IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41770 of 2013

(Arising out of Order-in-Original No. 11/2013 (RST) dated 31.05.2013 passed by Commissioner of Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Indian Institute of Technology **...Appellant**
Centre for Industrial Consultancy and Sponsored Research (ICSR),
IIT Campus,
Chennai – 600 036.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Shri I. Dinesh, Advocate
For the Respondent : Shri Rudra Pratap Singh, Additional Commissioner / A.R.

CORAM:

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

DATE OF HEARING : 25.09.2023
DATE OF DECISION : 19.12.2023

FINAL ORDER No. 41130 / 2023

Order : [Per Mr. VASA SESHAGIRI RAO]

The Appellant, M/s. Indian Institute of Technology, Madras is constituted under the Act of Parliament and the Centre for Industrial Consultancy and Sponsored Research (IC & SR) was setup by the IIT, Madras to promote interaction between IIT and Government and other agencies engaged in research. Service Tax Appeal No. ST/41770/2013 has been filed by M/s. Indian Institute of Technology assailing the Order-in-Original No. 11/2013 dated 31.05.2013 passed by the Commissioner of Central Excise, Chennai-III confirming the

demand of Service Tax of Rs.1,29,89,850 under Scientific and Technical Consultancy Services for the period from 01.10.2005 to 30.09.2010, Rs.2,43,977/- under Convention service for the period from 01.05.2006 to 30.09.2010 and dis-allowance of CENVAT Credit of Rs.3,65,836/-, under proviso to Section 73(1) of the Finance Act, 1994 by invoking the extended period and also levy of interest and imposition of penalties under Sections 77 and 78 of the Finance Act, 1994.

2. Brief facts are that the Appellant, engaged in rendering Scientific and Technical Consultancy Service are registered with Service Tax department with Registration No.CHEI04464FSTC001. The officers of Internal Audit Section, Service Tax Commissionerate visited the premises of the Appellant during May and June 2008 and during verification certain irregularities such as non-payment of service tax on the services rendered and wrong availment of CENVAT credit were noticed. Hence, the matter was referred to Survey, Intelligence and Research unit of Service Tax Commissionerate for a detailed investigation.

3.1 Investigation revealed that the Appellant was liable to pay Service Tax on the amounts received from Private Companies / Private Sponsors, towards the Sponsored research provided by the Appellant. In respect of researches sponsored by private parties, in as much as the report on the research was provided for further use by the Sponsors in their manufacturing activities, it appeared that there was a service provider- service recipient relationship established between the Appellant and the respective sponsor and therefore it appeared that the appellant was liable to pay service tax on such sponsored researches. The total taxable value of services provided in respect of "Scientific and Technical Consultancy service" was Rs.10,91,89,322/- for the period from October 2005 to September 2010 on which the Service Tax liability worked out to Rs.1,29,89,850/-. As per the ST-3 returns periodically filed by the Appellant in respect of Scientific and Technical Consultancy Service, during the period from October 2005 to September 2010, the Appellant had totally paid Service Tax amount of Rs.8,86,67,229/- out of

which Rs.8,82,82,139/- was paid in PLA and balance Rs.3,85,090/- was paid by utilization of CENVAT credit availed by them.

3.2 Further, it was noticed that the center for Industrial Consultancy and Sponsored research (IC & SR) building of the Appellant had facilities for conferences, meetings and video conferencing and facilities were also available to industries, industrial associations and other professional bodies, for organizing seminars / technical sessions and conferences. The Appellant collected amounts from private users who use the hall for the purpose of meetings/ demonstrations/ cultural programs. As the above activity was covered under Section 65(32) of the Finance Act, 1994 under Convention Service, it appeared that an amount of Rs.21,78,337/- collected as Building Maintenance Fund during the period from 01.04.2006 to 31.03.2010 was liable to Service Tax of Rs.2,43,977/-.

3.3 Verification of documents of appellant revealed that they have availed CENVAT credit in respect of travel, India post and freight charges which did not qualify as input service in terms of Section 2(l)(i) of CENVAT Credit Rules, 2004 as the input services did not have any impact on the efficiency in providing the output service of Scientific and Technical Consultancy. Hence, it appeared that the Appellant was not eligible to take CENVAT credit of Rs.3,65,836/- claimed in their ST-3 returns which was utilized in discharging Service Tax liability.

3.4 A Show Cause Notice No. 163/2011 dated 08.04.2011 was issued to the Appellant by the Commissioner of Service Tax proposing to demand the Service Tax of Rs.1,29,89,850/- on Scientific and Technical Consultancy Service and Rs.2,43,977/- on Convention Service besides proposing to recover ineligible CENVAT credit of Rs.3,65,836/- with proposal to levy interest under Section 75 and to propose penalties under Sections 76,77 and 78 of Finance Act, 1994. After due process of law, the Adjudicating Authority confirmed the above demands, levied

interest and imposed penalties under Section 78 and Section 77 of the Finance Act, 1994.

