.2011. The demand of Service Tax of Rs. 45,42,521/- was confirmed [Acquisition Expenses Rs. 12,73,276/-, Administrative Service Rs. 32,68,397/- and Stock Exchange Fees Rs. 848/-]. The rest of the demand of service tax of Rs. 64,28,450/- [Acquisition Expenses Rs. 39,98,417/-, License Fees Rs. 6,05,095/-, Patent & Trade Mark Rs. 5,54,463/- and Administrative Service Rs. 12,70,475/-] was dropped by the Commissioner vide the aforementioned order in original. The subject OIO issued by the Commissioner as adjudicating authority was accepted by the department on 23.05.2011. However, aggrieved by the Order In Original confirming the demand of Rs. 45,42,521/- passed by the Commissioner, the assessee had preferred an appeal against the same in CESTAT. The Hon'ble Tribunal vide its Order No. A/10248/2022 dated 14.03.2022 has remanded the matter for reconsideration of the matter by the adjudicating authority afresh, as the assessee had not produced the documents before the adjudicating authority.

BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S DISHMAN PHARMACEUTICALS & CHEMICAL LTD (100% EOU), ARE AS FOLLOWS:

M/s Dishman Pharmaceuticals & Chemical Ltd (100% EOU), Survey No. 47, Village: Lodariyal, Tal. Sanand, Dist: Ahmedabad - 382220 (hereinafter referred to as "the assessee") were engaged In the 'manufacturing of Bulk Drugs falling under the Chapter 29 of the Central Excise Tariff Act,1985. The said noticee had also taken Service Tax Registration Certificate bearing number AAACD4164DST001 under the category of (GTA, BAS, Online Data Information Service etc.)

2. During the course of audit conducted at the premises of the said noticee by the departmental officers during February' 2009, it was noticed that the assessee was a recipient of various services as detailed under:

TABLE

The year wise amount involved is as under:-

Foreign Expenditure Amount	
For 2006-07	: Rs.4,20,81,120/-
For 2007-08	: Rs.1,62,87,632/-
For 2008-09	: Rs.1,47,35,995/-
Total	: Rs.7,31,15,748/-

3. It appeared that the assessee had not paid Service Tax on Services received in foreign countries. As per Section 66A of Finance Act, 2006, taxable service Include services received outside India by a person who has his place of business, fixed establishment, permanent address or usual place of residence in India. The noticee had a registered office at Ahmedabad (India). Hence the assessee being recipient of service, appeared liable for payment of Service tax.

4. The Superintendent of Service Tax, AR-IX, Division-II Ahmedabad had written a letter dated 15-06-2009 to the assessee asking them to furnish the details of such payments for the year 2004-05 and 2005-06. In response to the said letter the assessee had filed a reply dated 11.08.2009. They had informed that a detailed reply had already been submitted in this regard and they had enclosed a copy of that letter dated 03.03.2009 addressed to the Superintendent of Central Excise, Audit Section, Ahmedabad-II, wherein they had contented that:-

(a) Patent & Trade Mark Asset Fees:- These payments were effected by Dishman Pharmaceuticals and Chemicals Limited (DPCL) to Netherlandsh Octroo Bureau of Netherlands for registration of patents and the said service of Bureau of Netherlands was in the nature of legally qualified attorney like a Trade & Patent attorney. These services were in the nature of legal consultancy therefore Service Tax was not leviable on legal consultancy services under the Finance Act, 1994.

(b) Subscription Expenses:- These expenses were incurred either at the time of the subscription of Books & periodicals or at the time of Online Data Transfer. There was no service tax on the purchase of Books & periodicals but service of Online Data Transfer was taxable for which they were paying service tax details of which were shown to audit party.

(c) Administrative Services:- The expenses incurred by Dishman Europe Ltd have been reimbursed by DPCL. Dishman Europe Ltd., is a group company located outside India. 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. Dishman Europe Ltd. is not engaged in the activity of providing taxable services. Dishman Europe Ltd. is recovering some of the expenses incurred by it from DPCL in the course of its main functioning in Europe which is not the activity of provision of service.

(d) Acquisition Expenses:- These were also the legal expenses incurred by DPCL in respect of various legal services availed by DPCL.

(e) Stock Exchange Fees:- Stock Exchange Fees being the legal/statutory fees payable by any company to get some statutory registration to enable listing of the Exchange was not a service & hence not taxable.

(f) License Fees;- License Fees is in the nature of fees which have to be paid as per statutory requirement as per the provision prevalent in the respective countries which cannot be termed as provisioning of services,

(g) Legal Fees:- Legal Fees paid was not chargeable to Service Tax.

5. A statement of Shiri Jayesh Ratilal Shah, Excise Manager of the assessee had been recorded on 30.05.2009, wherein he had stated that they were not liable for payment of Service Tax on the services such as Acquisition Expenses, Subscription Expenses, License Fees, Patent and Trademark, Administrative Services, Stock Exchange Fee and the reasons for non payment of service tax have been discussed in detail in their letters dated 03.03.2009 and 11.08.2009 submitted to Central Excise and Service Tax departments. He had further produced a worksheet duly signed by him and by Mr. Sanjiv Bhatt(AGM account), showing month wise -as well as year wise audited figures of Acquisition Expenses, Subscription Expenses, license Fees, Patent and Trademark, Administrative Services, Stock Exchange Fee for the period from April 2004 to March 2009 (2004-05 to 2008-09). On being pointed out some discrepancies by the Range Officer, the assessee had further submitted a modified worksheet on 06/10/2009.

6. On verification, it appeared that a subscription expenditure is incurred at the time of subscription of books and periodicals for which there is no need to pay Service Tax. Further, when there is an online data transfer the assessee had paid Service Tax at appropriate rate. Further on verification it appeared that stock exchange services were brought under service tax net on 16.05.2008. Hence the figures prior to 2008-09 of the said stock exchange services were not considered for this show cause notice. On verification, it appeared that administrative service appeared to be falling under the category of 'Business Support Services' which were brought to service tax net on 01.05.2006, therefore the figures prior to 2006-07 of these services were not considered for the show cause notice. On the basis of details furnished by the said assessee a detailed worksheet was prepared in the form of Annexure-A attached to the Show Cause Notice. On going through the Annexure-A, it appeared that the noticee had made payment of Rs.8,95,44,101/- for the above said services for the period from 2004- 05 to 2008- 09 on which they had not made payment of Service Tax (including 2% Ed. Cess & 1% S&H Cess) amounting to Rs.1,09,70,971/-.

7. As per the provision of Rule 2(1)(d)(iv) of Service Tax Rules, 1994 (hereinafter referred to as the Rules) and as per Section 66A of the Finance Act 1994 (hereinafter referred to as the Act), in relation to taxable Service provided by any person from a country other than India and received by any person in India, then recipient of such service shall pay the Service Tax. As per the provisions of Section 68 of the Act read with Rule 6 of the Rules, every person providing taxable service to any person, shall pay the Service Tax at the rate specified in Section 66 of the Act in such manner and within such period as may be prescribed.

8. In the subject case, it appeared that the said assessee had not paid the service tax leviable thereon and thereby contravened the provisions of section 68 of the Act and they appeared to have rendered themselves liable for penalty as provided under section 76 of the Act.

9. As per the provision of Section 70 of the Act read with Rule 7 of the Rules, every person liable to pay Service Tax shall himself assess the tax due on the services provided by them and shall furnish to the Superintendent of Central excise, a return in the prescribed form ST-3 by 25th of the month following the particular half year. In the subject case, the said assessee had not filed returns for the services received by them during the period under reference and appeared to have contravened the provisions of section 70 of the Act, therefore, they appeared to have rendered themselves liable to pay late fee as provided under section 70 of the Act.

10. As per the provision of Section 67 of the Act, every person liable to pay Service Tax, should himself show the correct value of the services for discharging service tax liability. In the subject case, the assessee had provided the year wise details of patent and trademark, subscription expenses, administrative services, acquisition expenses, stock exchange fees, legal fees etc provided outside India and received in India for the period from 2004-05 to 2008-09, but they had paid the Service Tax due and as such, the said assessee had contravened the provisions of section 67 of the Act, accordingly, they appeared to have rendered themselves liable to penalty as provided under section 78 of the Act.

11. As per the provision of Section 75 of the Act, if any person is required to pay the service tax, but does not pay the service tax in time prescribed has to pay the interest. Therefore, it appeared that the assessee was required to pay the interest as provided under Section 75 of the Act.

12, From the Annexure-A attached with this Show Cause Notice, it can be seen that the assessee had not disclosed the taxable value of Rs. 8,95,44,101/- before the Service Tax department in any of the ST-3 returns filed by them though the said taxable value has been shown in their profit & loss account and thereby they had short paid Service Tax to the tune of Rs.1,09,70,971/-. By this way the noticee had suppressed the material facts from the department with an intention to evade payment of service tax and hence the extended period appeared invokable for effecting recovery of non paid/ short paid amount of service tax, as provided under Section 73 of the Act.

