

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41234 of 2013

(Arising out of Order-in-Appeal No. 88/2013 (M-III)(ST) dated 21.02.2013 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. LifeCell International Private Limited : Appellant
No. 26, Keelkottaiyur Village,
Vandalur – Kelambakkam road,
Chennai – 600 048

VERSUS

The Commissioner of Central Excise and Service Tax : Respondent
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

AND

Service Tax Appeal No. 42780 of 2014

(Arising out of Order-in-Appeal No. 221/2014 (M-III) dated 19.09.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. LifeCell International Private Limited : Appellant
No. 26, Keelkottaiyur Village,
Vandalur – Kelambakkam road,
Chennai – 600 048

VERSUS

The Commissioner of Central Excise and Service Tax : Respondent
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Shri N.K. Bharath Kumar, Chartered Accountant for the Appellant

Smt. Sridevi Taritla, Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 40293-40294 / 2023

DATE OF HEARING: 06.04.2023

DATE OF DECISION: 24.04.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief undisputed facts, as could be gathered from the orders of lower authorities, are that the appellant is engaged in the process of separation, isolation, storage and cryo-preservation of Umbilical Cord and Stem Cells, for which, it appears that the appellant had entered into agreement with M/s. Cryo-Cell International Inc., USA (hereinafter referred to as 'CCI') under 'Licence and Royalty Agreement' dated 14.07.2004 for the use of 'Licensed Technology' and it is the duty of the appellant to pay the royalty, as per the terms of the above agreement, to M/s. CCI.

2.1 Entertaining a doubt that the appellant had not registered under Intellectual Property Rights (IPR) service, also had not discharged Service Tax on the said payments made to M/s. CCI as required under Section 68(2) of the Finance Act, 1994, as amended, and that the appellant had paid royalty on the IPR to M/s. CCI, Show Cause Notices dated 19.02.2009 and 16.06.2011 came to be issued for the month of February 2008 and for the period April 2008 to June 2009 respectively proposing, *inter alia*, to demand Service Tax on the royalty payments made by the appellant, along with applicable interest and penalties. The appellant appears to have filed replies denying any liability under Service Tax, but however, not satisfied with the explanation, the Adjudicating Authority vide Order-in-Original Nos. 18/2010 dated 07.12.2010 and 50/2012 dated 20.07.2012 proceeded to confirm the proposals made in the Show Cause Notices.

2.2 It appears that the appellant preferred first appeals before the Commissioner of Central Excise (Appeals), Chennai, who also having upheld the demands thereby by dismissing their appeals vide impugned Order-in-Appeal Nos. 88/2013 (M-III)(ST) dated 21.02.2013 and 221/2014 (M-III) dated 19.09.2014, the appellant has preferred the present appeals before this forum.

3. Heard Shri N.K. Bharath Kumar, Learned Chartered Accountant appearing for the appellant and Smt. Sridevi Taritla, Learned Additional Commissioner appearing for the respondent. After hearing both sides, we find that the only issue that is to be decided is: whether the Revenue is justified in demanding Service Tax on the royalty paid to M/s. CCI?

4.1 The Learned Chartered Accountant for the appellant would submit, at the outset, that the issue involved in the present case is no more *res integra* as the same is settled by this Chennai Bench of the CESTAT in the appellant's own cases for different periods, namely: -

(i) *M/s. LifeCell International Pvt. Ltd. v. Addl. Commissioner of Central Excise, Chennai-III [Final Order No. 42739 of 2018 dated 29.10.2018 – CESTAT, Chennai];*

(ii) *M/s. Asia Cryo Cell Pvt. Ltd. v. C.C.E. & S.T., Chennai [Final Order No. 42952 of 2017 dated 17.11.2017 – CESTAT, Chennai].*

4.2 He also invited our attention to paragraph 6 of the Final Order No. 42952/2017 (*supra*) wherein this Bench, after following the orders of co-ordinate Delhi and Mumbai Benches, had allowed the appeal. The said order was followed by this Bench in the other cited order [Final Order No. 42739/2018 (*supra*)].

5. *Per contra*, the Learned Representative for the Revenue relied upon the findings of the lower authorities.

6. Heard both sides and perused the documents placed on record.

7. We find that this Bench in its Final Order No. 42952/2017 (*supra*) has held as under: -

"6. The dispute in the present case is relating to the liability of the appellant under IPR service on reverse charge basis. Similar disputes have been repeatedly brought before the Tribunal for a decision. It has been held that to be held liable for service tax on reverse

charge basis under IPR service, such IPR should be recognized by any law for the time being in force in India. In the present case, the IPR is not registered for enforcement under any law including Trade Mark Act in India. This is an admitted fact. IPR now under consideration can be construed to be recognized by the Indian Law, if he satisfies the requirement of IPR as per law. Registration is not a requirement. We note that the Board has also clarified these aspects more specifically, with reference to the phrase "law for the time being in force." It is clarified in the Circular dated B2/8/2004-TRU dated 10.09.2004, that the said phrase implies such laws as are applicable in India. IPRs covered under Indian Law in force at present alone are chargeable to service tax. Viewed from such clarification and also consistent view by the Tribunal in various decisions, it is clear that in the present case, the appellant cannot be held liable for service tax under IPR service. We refer to the decisions of the Tribunal in Chambal Fertilizers and Chemicals Ltd. v. C.C.E., Jaipur - 2016-TIOL-2484-CESTAT-DEL and Tata Consultancy Services Ltd. v. CST, Mumbai - 2015-TIOL-2370-CESTAT-MUM."

8. By the above, it appears that the CESTAT Benches have consistently held that the payment of royalty for IPR services was not liable to tax in India. Following the above *ratio decidendi*, therefore, we are of the view that the demands raised are not proper, for which reason the impugned orders are set aside.

9. In the result, the appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **24.04.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)