4.1 Aggrieved by the above Order, the appellant is on appeal before this forum.

4.2 The Ld. Advocate Shri I. Dinesh appeared for the Appellant submitted that the Appellant was under the *bona fide* belief that receipts from grants for activity relating to pure research would not be covered under the Service tax net and that all materials relating to grants for sponsored Research were well within the domain of the department. The impugned order ought to have noted that the Sponsored research undertaken by the Appellant does not come within the purview of 'Scientific and Technical Consultancy' as defined in Section 65(105)(za) of the Finance Act, 1994. The impugned order errs in not noting the distinction between Sponsored research and Industrial Consultancy. The two activities are wholly different and the differences have neither been noted nor appreciated in the impugned order.

4.3 Further, it was submitted that the impugned order brings to tax receipts for the period October 2005 to September 2010 from grants of "Sponsored Research" under the head 'Technical and Scientific Consultancy' . The Ld. Advocate adverted to Section 65(105(za) which reads as follows:

> *"65(105) (za) 'taxable service' means any service provided or to be provided - ----*
>
> *---------- to any person, by a scientist or a technocrat, or any science or technology institution or organization, in relation to Scientific or technical consultancy"*

It was pointed out that the definition was not inclusive and it is specific to services offered that relate to cognate products or product application. Research relates to gathering of data that may or may not relate to the subject on hand. Topics are chosen and research undertaken with the support of grants offered by

the sponsor. The grants are from Government Agencies, Alumni of IITM, Industries and other funding agencies and non-governmental organizations such as British Council, etc. The studies conducted do not result in any commercial enhancement. The CBEC has clarified *vide* circular F.No. B/11/1/2001-TRU dated 09.07.2001, on a query relating to taxability of grants or aid from the Government for conducting research / projects that such grants are not liable to Service tax and the question of payment of Service Tax does not arise. It was alleged in the impugned order that the Appellant had not provided details of grants made by the Government which was totally incorrect as the appellant along with the written submissions provided the details of various projects undertaken by the Appellant demarcated as Government projects, alumni, Industries, Workshops and Foreign projects where money was received in FOREX.

4.4 It was submitted that the impugned order had relied on the extracts of the agreements entered into with CPCL and JK Tyres to confirm the levy. Such reliance is misplaced as the extracted clauses clarify the position that IPR as well as technical information generated, if any, will be shared and utilized as per terms of a subsequent agreement. The method of operation of the Appellant is as under:-

(a) A Memorandum of Understanding is entered into between the Appellant and the third party who sponsors the research project.

(b) A separate account is maintained wherein the grants are parked to conduct research. These grants are used to purchase materials, overhead expenses and other ancillary expenses.

(c) A half-yearly report is to be submitted to the sponsor on the status of the project.

(d) The final report will be submitted to the client on the research conducted.

(e) As and when a commercial element is found in the research, a separate agreement is entered between the parties on exploring the same in a commercial means for which Service tax is charged and duly discharged.

(f) Unspent / unutilized grant have to be returned back to the sponsor who funded the project.

The projects are sponsored by Industries and Alumni. A bare perusal of the projects would make it clear that the research is towards educational purposes only. In any event, the clauses cannot be taken out of context and read in isolation, but to be seen in totality and the Agreement understood in the right perspective.

4.5 The above explanation makes it clear that there is no consideration paid by the third parties / sponsor to conduct research on any specific subject. The amount spent is only towards imparting education and knowledge. Also, it is pertinent to note that the Appellant doesn't advise, provide consultancy services to the sponsors in as much as the quarterly / half yearly report only gives the overview of the research and the same doesn't advise or assist the third party sponsor to proceed further with the report. It is called "Tied up Grant' in accounting parlance. Naturally, the grantee needs to show that the grant is applied only for the intended purpose.

4.6 The clarification relied upon by the department makes it clear that there must be a consultancy service and that there must be a consideration or payment basis to render service to anyone. In the instant case, the appellant doesn't provide consultancy. The Appellant enters into a separate agreement based on which the third party acts and gains commercial interest. What has been provided is the report on the research which wouldn't yield any commercial value. The Sponsor doesn't derive any commercial gain from the project it sponsors. There may be certain situations where the research conducted may generate/ indicate the possibility of potential commercial value. The appellant then enters into a separate agreement as

and when the commercial value is generated for which service tax is duly charged and discharged by treating as the same as consultancy. The Sponsored projects are conducted on a no-profit no-loss basis. What has been received is a grant to conduct research on a specific subject and not consideration. There being no service provider-service recipient relationship, the same is not eligible to service tax at all. The sole aim of the arrangement between the Sponsor and the Appellant is purely to further the cause of education alone.

4.7 It was pointed out that the impugned order had erroneously and contrary to facts alleged that the Appellant was not represented during hearings but the authorized representative had duly responded to the same but was only permitted to file the details and not to make submissions. This has resulted in gross violation of the Principles of Natural Justice.