13. All these acts of contravention on the part of the said assessee appeared to have been committed by way of suppression of facts with an intent to evade payment of Service Tax and therefore, the said service Tax not paid by them was required to be demanded and recovered from them under the proviso to Section 73(1) of Act by invoking extended period of five years. All these acts of contravention of the provisions of Section 66,67,68,69 and 70 of Act read with Rules 4,5,6, and 7 of Rules appeared to be punishable under the provisions of Section 76 and 77 of the Act

14. For the same reasons, it appeared that they had wilfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax. Therefore, they appeared to have rendered themselves liable for penalty under section 78 of the Act.

15. Therefore, M/s Dishman Pharmaceutical & Chemical Ltd (100%EOU), were issued show cause notice vide Show cause notice F. No. STC/4-56/0&A/Dn.11/2009 dated 23.10.2000 by the Commissioner, Service Tax, Ahmedabad calling upon as to why:-

(i) The Service Tax, Education cess and Higher Edu. Cess on the services provided outside India but received In India totally amounting to Rs. 1,09,70,971/- (Rs. One Crore Nine Lakhs Seventy Thousand Nine Hundred Seventy One Only) for the period from 2004-05 to 2008-09 as detailed In Annexure-A attached to the Show Cause Notice should not be demanded/ recovered from them under the first proviso of sub-Section (1) of Section 73 of the Finance Act, 1694, by invoking extended period.

(ii) interest at the appropriate rate should not be demanded and recovered from them on the total amount of Service Tax as mentioned at (i) above under the provision of Section 75 of the Finance Act, 1994, from the due date of payment upto the actual date of payment.

(iii) penalty under Section 76 of the Finance Act, 1994, should not be imposed upon them for their failure to pay Service Tax within the period prescribed under Section 88 of the Finance Act, 1994, read with the Rule 6 of the Service Tax Rules, 1994.

(iv) Penalty under Section 78 of Finance Act, 1994 should not be Imposed upon them under Section 78 of Finance Act, 1994 for suppressing of value of taxable service with intent to evade payment of Service Tax.

(v) Penalty under Section 77 of Finance Act, 1994 should not be imposed upon them for their failure to file ST-3 returns within the time prescribed under Section 70 of Finance' Act, 1994 read with Rule 7 of Service Tax Rules, 1994.

(Defence Reply & Personal Hearing submitted/held before the then adjudicating authority):

16. The assessee vide their letter dated 02.04.2010 filed their written submission to the above mentioned Show Cause Notice. They denied all allegations made in the SCN to charge service tax under various heads as well as for different types of expenses incurred by them. They referred to their letter dated 03.03.2009 submitted by them as reply to the Audit Report. They submitted that Section 66A was introduced w.e.f. 18.04.2006 and has become applicable for the period after 18.04.2006. The said section - 66A is in relation to import of services provided from outside India and received in India. As per the provisions contained in "Taxation of Services (Provided from outside India and received In India) Rules, 2006", these services have been categorized in 3 different clauses as specified in Rule 3 of the said rules. They had reproduced the text of Rule 3 of "Taxation of Services (Provided from Outside India and received in India) Rules, 2006" as under:

"RULE 3. Taxable services provided from. outside India and received in India. — Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services,-

"RULE 3. Taxable services provided from. outside India and received in India. — Subject to section 66A of the Act, the taxable . services provided from outside India and received in India shail, in relation to taxable services, —

(i) specified in sub-clauses (d), (p); (q), (v), (zzq), (zzza), (zzzb), (zzzc), [(zzzh), (zzzr), (zzzy), [(zzzz), (zzzza), and (zzzzm)] of clause (105) of section 65 of the Act, be such services as are provided or to be provided in relation to an immovable property situated in India;

(ii) specified in sub-clauses (a), (f,) (h), (i), (j), (l), (m), (n), (o), (s), (t), (u) (w), (z), (zb), (zc), (zd), (zi),(zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm), (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), [(zzzf), (zzzp), (zzzzg), (zzzzh), (zzzzi), (zzzzk), and (zzzzl)] of clause (105) of section 65 of the Act, be such services as are performed in India :

Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the ruies made thereunder :

[Provided further that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of clause (105) of section 65 of the Act, are provided 'in relation to any goods or material or any immovable property, as the case may be, situated in India at the time of provision of service, through internet or an electronic network including a computer . network or any other means, then such taxable service, whether or not performed in India, shall be treated as the taxable service performed in India].

(iii) specified in. clause (105) of section 65 of the Act, but excluding, —

(a) sub-clauses (zzzo) and (zzzv);

(b) those specified in clause (i) of this rule except when the provision of taxable services specified in clauses [(d), (zzzc), (zzzr) and (zzzzm)] does not relate to immovable property; and

(c) those specified in clause (ii) of this rule, be such services as are received by a recipient located in India for use in relation to business or commerce :

[Provided that where the taxable service referred to in sub -clause (zzzzj) of clause (105) of section 65 of the Act is received by a - recipient located in India, then such taxable service shall be treated as taxable service provided from outside India and received in India subject to the condition that the tangible goods supplied for use are located in India during the period of use of such tangible goods by such recipient] —

They then discussed all the issues covered in the SCN as under:

17 Acquisition Expense:-

2006-07:

These are mainly the legal expenses incurred by DPCL in respect of various legal services/legal consultancy service availed, the same became chargeable to tax under Finance Act, 1994 with effect from 01.09.2009 only and hence the entire amount of expenses is not chargeable to tax. They had enclosed the

statement as Exhibit-A, showing the voucher wise details of expenses. incurred by them for the entire period of 01.04.2006 to 31.03.2008.

They submitted that out of the entire amount of Rs. 3,78,77,185/- shown in the Annexure - A to the SCN, the company had already paid goods and service tax on the value of Rs. 55,40,921/-, When the service tax is charged in the country in which the expense is incurred it is a conclusive evidence of the fact that the service can neither be said to have been received in India nor can the same be said to have been used in India. The concept of charging service tax under reverse charge is to ensure that the services provided from outside India do not escape the levy since such person does not have any place of business in India and hence the recovery is made from the receiver of the service. Here since the expenses have already suffered the burden of service tax in the country where the same had been provided, the same cannot simultaneously be said to have been received & used in India and hence the liability cannot be attracted again in India.

They had further submitted that they had already suffered the service tax by way of payment of the bill of M/s. Rabo India Securities Pvt. Lid., Forbes Building, 2" Floor, Charanjit Rai Marg, Fort, Mumbai, India, being the service provider registered with the service tax department to whom they had paid the entire amount of the bills consisting the value of Rs. 81,03,067/ and the service tax amount of Rs. 9,91,815/- (9,79,200/- + 12,615/-). Hence the question of liability of service tax does not arise in respect of this value of Rs. 81,03,067/- and this expense was incurred by them in INR.

As regards the balance amount of Rs. 2,42,33,196/- for the year 2006-07, they clarified that all these expenses are in the nature of the legal expenses which if chargeable by any stretch of Imagination, could fall under the category of Legal Consultancy Services which came to be chargeable to service tax under the Finance Act 1994 only with effect from: 01.09.2009 only, which is shown by way of the details in the remarks column of the statement submitted by them.

Hence the entire value of Rs.3,78,77185/- allegedly chargeable is not taxable. It is true that the expenses are incurred in foreign currency but only the fact that the expenses are incurred in foreign currency does not by itself make the expense, liable to service tax under section 66A or under rule 2(1)(d)(iv) of Service Tax Rules 1994,

2007-08

As regards the value of Rs. 51,41,796/- being the value allegedly chargeable to service tax for the year 2007-08, they stated that Rs.25,70,802/- comprise of the expenses which are in relation to the reimbursement of expenses incurred in the course of providing the legal consultancy service provided to the company and hence can exclusively be classifiable under the category of Legal Consultancy Services only which came to be chargeable to service tax under the Finance Act 1994 with effect from 01.09.2009 only. The remaining amount of Rs 25,70,994/- is a rectification entry only and not an expense but due to some error the credit side same figure was not considered in drafting of notice. They submitted that on the basis of the discussion hereinabove, the entire amount allegedly chargeable to service tax was worked out without application of the correct provisions of the law and hence deserves to be quashed in the interest of justice.

18. License Fees:-

As regards the proposal to levy service tax on the license fees expenses incurred by them, they submitted that it may be observed from the voucher wise statement for each of the years 2004- 05 to 2008-09, that most of the expenses

are in the nature of expenses incurred in Indian Rupees as opposed to the allegation in the SCN that these expenses were incurred in foreign currency. In fact the department while finalizing the SCN had taken the figures from the ledger accounts or the Balance Sheet of the company without further verification of the details of the expenses. It can also be verified from the details shown in the statement at Exhibit A2 that most of the expenses incurred are for payment of the license fees to the local government bodies like DGFT for application fees for availing the licenses from DGFT under various schemes of the Export Import Policy, the fees paid to the domestic inspecting agencies In Indian Rupees, fees paid to Gujarat State government for Alcohol transport supervision fees, factory license fees, fees to GCCI, fees paid to narcotics & explosive departments, fees for FDCA department, electrical contract license etc...

As regards the proposal to recover the Service Tax U/s 66A read with rule 2(1)(d)(iv) of Service Tax Rules 1994, they had submitted that though the Liability as proposed was not attachable to for the reasons mentioned above, the liability under reverse charge mechanism is applicable only for the services rendered after 18.04.2006. The department had erred in proposing to cover the entire period from 2004-05 to 2008-09 and no attempt had been made to bifurcate the liability for the period prior to the introduction of Section 66A and for the period subsequent thereto. And hence the value of taxable services of Rs. 49.51 lacs worked out in the SCN is erroneous without justification and hence illegal.

In fact, going in to the factual aspects of the issue involved in relation to this part of the liability i.e. service tax allegedly proposed to be paid by them, the liability of service tax does not arrive at all since almost all the expenses were incurred in INDIAN RUPEES and all such expenses incurred were for the purpose of payment of various statutory government fees. Hence without even examining and testing the applicability of Section 66A and / or provisions or Rule 2(1)(d)(iv) of the Service tax rules 1994, there cannot be any charge of service tax in respect of the entire value of Rs. 49,51,196/- as displayed under the heading Licence Fees in Annexure A to the SCN.

However, the above amount of Rs. 49,51,196/- also included an amount of Rs.22,09,921/- during the period 2007-08 being the value of service as mentioned in the said Annexure A to SCN for this they had clarified that they had already paid service tax on the amount. The relevant voucher/bill is submitted herewith annexed as Exhibit a(3).

19. Patent & Trade mark Asset Fees:-

The lability under patent and trademark category had been worked out on the value of Rs.47,01,725/- bifurcated into the years 2005-06 to 2007-08 as under :-

Year	Value of Service as per SCN
2005-06	10,75,359
2006-07	28,69,466
2007-08	7,56,900

2005-06 value of Rs. 10,75,350/-

The had stated that expenses incurred were in relation to the fees paid to the attorneys for legal services as can be seen from the vouchers and these services had become taxable w.e.f. 01.09.2009. And in the instant case these expenses had been incurred prior to 01.09.2009. In addition, other expenses were the expenses for making the application for patent and trade. These were not in the nature of the services rendered by any one to them. Hence the entire

amount taken from the ledger account of the company had been wrongly termed as expense in foreign currency towards receipt of service by them. The department in the notice had either ignored or had failed to provide any justification or evidence quoting the correct and legal provisions of law applicable for proposing to levy service tax while drafting the said notice

2006-07 value Rs.28,69 ,466/-

As regards the value of services for the year 2006-07 being Rs.28,69,466/- they had clarified that the value of Rs.5,20,000/- was pertaining to the payment effected to M/s Jatin H. Trivedi being the attorney and advocate for their services as legal services according to the bills raised by them in Indian Rupees. Since this being the legal services, Service tax was not applicable for the period prior to 1-9-2009.

Now for the balance amount of Rs.23,49,466/-(2869466 minus. 520000} for the year 2006-07 was in relation to the legal expenses incurred by them in foreign currency for which they had submitted the respective voucher wise bill. These payments were effected to Nederlandsch octroi bureau for patent application in the USA. All these expenses being in the nature of legal expenses paid to the European Patent and Trademark Attorneys were in the nature of legal expenses which came to be taxable w.e.f. 01-09-09. And hence irrespective of whether they are covered u/s 66A of the Finance Act 1994 or under the provisions of Rule 2(1)(d)(iv) of Service Tax Rules, 1994, they were not liable to service tax since the service was classifiable under the category of legal services.

They had submitted that no part of the value proposed to be covered under patent and trade mark services would not be falling under this category of patent and trademark services as could be verified from the definition of Intellectual Property Services under sub section 55b of section 65 of the Finance Act 1994.

The department had erred in proposing the service tax under Section 66A covering the period from 2004-05 to 2008-09, though the levy imposed w.e.f 18.04.2006. And no attempt had been made to bifurcate the liability for the period prior to the introduction of Section 66A and for the period subsequent thereto. And hence the value of taxable services of Rs.47.02 lacs worked out in the SCN was without justification and hence illegal.

20. Administrative Services:-

As regards Administrative services these were in fact the expenses - incurred by Dishman Europe Ltd which had been reimbursed by DPCL. Dishman Europe Ltd had incurred the expense on behalf of DPCL. As Dishman Europe Ltd was paid by DPCL only for the expenses incurred by Dishman Europe Ltd. Dishman Europe Ltd being a group company outside India, any expense incurred by them on behalf of another group company cannot be considered as provision of service by one person to any other person. Being a group company it is but natural that to achieve the economy of scale, the expenses was to be incurred by one company & the same were to be thereafter apportioned between the various companies for whom such expenses were made & for such expenses incurred, the expenses were shared by the company for whom such expenses were made. Such an arrangement cannot be termed as provision of services. If

this type of arrangement is termed providing of services by one person for another person, it can be said that the revenue is trying to recover Service Tax on the services - provided by one person to same person & not to any other person. In addition to this Dishman Europe Ltd was not engaged in the activity of providing such type of services. It was in the course of its operation being carried out in Europe, that Dishman Europe Ltd was incurring some expense on behalf of group company, DPCL. In other words, Dishman Europe Ltd was merely recovering some of the expenses incurred by it from DPCL in the course of its main functioning in Europe which was not the activity of provision of service. Hence, the nature of expenses paid by DPCL to Dishman Europe Ltd was not suggestive of receipt of any services. Also, there was no relationship of service receiver & service provider established between the two & that was also the reason such sharing of expenses should not be termed as provision of service.

They submitted that department had shown the total taxable value of Rs.3,68,65,338/- under the heading Administrative Expense in Annexure A to the SCN bifurcated in to 3 years as under ; -

Year	Value Rs.
2006-07	1,47,36,995
2007-08	73,91 347
2008-09	1,47,36,996
Total	3,68,65,338

They had submitted that in respect of the value of Rs. 1,47,36,996/- shown against the year 2008-09, that the department appeared to have erred in taking the value from the ledger account of the company. In fact this expense for the year 2008-09 was Rs. 44,58,072/- instead of Rs. 1,47,36,996/-. Hence, to the extent of this value of Rs.1,02,78,924/- (Rs. 14736996/- minus Rs. 44,58,072/-) the value alleged was to be reduced from the total value of Rs.8,95,44,101/- alleged in the SCN.

21. Stock Exchange Fees:-

In this regard they had clarified that this expense was the annual listing fee of stock exchange as well as contingency submission fees not in respect of services provided by anyone. Stock Exchange Fees being the legal / statutory fees payable by any company to get some statutory registration to enable listing on the Exchange was not a service & hence not taxable since by no stretch of imagination this expense be termed as the provision of any service by any person to any other person.

They further clarified that even if it was to be termed as import of service, it was not chargeable to tax since the same were performed outside India. And by any stretch of imagination the same can not be said to have been performed in India and hence the proposal of department to charge service tax on this value of Rs.0.06 lacs under Section 66A, was erroneous.

22. A personal hearing was held on 4.1.2011 before the then Adjudicating Authority, which was attended by Shri Ajay D Karia, Chartered Accountant and Shri Jayesh R Shah, Manager, Excise of the said noticee. They explained all heads of expenses in brief and also gave written submission dated 4.1.2011.

They requested for some time to provide Bill wise and voucher wise evidence to explain the nature of each of the expenses. They were granted time till 17.1.2011. During the course of Personal hearing, they drew attention towards Annexure-B enclosed along with the written submission dated 4.1.2011, for category wise explanation as under:

23.

(I) Acquisition Expense

(a) Out of the total expenses of Rs.4,30,18,981/- the amount of Rs.55,40,921/- was the expense incurred in foreign currency but the said expense had suffered burden of VAT, meaning thereby that the services had been provided from outside India and had been received outside India. In addition to this, this was the service provided by legal consultants and could be categorized under Legal Consultancy Service which had been become chargeable to service tax after 01.09.2009 and since these expenses were incurred prior 01.09.2009, they could not be treated as taxable service and hence question of the place from where the services were provided was immaterial.

(b) The expenses of Rs.81,03,067/- was incurred by them in INR for the purpose of payment to the Rabo India Securities Pvt. Ltd. who had provided the service under the category of Banking & Financial Service and in fact it was the payment including service tax charged by the service provider. Hence the entire amount of Rs. 81,03,067/- was erroneously taken in the proposal to charge service tax.

(c) Amount of Rs.2,47,33,108/- was related to the payment made to the legal consultants in foreign country who had provided the legal consultancy service prior to 01.09.2009, i.e. from the date from which legal consultancy service became taxable. Hence the question of invoking the provision of section 66A on the services was not correct.

(d) As regards the amount of Rs.25,70,802/- in the year 2007-08, the same has been paid for the reimbursement of the expenses incurred by the legal consultants M/s Lovels Lee & Lee whose services were availed as legal consultancy services and hence all legal services falling under the category of legal consultancy services including the payment for reimbursement of expenses made to legal consultants also would fall under the category of legal consultancy services which came to be chargeable with effect from 01.09.2009 and hence the amount of this expense of Rs.25,70,802 incurred in the year 2007-08 was not also not chargeable to tax, under the provisions of section 66A does not arise.

(e) An amount of Rs.25,70,994/- in the year 2007-08 is an rectification entry and neither an expense nor any payment and for which they had submitted the copy of the ledger submitted.

(II) Licence Fee:

The total amount of Rs. 49,51,196 for the period of four years was in relation to various Government fees paid by them in INR. The department while drafting the SCN had grossly neglected this fact and had erred in treating these expenses as expense incurred in foreign currency and hence the basic ground under which the SCN was issued that service tax was payable under reverse

charge mechanism under section 66A in the case of expenses in foreign currency does not apply here since all the expenses are in relation to payment in INR,

In addition to this, these expenses are the direct payments by them to various Government authorities like DGFT, GCCI, FDCA Department, Narcotics and Explosive Departments, etc, which paid by them through relevant challans to these Government authorities and hence on this ground also service tax was not liable to be paid by them.

(III) Patent and Trade Mark

As regards the expenses incurred for the patents and trademark for the amount of Rs.47,01,725 for the year 2005-06 to 2007-08, all the expenses were related to the legal consultancy services availed by them and the same would be falling under the category of legal consultancy services, which became chargeable with effect from 01.09.2008 and hence all the expenses incurred prior to this date was not chargeable to tax and accordingly here also question of applicability of provisions of section 66A of the Finance Act, 1994 was not invokable.

Out of the total amount of Rs.47,01,725/-, amount of Rs.5,20,000 was paid to M/s Jatin H Trivedi, the attorney, who had raised their invoice and had not charged any service tax on the said amount since their service also fall under the category of legal services which became chargeable after 01.09.2009. This non charging of service tax by the Indian Legal Consultant itself was evident that all the services of similar nature were provided by the consultants outside India were also falling under the category of legal services and hence was not chargeable prior to 01.09.2000,

(IV) Administrative Service

Total expense of Rs. 3,68,65,338/- for the period 2006-07 to 2008-09 shown as administrative expenses were merely the reimbursement of expense by the group company. The payment was made to Dishman Europe Ltd who was not a service provider. The question of charging service tax here does not arise since the relationship of service provider and service receiver is not established in the instant case. Not only this they had not made or effected any payment towards receipt of any services from the payee i.e. Dishman Europe Ltd. This is merely booking of expense by them which was incurred by them but the payment there of was effected by the group company and not by any service provider and hence there does not arise any question charging of service tax and invoking the provisions of section 66A of Finance Act, 1994.

In addition to this, out of the total amount of Rs.3,68,65,338/- an amount of Rs.1,47,36,996/- is shown as expense in 2008-09. In fact the department had erroneously taken this figure of Rs.1,47,36,996/- instead of Rs.44,58,072/- being the expense for the entire amount in year 2008-09. Hence the amount of Rs.3,68,65,338/- was to be reduced to the extent of Rs.1,02,78,924/-. And calculation of Service Tax liabilities in SCN was also to be reduced to this extent.

24. Vide their letter dated 17.1.2011, the said noticee submitted copies of relevant vouchers, invoices and ledgers duly certified by the Authorized signatory of the said noticee summarized in Exhibits. In this regard they also submitted certificate dated 30.3.2011 of their statutory auditors Kunte and Associates, Chartered Accountants annexing ledger account abstracts in Annexure-A and B and certifying the correctness of the same. They also submitted certificate dated 30.3.2011 of their statutory auditors Deloitte Haskins & Sells, Chartered Accountants annexing ledger account abstracts in Annexure-A to H and certifying the correctness of the same.

25. The then adjudicating authority vide OIO NO. STC/10 /COMMR/ AHD/2011 dated 31.03.2011 had decided the SCN F. No. STC/4-56/Dn.II/2009 dated 23.10.2009. The adjudicating authority had ordered as under:

(i) Confirmed the demand of service tax (including education cess) amounting to Rs. 45,42,521/- (Rupees Forty five lakh forty two thousand five hundred twenty one only)[Acquisition Expenses -Rs. 12,73,276/- , Stock Exchange Fees Rs. 848/-] under Section 73 of the Finance Act,1994, by invoking the extended period of five years as per proviso to sub section (1) of Section 73 of the said Act;

(ii) Ordered to recover interest on Rs. 45,42,521/-(Rupees Forty five lakh forty two thousand five hundred twenty one only) at the prescribed rate from the said noticee under Section 75 of the Finance Act, 1994;

(iii) Imposed penalty of Rs.200/- (Rupees Two hundred only) per day for the period during which failure to pay the tax continued, or at the rate of 2% of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service upon the said noticee under Section 76 of the Finance Act, 1994, provided the total amount of penalty payable in terms of this section shall not exceed Rs. 45,42,521/- (Rupees Forty five lakh forty two thousand five hundred twenty one only) i.e. amount of service recoverable from the said noticee;

(iv) Imposed penalty of Rs. 45,42,521/- (Rupees Forty five lakh forty two thousand five hundred twenty one only) on the said noticee under section 78 of the Finance Act, 1994 . In the event or the said noticee opting to pay the amount of service tax along with all other dues as confirmed and ordered to be recovered within thirty days from the date of communication of this order, the amount of penalty liable to be paid by them under Section 78 of the Finance Act, 1994 shall be 25% of the said amount. However, the benefit of reduced penalty shall be available only if the amount of penalty is also paid within the period of thirty days from the communication of this order, otherwise full penalty shall be paid as imposed in the above order;

(v) Imposed the penalty of Rs. 1000/- (Rupees One thousand only) on the said noticee for not filing the ST-3 Returns under Section 77 of the Finance Act, 1994;

(vi) Dropped the demand of service tax of Rs. 64,28,450/- (Rupees Sixty Four Lakh Twenty eight thousand four hundred fifty only) [Acquisition Expenses Rs. 39,98,417/- Licence Fees Rs. 6,05,095/- Patent & Trademark -Rs. 5,54,463/- Administrative Services 1270475/-] as discussed in the forgoing paras.

26. The Order in Original No. STC/10 /COMMR/ AHD/2011 dated 31.03.2011 (herein after referred to as "the said OIO") was accepted by the department on 23.05.2011. However, the assessee being aggrieved with the above OIO, had filed an appeal before Tribunal and Tribunal vide its Final Order No. A/10248/2022 dated 14.03.2022 has observed with respect to Acquisition Expense that the Commissioner had confirmed the demand under the category of Business Support Service as the assessee could not produce any documentary evidences to show that the service received by them were legal service. As regard the Administration Service, the Tribunal has observed that though the appellant (assessee) claimed that this expenses are reimbursement but no details were brought on record to ascertain whether this expense are on account of the activity which amount to service to the appellant by their group company or by any other service provider. Therefore, the Tribunal observed the need to ascertain whether any service is involved or otherwise. Hence, the Tribunal has ordered to verify the same on the basis of source documents. Accordingly, the tribunal has remanded back the matter to the adjudicating authority for reconsidering the matter afresh with respect to service tax on acquisition expenses and administrative expenses only.

DEFENCE REPLY:

27. The assessee has submitted the written submission vide their letter dated 16.02.2023 in denovo proceedings, wherein they have inter alia stated that:

- In respect of Acquisition Expenses, the assessee has stated that the said expenses are legal expenses incurred by them in respect of legal services availed by them. The entire service had been received outside India, in a not-taxable territory. Hence the same is not taxable under Reverse Charge Mechanism. They have provided the copies of voucher and invoices with written submission. They have also provided information regarding service provided, service receiver and place of provision of services as tabulated below.

Service Provider	Service Receiver	Place of Provision of service
Ernst & Young AG, Bern, Switzerland	The noticee- service received for PROJECT PLYMOUTH	Switzerland (non taxable territory)

Ernst & Young AG, Zurich, Switzerland	The noticee- service received for PROJECT CARBOGEN	Switzerland (non taxable territory)
Neiderer Kraft & Frey, Law Firm in Zurich, Switzerland	The noticee- Professional Legal Services at Switzerland	Switzerland (non taxable territory)

- In respect of Administrative Expenses, they have stated that the expenses incurred by Dishman Europe Ltd, a group, have been reimbursed by them on the debit notes raised to them by Dishman Europe. They have also submitted that 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. The assessee have placed reliance on the judgement of the Hon'ble Gujarat High Court in the case of CST vs Arvind Mills Ltd cited in 2014 (35) STR 496 (Guj), wherein it is held that "Subsidiary companies could not be said to be client of holding company". They have submitted the copies of vouchers and invoices alongwith written submission. They have also provided information regarding service provided, service receiver and place of provision of service as tabulated below.

Service Provider	Service Receiver	Place of Provision of service
No service provider - Debit Notes raised by Dishman Europe Ltd for various expenses	Dishman Europe Ltd. London [Noticee has only reimbursed the expenses to the subsidiary group company	Non -taxable territory at London, UK

- They have also submitted that the administrative expenses are the expenses which were initially incurred by M/s. Dishman Europe Ltd, and subsequently claimed from the parent company Dishman Pharmaceuticals & Chemicals Ltd, Ahmedabad. They have only reimbursed the expenses incurred by the subsidiary company, for their business operations in London, UK which can be ascertained from the Invoice issued by Dishman Europe Ltd, London, UK, which is a 100% subsidiary company.
- The assessee have argued that that it is a settled law that the reimbursement expenses are not at all taxable under Finance Act, 1994, as has been settled by the Hon'ble Supreme Court in the case of **Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India - cited in 2018 (10) G.S.T.L. 401 (S.C.)**, wherein the Supreme Court has held the Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to be ultra vires and therefore the reimbursable expenses in valuation of services under Section 67 of Finance Act,. 1994, amount which is not calculated for providing taxable service cannot be part of valuation of service. Hence, Rule 5 ibid was ultra vires Section 67 ibid. It was more so amendment to Section 67 ibid by Finance Act, 2015 to include reimbursable expenditure or cost in consideration for services, indicated realisation of legislature that these were not includible before

amendment - This amendment was prospective as it was substantive and not merely declaratory.

They have reproduced para 24 to 29 of the said order as under:

24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax. the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation ds that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from. May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service" and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.

26. It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner "Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect (o the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

27. The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.

28. It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in Taj Mahal Hotel : "the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or ne whittle down its effect."

29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged. in the course of providing or agreeing to pro) idle a taxable service, Thus, only

with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-l, New Delhi v. Vatika Township Private Limited [(2015) 1 SCC 1] wherein it was observed as under;

> *"27. A legislation, be it a statutory Aet or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There Is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a Judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes" Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.*
>
> *28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 OB I], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not 10 change the character of past transactions carried on upon the faith of the then existing law.*
>
> *29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office: Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.*

- The place of provision of service itself is in a not taxable territory, and the reimbursable expenses is not includable in the taxable services under RCM. They have stated that none of the activity qualify as taxable services and more so does not attract service tax under RCM. Lastly, they have requested to drop the proceedings.

PERSONAL HEARING:

28. Personal Hearings were granted to the assessee on 19.01.2023. 06.02.2023 and 20.02.2023. The assessee had sought an extension of time for 15 Days vide their letter dated 18.01.2023. Accordingly, another date of personal hearing was granted to them on 06.02.2023, however, the assessee had not attended the Personal hearing fixed on 06.02.2023. Thereafter the assessee was granted PH on 20.02.2023, which was attended through Video Conferencing by Shri R. Subramanya Advocate, as authorized by the assessee. During the course of personal hearing he stated that the matter has been remanded back for conducting necessary verification of the documents submitted by the assessee evidencing the provision of service to entities, which are based out side India thus taking the subject service, whether consultancy /administration, out of purview of the tax net. He has also referred to the written submission which contains all the invoices which can be verified to buttress their claim.

DISCUSSION AND FINDINGS:

29. I have carefully gone through the facts of the case, material on record and the submissions made by the assessee. I have also gone through the Order-in-Original No. STC/10/Commr/Ahd/2011 dated 31.03.2011, which has been remanded back to the adjudicating authority vide CESTAT order No. A/10248/2022 dated 14.03.2022.

30. I find that the then adjudicating authority had vide Order in Original No. STC/10/Commr/Ahd/2011 dated 31.03.2011, confirmed the demand of service tax amounting to Rs. 45,42,521/- (On Acquisition Expense - Rs. 12,73,276/-, on Administrative Services -Rs. 32,68,397/- and on Stock Exchange Fees – Rs. 848/-) by holding the service to be "Business Support Service and also ordered for recovery of interest and imposition of penalty. The rest of the demand of service tax of Rs. 64,28,450/- was dropped [Acquisition Expenses Rs. 39,98,417/-, License Fees Rs. 6,05,095/-, Patent & Trade Mark Rs. 5,54,463/- and Administrative Service Rs. 12,70,475/-]. Being aggrieved by the OIO confirming the demand of Service Tax of Rs. 45,42,521/-, the assessee had filed an appeal before the Hon'ble Tribunal against the impugned OIO. The Hon'ble

Tribunal vide its Order No. A/10248/2022 dated 14.03.2022 has remanded the matter for passing a fresh order after reconsidering the matter relating to Service Tax on Acquisition Expenses and Administrative Service.

31. I also find it essential to comprehend the rationale behind CESTAT's decision to remand the impugned OIO to the adjudicating authority. On going through the Tribunal's order, it can be seen from para 4 of the Tribunal's order that the Tribunal has observed with respect to Acquisition Expense that the Commissioner had confirmed the demand under the category of Business Support Service as the assessee could not produce any documentary evidences to show that the service received by them were legal service. As regard the Administration Service, the Tribunal has observed that though the appellant (assessee) claimed that this expenses are reimbursement but no details were brought on record to ascertain whether this expense are on account of the activity which amount to service to the appellant by their group company or by any other service provider. Therefore, the Tribunal observed the need to ascertain whether any service is involved or otherwise. Hence, the Tribunal has ordered to verify the same on the basis of source documents. The said para 4 and other relevant para of Tribunal's Order, are reproduced hereinunder for ready reference.

> *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.*
>
> .....

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.

Thus, I find that as per the direction of the Tribunal, the matter related to service tax on Acquisition Expenses and Administrative Services have to be reconsidered on the basis of the documentary evidences produced by the assessee. It is also to be ascertained whether the Acquisition Expenses were for legal service or otherwise. Similarly, in respect of Administrative Service, it is to be ascertained whether any service is involved or otherwise.

32. Before moving ahead to decide the matter, it is also imperative to understand the basic issue involved in the matter. On going through the impugned OIO and SCN, I find that the audit of the records of assessee was carried out by the department covering the period FY 2004-05 to 2008-09 and as per the audit observations, the SCN dated 23.10.2009 was issued to the assessee.

32.1 The brief issues involved under the said SCN, which is relevant to the matter under dispute, were that the assessee was recipient of various services in foreign territory and had made expenses in foreign territory but they had not paid service tax on receipt of services. It was also observed that as per Section 66A of Finance Act, 1994, taxable service include services received outside India by a person who has his place of business, fixed establishment, permanent address or usual place of residence in India. The assessee had their registered office in Ahmedabad (India). It was also observed that as per the provision of Rule 2(1)(d)(iv) of Service Tax Rules 1994 (the Rules) and as per Section 66A of the Finance Act, 1994 (the Act),"in relation to taxable service provided by any person in India, then recipient of such service shall pay the Service Tax". Accordingly, it was observed that the assessee was required to pay service tax on expenses made in foreign territory for receiving services in India. The assessee had incurred "Acquisition Expenses" of Rs. 4,30,18,981/- during FY 2006-07 to 2007-08 and expenses under head of "Administrative Service" for Rs. 3,68,65,338/- during 2006-07 to 2008-09. Therefore, the assessee appeared liable to pay service tax on it under Section 66A read with Rule 2(1)(d)(iv) for receiving service from service provider located outside India, thus,

the said SCN was issued for demanding service tax on such expenditure, considering the service received to be "Business Support Service" under Section 65(105)(zzzq).

32.2 The then Commissioner of Service Tax, Ahmedabad (Adjudicating Authority) vide Order-In-Original No. STC/10/COMMR/AHD/2011 dated 31.03.2011 had adjudicated the said SCN confirming the demand of Service Tax of Rs. 45,42,521/- [Acquisition Expenses Rs. 12,73,276/-, Administrative Service Rs. 32,68,397/- and Stock Exchange Fees Rs. 848/-]. The rest of the demand of service tax of Rs.64,28,450/- [Acquisition Expenses -Rs. 39,98,417/-, License Fees- Rs. 6,05,095/-, Patent & Trade Mark - Rs. 5,54,463/- and Administrative Service Rs. 12,70,475/-] was dropped by the adjudicating authority vide aforementioned order in original. As discussed above, as per the direction of the Tribunal, only the matter related to Acquisition Expenses and Administrative Service have to be reconsidered by the adjudicating authority.

32.3 I find that the main issue concerns the service tax liability of the assessee under section 66A, as they are recipient of services from the service provider located outside India. The assessee has contested that the service had been received outside India; however, in respect of M/s. Dishman Europe Ltd., they have argued that they being their subsidiary/group company, the reimbursement of the expenses to M/s. Dishman Europe Ltd can not be considered to be provision of service by one person to another person. I also find that Section 66A also provides for treatment of a person carrying business in India and in a country other than India having different establishments for the same. Therefore, for better comprehension, Section 66A of the Finance Act, 1994 is reproduced herein under:

Charge of service tax on services received from outside India:

Section 66A:

(1) Where any service specified in clause (105) of section 65 is, -

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply :

***Provided** that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply :*

***Provided** further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.*

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

From the above legal position, it is quite clear that service tax liability on any taxable services provided by a non resident or a person located outside India to a recipient in India will be leviable as if the recipient of the services had himself provided service in India and accordingly all the provisions of Finance Act shall apply. I also find from Sub Section (2) that where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated **as separate persons for the purposes of this section**. In view of this legal position, arguments tendered by the assessee do not sustain.

33. Now moving ahead to decide the matter, I would take up the matter expenses wise. It would be of much importance to look at the observations of the then adjudicating authority while confirming the demand on Acquisition Expenses and Administrative Service Expenses, while proceeding to decide the matter.

33.1. <u>Acquisition Expenses: (for FY 2006-07)</u>

On going through the impugned OIO, I find that the adjudicating authority has categorically mentioned in para 29.1 of the said OIO that relevant invoices had been seen while confirming the demand of service tax of Rs. 12,73,276/- on expenses of Rs. 1,04,02,586/- out of payment of Rs. 2,42,33,196/- made in foreign currency. As per the said the OIO, the demand was confirmed with respect to the following invoices:

Sr. No.	Voucher No.	Invoice No.	Name of the service provider	Currency	Total amt. in foreign currency	Conversion Rate	Amount in Rs.
1	H-HE600295	14813332	Ernst & Young	Euro	85892.5	59.07	5073670
2	H-HE600347	28127	Niederer Kraftt & Frey	USD	38727.16	46.495	1800619
3	H-HE600416	CHLO100039	Ernst & Young	CHF	44720	36.92	1651062
4	H-HE600774	TAF/28127	Niederer Kraftt & Frey	USD	2920.66	44.21	129122
5	H-HE600775	TAF/28127	Niederer Kraftt & Frey	USD	2826.38	44.21	124954
6	H-HE600776	TAF/28127	Niederer Kraftt & Frey	USD	36714.74	44.21	1623159
						Total	10402586

33.1.2. In this regard, the assessee, vide their written submission dated 16.02.2023, has contended that the said expenses are legal expenses incurred by them in respect of legal services availed by them. The entire service had been received outside India, in a non-taxable territory. Hence the same is not taxable under Reverse Charge Mechanism. They have provided the copies of voucher and invoices with written submission.

33.1.3 From the reply and documents submitted by the assessee, it is discerned that they have not brought any new evidences to prove that the service received were Legal Service. However, on examining the copies of invoices, the following observations are drawn.

Invoice No. & Date	Amount involved	Name of the service provider	Observation
14813332 dt. 16.06.2006	85892.5 EURO	Ernst & Young	- The same has been issued for Tax and Financial services provided -attachment to invoice mentions the same is for professional service provided. -Payment voucher mentions as "Services for Project Plymouth"
28127 dt. 16.08.2006	38727.16 USD	Niederer Kraft & Frey, Zurich	-The invoice has been raised for "Professional service" rendered. - it also mentions **"services deemed rendered abroad"**
CHLO100039 dt. 28.08.2006	44720 CHF	Ernst & Young, Zurich	- The same has been issued for Professional Services
TAF/28127 dt. 04.11.2006	2920.66 USD	Niederer Kraft & Frey, Zurich	-The invoice has been raised for Professional service rendered. - it also mentions **"services deemed rendered abroad"**
TAF/28127 dt.04.11.2006	2826.38 USD	Niederer Kraft & Frey, Zurich	-The invoice has been raised for Professional service rendered. - it also mentions **"services deemed rendered abroad"**
TAF/28127 dt.16.08.2006	36714.74 USD	Niederer Kraft & Frey, Zurich	-The invoice has been raised for Professional service rendered. - it also mentions **"services deemed rendered abroad"**

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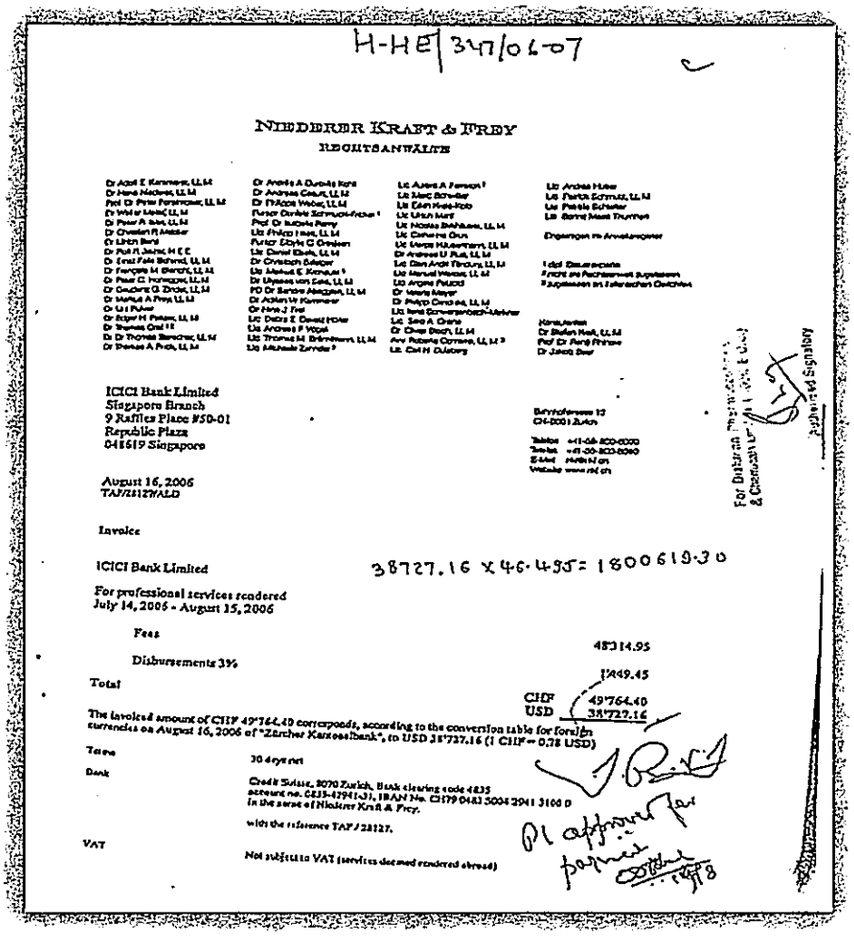
Sample images of invoice/ voucher are as under:



H-HE/347/06-07

NIEDERER KRAFT & FREY
RECHTSANWÄLTE

ICICI Bank Limited
Singapore Branch
9 Raffles Place #50-01
Republic Plaza
048619 Singapore

August 16, 2006
TAF/28127/WALD

Invoice

ICICI Bank Limited

38727.16 X 46.495 = 1800619.30

For professional services rendered
July 14, 2006 - August 15, 2006

Fees 48314.95

Disbursements 3% 1449.45

Total CHF 49'764.40
USD 38'727.16

The invoiced amount of CHF 49'764.40 corresponds, according to the conversion table for foreign currencies on August 16, 2006 of "Zürcher Kantonalbank", to USD 38'727.16 (1 CHF = 0.78 USD)

Terms 30 days net

Bank Credit Suisse, 8070 Zurich, Bank clearing code 4835
account no. C425-47941-31, IBAN No. CH79 0483 5047 9413 1600 0
in the name of Niederer Kraft & Frey.
with the reference TAF/28127.

VAT Not subject to VAT (services deemed rendered abroad)

Pl approve for payment

For Dickson Minwalla & Chenoy

Authorised Signatory

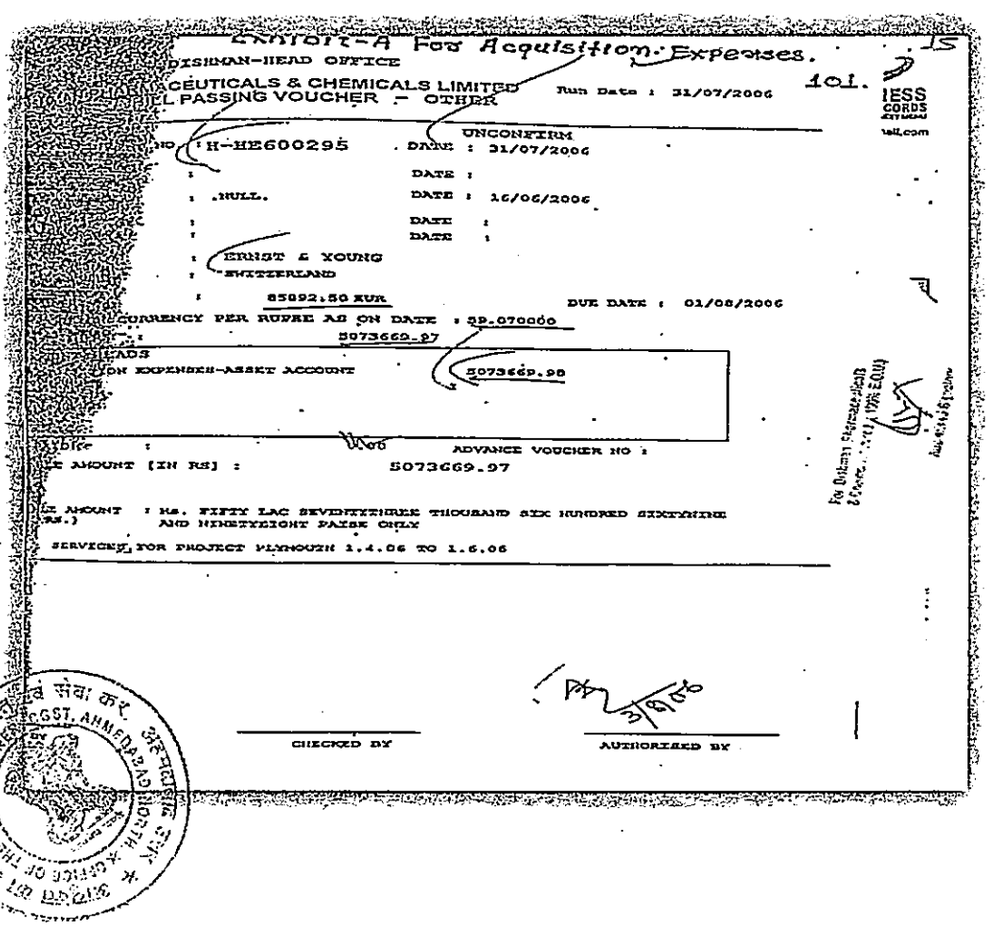


EXHIBIT-A For Acquisition Expenses. 15

DISHMAN-HEAD OFFICE

CEUTICALS & CHEMICALS LIMITED Run Date : 31/07/2006 101.

L PASSING VOUCHER - OTHER

UNCONFIRM

NO : H-HE600295 . DATE : 31/07/2006

: DATE :

: .HULL. DATE : 16/06/2006

: DATE :

: DATE :

: ERNST & YOUNG

: SWITZERLAND

: 85092.50 EUR DUE DATE : 01/08/2006

CURRENCY PER RUPEE AS ON DATE : 59.070000

: 5073669.97

ADS

ON EXPENSES-ASSET ACCOUNT 5073669.98

ADVANCE VOUCHER NO :

E AMOUNT (IN RS) : 5073669.97

E AMOUNT : Rs. FIFTY LAC SEVENTYTHREE THOUSAND SIX HUNDRED SIXTYNINE AND NINETYEIGHT PAISE ONLY

SERVICES FOR PROJECT PLYMOUTH 1.4.06 TO 1.6.06

CHECKED BY

AUTHORIZED BY

33.1.4 From the documentary evidences produced by the assessee as above, it can not be ascertained that the services provided by the service provider from abroad, are in nature of Legal Service as has been claimed by the assessee. It is apparent that the services provided were "Professional Service". I also find from the documents submitted during the denovo proceedings, the same were also produced before the then adjudicating authority. In view of the same, I am not convinced that the services provided were legal service. I, thus, find that the assessee has again failed to substantiate their claim that the service received by them were indeed Legal Service. As per Section 65(105)(zzzq), *"taxable service means any service provided or to be provided to any person , by any other person, in relation to support services of business or commerce, in any manner"*. I find the services provided by M/s. Ernst & Young and M/s. Niederer Kraft & Frey to the assessee are in relation to business or commerce in nature. Thus, the same are squarely covered under the meaning "support services of business or Commerce" as provided under Section 65(104c) of the Finance Act, 1994 and the service is "taxable service" under Section 65(105)(zzzq) of the Finance Act, 1994. In the instant case, since the provider of service does not have fixed establishment in India and the services has been received by the assessee, who has their permanent business establishment in India, the recipient of service i.e. the assessee is liable to pay service tax under Section 66A of the Finance Act, 1994. The invoices issued by M/s. Niederer Kraft & Frey, Zurich indicates that the provision of services is to be deemed to have been rendered abroad. Their argument that the services had been provided outside India hence they were not liable to pay service tax on it, is also not sustainable as discussed herein above. Therefore, from the documentary and legal position as discussed, I find that the assessee is liable to pay service tax of Rs. 12,73,276/- on Acquisition Expenses of Rs. 1,04,02,586/- under the category of "Business Support Service" as confirmed under the said OIO, and thus the same is required to be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994.

33.2. <u>Administrative Service (for FY 2006-07 to 2008-09)</u>

It is seen from the said OIO that the adjudicating authority has specifically observed and mentioned under para 29.4 of the said OIO while confirming the demand of Service tax of Rs. 32,68,397/- under the category of Business Support Service on expenses of Rs. 2,65,86,414/- incurred under head of Administrative Service, that "the expression *"services provided in relation to business or commerce" is all encompassing and includes every service provided in relation to business or commerce. Furthermore, the said definition is*

an inclusive definition and covers various services. Therefore, for exclusion its is necessary to show the exact nature of service provided. I find that the noticee has never produced any evidence to show the nature of expenses incurred by M/s. Dishman Europe Ltd on their behalf for which reimbursement have been made to them. In absence of any contrary evidence to prove that the said payments made by the noticee to M/s. Dishman Europe Ltd were not for sale of goods or any such activity, I am inclined to believe that M/s. Dishman Europe Ltd had provided support services of business and commerce to the said noticee." Therefore, it is seen that the assessee had not produced any evidence to show the nature of expenses incurred by M/s. Dishman Europe Ltd on their behalf for which reimbursement had been made to them.

33.2.1 In respect of the expenses incurred under the head of "Administrative Service", the assessee vide their written submission has contested that the expenses incurred by M/s. Dishman Europe Ltd., a group company, have been reimbursed by them. They have put forth the plea that the administrative expenses are the expenses which were initially incurred by M/s. Dishman Europe Ltd and subsequently claimed from the parent company Dishman Pharmaceuticals & Chemicals Ltd. The parent company has only reimbursed the expenses incurred by the subsidiary company for their business operations in London. In support of the arguments advanced by them, they have furnished the copies of debit notes raised by M/s. Dishman Europe Ltd on them. They have also provided copies of payment vouchers.

33.2.2 The following debit notes have been produced by them in their support. On perusing them, it is seen that the same have been issued either for *"Reimbursement of your apportioned share in expenses incurred for the Group Companies"* or *"Reimbursement of your apportioned share in expenses incurred for the Group Companies Management fees-Alan Barnes"*. The Remark contained in the said vouchers mention the payment for "Reimbursement of Apportioned Share in Exp Incurred Group Com" or "Reimbursement of Apportioned Share in Exp".

Debit notes raised on M/s. Dishman Pharmaceuticals & Chemicals Ltd, Ahmedabad by M/s. Dishman Europe Limited, United Kingdom			
Debit Notes No. & Date	Amount involved in EURO	Conversion Rate	Amount in Rs.
4136 Dt. 30.06.2006	14655.28	85.32	1250388.49
300606 Dt. 30.06.2006	48125.55	85.59	4119065.82
300906 Dt. 30.09.2006	57348.66	85.59	4908471.81
311206 Dt. 31.12.2006	22319.44	85.59	1910320.87
310307 Dt. 31.03.2007	29778.58	85.59	2548748.66
300607 Dt. 30.06.2007	30472.09	81.8	2492616.96
300907 Dt. 30.09.2007	23660.36	80.85	1912940.11
310308 Dt. 31.03.2008	37511.81	79.596	2985790.03
DPCL300608 Dt. 30.06.2008	15508.66	85.73	1329557.42
DPCL181208 Dt. 18.12.2008	8798.74	71.02	624886.51

DPCL310708 Dt. 31.07.2008	3825.54	71.02	271689.85
DPCL270808 Dt. 27.08.2008	3825.54	71.02	271689.85
DPCL260908 Dt. 26.09.2008	3990.54	71.02	283408.15
DPCL301108 Dt. 30.11.2008	10137.67	71.02	719977.32
DPCL260209 Dt. 26.02.2009	8798.74	72.5	637908.65
DPCL270309 Dt. 27.03.2009	4399.37	72.5	318954.33
		Total	26586414.84
It is seen from the description of the debit notes, the same have been issued either for "Reimbursement of your apportioned share in expenses incurred for the Group Companies" or "Reimbursement of your apportioned share in expenses incurred for the Group Companies Management fees-Alan Barnes"			

Scanned Image of sample Debit Note:

dishman Europe Limited

120 New Cavendish Street
London W1W 6XX
United Kingdom
Tel: +44(0)20 7323 0808
Fax: +44(0)20 7323 0809
info@dishman-europe.com
www.dishman-europe.com

Dishman Pharmaceuticals & Chemicals Ltd
Bhadr-Raj Chambers
Swastik Cross Roads
Navrangpura
Ahmedabad
380 009
India

DEBIT NOTE: DPCL300608 30.06.2008

DESCRIPTION	£
Reimbursement of your apportioned share in expenses incurred for the Group companies From April to June 2008 (in GBP)	15,508.66
TOTAL	15,508.66

For Dishman Pharmaceuticals & Chemicals Limited (100% E.O.U.)

15508.66 X 85.73 = 1329557.42

Payment Terms: Immediate
Bank Details: NatWest Bank Ltd
Leeds City Office
8 Park Row
Leeds
LS1 1QT
Sort Code: 60-60-05
Sterling account: 45549699
IBAN No. GB85NWBK60600545549699
SWIFT Code: NWBKGB2L

33.2.3 I understand from the details/information contained in the above mentioned debit notes and the vouchers produced by the assessee that the expenditure incurred by M/s. Dishman Europe, still remains unexplained. The assessee has not explained/clarified the nature of expenditure incurred by their group company on their behalf. The assessee has reiterated their plea of having reimbursed the expenditure to their group company for incurring expenditure on their behalf. I find that the Tribunal has also observed that no details were brought on record to ascertain whether these expenses are on account of the

activity amount to service to assessee by their group company or any other service provider. From the documents produced by the assessee and written submission dated 16.02.2023 tendered by them, it is revealed that M/s. Dishman Europe had incurred expenditure (what expenditure is, however, not explained) on behalf of the assessee and which had been reimbursed by the assessee. However, it is revealed from the debit notes produced by the assessee that they were reimbursing *"the apportioned share in expenses incurred for the group companies"* to M/s. Dishman Europe Ltd. The nature of expenditure clearly indicates that M/s. Dishman Europe Ltd was working/acting on behalf of the group companies in the course of the business of group companies and their expenditure was being reimbursed by the group companies including the assessee. The meaning of "Support service of business or commerce" has been provided under Section 65(104c) of the Finance Act, 1994, according to said Section 65(104c), *"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, [Operational or administrative assistance in any manner], formulation of customer service and pricing policies, infrastructural support services and other transaction processing."* Further, as per Section 65(105)(zzzq), *"taxable service means any service provided or to be provided to any person , by any other person, in relation to support services of business or commerce, in any manner".* Since, M/s. Dishman Europe Ltd was working/acting on behalf of the assessee in course of the assessee's business, the said activity of M/s. Dishman Europe Ltd. is covered under the meaning of "Support Services of Business or Commerce" as provided under Section 65(104c) of the Finance Act, 1994 and thus , the service rendered by M/s. Dishman Europe Ltd is "taxable service" under Section 65(105)(zzzq) of the Finance Act, 1994.

33.2.4 It is also contested by them that any expenditure incurred by them on behalf of another group company can not be considered as provision of service by one person to another person. The plea advanced by the assessee is also not acceptable in view of the legal position discussed herein above that M/s. Dishman Pharmaceutical & Chemicals and M/s. Dishman Europe Ltd are different entities/persons for purpose of Section 66A of the Finance Act, 1994.

33.2.5 I find that the assessee has placed reliance on the decision of Hon'ble Gujarat High Court in the case of Commissioner Service Tax vs. Arvind Mills Ltd

reported in 2014 (35) STR 496 (Guj), wherein it is held that "Subsidiary companies could not be said to be client of holding company". On going through the decision of the High Court, I find that the facts of the case are different from the facts of the instant case on hand, the services involved in the case of M/s. Arvind Mills, were Manpower Recruitment or Supply Agency Services and the expenditure incurred on staff deputed were reimbursed by the group company. In the instant case, the noticee has not explained the nature of expenditure incurred by their group company on their behalf. Therefore, I am of the view that the decision of the High Court is not applicable to the instant case.

33.2.6 The assessee has contended that the reimbursement expenses are not at all taxable under Finance Act, 1994, as has been settled by the Hon'ble Supreme Court in the case of **Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India - cited in 2018 (10) G.5.T.L. 401 (S.C.),** wherein the Supreme Court has held the Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to be ultra vires. On going through the decision of the Hon'ble Supreme Court, I find that the case before the court was that whether the reimbursable expenditure incurred by the service provider was includible to the gross value of services charged by the service provider under Rule 5 of Service Tax (Determination of Value) Rules, 2006. The facts involved in the instant case on hand are totally different. There is no proposal to include the reimbursement of expenses to the value of service provided by the group company of the assessee. In the instant case, the payment made to the group company by the assessee, in guise of reimbursement of the expenditure has been sought to be considered for provision of service. Therefore, I find that the facts of the decision relied upon by the assessee are different than the case on hand. I observe that the assessee has relied upon the decisions of High Court and Supreme Court in their defence. In this regard, the ratios of the decision can be applied only if facts and circumstances of the case are shown to fit the same precedents which have been relied upon. The assessee has unfortunately failed to do so. In this regard, I take support of the decision of the Hon'ble Apex Court in the case of *Alnoori Tobacco Products* [2004 (170) E.L.T. 135 (S.C.)], wherein the Hon'ble Apex Court has held that *"a precedent followed had to be shown to fit factual situation of a given case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases".* Hence, I find that the cases relied upon by the assessee will not be applicable to the subject matter.

33.2.7 In the instant case, since the provider of service does not have fixed establishment in India (M/s. Dishman Europe Ltd being a separate person for purpose of section 66A) and the services has been received by the assessee, who

has their permanent business establishment in India, the recipient of service i.e. the assessee is liable to pay service tax under Section 66A of the Finance Act, 1994. Therefore, on the basis of documentary and legal position as discussed, I find that the assessee is liable to pay service tax of Rs. 32,68,397/- under the category of "Business Support Service" as confirmed under the said OIO, on expenses of Rs. 2,65,86,414/- incurred under head of Administrative Service, and thus the same is required to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Finance Act, 1994.

34. Based on above facts and discussion, I find that the assessee has contravened the provisions of (i) Section 68 and 66A of the Finance Act, 1994 read with Rules 2(1)(d)(iv) and 6 of the Service Tax Rules 1994, in as much as they have not paid service tax to the tune of Rs. 45,41,673/- (Rs. 1273276/- on Acquisition Expense + Rs. 32,68,397/- on Administrative Service) though they were liable to pay the same on receipt of taxable services from outside India (ii) Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file correct ST-3 Returns for the FY 2006-07 to 2008-09 (iii) Section 67 of the Finance Act, 1994 in as much as they had concealed the value of service received by them and had also failed discharge their service tax liability.

35. I also find that Section 75 of Finance Act,1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which crediting of tax or part thereof is delayed. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 45,41,673/-.

36. From the facts and discussion aforementioned, I find that in the instant case the assessee had not paid the service tax on taxable services received by them from person located outside India, though the service tax was leviable under Section 66A of the Finance Act, 1994. They has not disclosed the receipt of service in the ST-3 returns, despite the service being taxable. This non payment of service tax would not have come to the notice of the department if the audit of the assessee had not been conducted. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility on the tax payer to voluntarily make information disclosures is much greater in the system of self-

assessment. The omission or commission on the part of the assessee has clearly demonstrated their intention to evade payment of service tax, as they were very much aware of the unambiguous provisions of Finance Act, 1994 and Rules made there under. They have failed to disclose to the department at any point of time, the fact regarding receipt of service from outside India and non payment of service tax on it as required under Section 66A of the Finance Act, 1994, as discussed in forgoing paras during FY 2006-07 to 2008-09. These facts would not have come to light if the department had not initiated audit of the assessee. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assessees are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise & Service tax laws. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provision is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is also evident that such fact of contravention and non paying the service tax by not declaring taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the inquiry was initiated by the department. In the case *of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241,* it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai,* it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1994. By invoking the extended period of time of 5 years, service tax totally amounting to Rs. 45,41,673/- is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994 from the assessee.

37. Thus, for the same reasons as discussed above, I find that the assessee have not paid the service tax by resorting to suppression of facts and contravention of the provisions of law with intent to evade payment of the tax. The Hon'ble Supreme Court has settled the issue in the case of UOI Vs.

Dharmendra Textiles Processors reported in [2008(231) ELT 3(SC)] and further clarified in the case of UOI vs. RAJASTHAN SPINNING & WEAVING MILLS reported in [2009 (238) E.L.T. 3 (S.C.)]. The Hon'ble Supreme Court has held that the presence of malafide intention is not relevant for imposing the penalty and *mens rea* is not an essential ingredient for penalty for tax delinquency which is a civil obligation. Accordingly, I hold that the assessee have rendered themselves liable for penalty in terms of the provision of Section 78 of the Finance Act, 1994.

38. As discussed in the foregoing paras, the assessee has failed to pay service tax of Rs. 45,41,673/- as prescribed under Section 68 of the Finance Act, 1994 read with Rule 6 Service Tax Rules 1994. This makes the assessee liable to penalty under Section 76 of the Finance Act, 1994.

39. As regard the imposition of penalty under Section 77 of the Finance Act, 1994, I find that the assessee had failed to file returns in due time, thus they have rendered themselves liable for penalty under Section 77 of the Finance Act, 1994.

40. In view of the above discussion and findings, I pass the following order:

i. I confirm the demand of Service Tax amounting to Rs. 45,41,673/- [Rupees Forty Five Lakh Forty One Thousand Six hundred Seventy Three only] (Rs. 1273276/- on Acquisition Expense + Rs. 32,68,397/- on Administrative Service) under Section 73 of the Finance Act, 1994, by invoking the extended period of five years as per proviso to sub section (1) of Section 73 of the Finance Act, 1994.

ii. I order to recover the interest on Rs. 45,41,673/- at the prescribed rate from the said assessee under Section 75 of the Finance Act, 1994.

iii. I impose penalty of Rs. 200/- (Rupees Two Hundred only) per day for the period during which failure to pay the tax continued or at the rate of 2% of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax upon the said assessee under Section 76 of the Finance Act, 1994, provided that the total amount of penalty payable in terms of this section shall not exceed Rs. 45,41,673/- i.e. the amount of service tax recoverable from the said assessee.

iv. I impose penalty of Rs. 45,41,673/- on the said assessee under Section 78 of the Finance Act, 1994. In the event of the said assessee opting to pay the amount of service tax along with all other dues as confirmed

and ordered to be recovered, within thirty days from the date of communication of this order, the amount of penalty liable to be paid by them under Section 78 of the Finance Act, 1994 shall be 25% of the said amount. However, the benefit of reduced penalty shall be available only if the amount of penalty is also paid within the period of thirty days from the date of communication of this order, otherwise full payment of penalty shall be paid.

v. I impose penalty of Rs. 1,000/- (Rs. One thousand) on the assessee for not filing the ST-3 Returns under Section 77 of the Finance Act, 1994.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery
F.No. STC/15-47/O&A/Denovo/2022 Date: .06.2023.

To

M/s Dishman Pharmaceuticals &
Chemical Ltd (100% EOU),
Survey No. 47, Village: Lodariyal,
Tal. Sanand,
Dist: Ahmedabad - 382220.

Copy to:

1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2 The Deputy/Assistant Commissioner, CGST & C.Ex., Division- III, Ahmedabad North.
3 The Superintendent, Range-III, Division-III, Ahmedabad North.
4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File.