4.8 The Ld. Advocate pointed out that the Appellant conducts meetings / seminars / workshops and similar events that would necessarily involve public participation. The primary purpose of the IIT being dissemination of education and knowledge, holding of the above mentioned events is inevitable. In the event that programs are conducted for the benefit of their own staff or students, such events are not charged and the use of the convention center is provided gratis. Therefore, the impugned order has erred in imposing Service tax under Section 65(32)-Convention Service without keeping in mind the nature of activity intended to be covered by the provision as well as that actually engaged in. In fact, the CBEC has issued Circular No. 86/4/2006-ST stating that institutions such as IIT cannot be classified as 'Commercial concerns' in view of the activities carried on therein. A 'Convention' as defined under Section 65(32) of the Finance Act, 1994 refers to those events where public participation is restricted. However, in the present case, the events conducted in the Convention hall are substantially open to Public and the provision is thus not attracted. It is

pertinent to take note that Section 65(105)(zc) was brought in w.e.f 16.07.2001 which initially covers the services rendered to 'a client' which was then substituted to 'any person w.e.f 16.05.2008' the impugned period involved pre-amended and amended provisions of Section 65(105)(zc). Therefore the confirmation of demand under Convention service is erroneous and contrary to law.

4.9 It was averred that the impugned order has confirmed the disallowance of CENVAT credit of Rs.3,65,836/- wrongly availed. The Appellant is registered under the head 'Scientific and Technical Consultancy' and all activities like Travelling and postage are input services rendered in the course of Scientific and Technical Consultancy services. The CENVAT credit availed is eligible in full as 'input service' as defined in Rule 2(l) of the CENVAT credit Rules includes within its purview freight and postage charges.

4.10 It was submitted that the impugned order lacks jurisdiction in so far as it relates to the period October 2005 to September 2010 and SCN was issued on 08.04.2011 beyond the prescribed period of limitation as prescribed under Section 73(1) of the Finance Act, 1994. The extended period has been invoked without satisfaction of the mandatory statutory conditions imposed on the department. The proviso to Section 73(1) places the burden on the department to establish that there is existence of fraud, collusion, wilful mis-statement, suppression of facts or intent to evade payment of Service Tax by the Appellant which has not been established in the present case. A mere allegation cannot suffice to justify the invocation of the proviso and this renders the impugned order barred by limitation and liable to be cancelled. The department ought to have considered the judgment rendered by the Hon'ble Supreme Court in the case of *Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur [2013 (288) E.L.T. 161 (S.C.)]* and other judgments as cited by the Appellants. The Appellant had furnished a detailed reply to the queries raised as early as in

2008 and there is no citing of wilful evasion of payment of taxes. There are no reasons for invoking the extended period of limitation in the instant case as no existence of *mala fides* have been brought out. This view has been reiterated by various judgments of the Supreme Court and High Courts and Tribunals. The CBEC vide Circular No. 86/4/2006-ST states that IIT's and IIM's are not 'Commercial Concerns'. The Hon'ble CESTAT in the case of Indian School of Business Vs. Commissioner of Customs & Central Excise, Hyderabad [2009 22 STT 189 (Bang-CESTAT)] has reiterated that the principle activity of institutions like IIT and IIM is to impart education without any object of making profits and accordingly they cannot be termed as 'Commercial Concerns'. Being a public institution, the records of the Appellant are available for scrutiny. The impugned order thus erred in invoking the extended limitation in terms of the proviso to Section 73(1).

4.11 The Ld. Counsel has also relied on the following judicial pronouncements: -

(i) Sical Distiparks Vs. Commissioner of Central Excise, Chennai [2012 (28) S.T.R. 525 (Commr. Appl.)]

(ii) Commissioner of Central Excise Vs. Nita Textiles and Industries [2013 (295) E.L.T. 199 (Guj.)]

(iii) SOTC Travel Services Pvt. Ltd. Vs. Principal Commissioner of Central Excise, Delhi-I [2021 (55) G.S.T.L. 332 (Tri. - Del.)]

(iv) Abhishek Alkobev (P) Ltd. Vs. Commissioner of Central Excise- [2022 (62) G.S.T.L. 178 (Tri. - All.)]

(v) Commissioner of Central Excise Vs. Northern Operating Systems (P) Ltd. [2022 (61) G.S.T.L. 129 (S.C.)]

(vi) National Remote Sensing Agency Vs. Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV [2020 (6) TMI 618 – CESTAT HYDERABAD]

5.1 The Ld. Authorized representative Shri Rudra Pratap Singh representing the department reiterated the findings of the lower Adjudicating Authority. The Ld. Authorized Representative has contended that a scrutiny of various projects undertaken by the appellant for industries, alumni and other private persons indicate that the appellant is rendering Scientific and Consultancy Services. Some of the topics on which sponsored research is conducted and the persons at whose behest this research is conducted are mentioned below to support his contention that sponsored research involves rendering of Scientific and Technical Consultancy Service:-

Title	Name of the Client
Development of Mems Pressure Sensors for Operation up to 30 Bar Absolute and Gauge Pressure	RCI Hyderabad
Characterisation of Creepn Response of Woven Geotextiles	Garware Wall Ropes Ltd., Pune
Design and Development of Algorithm and C Program for Human Intrusion Detection	Siemens Information Systems Ltd.
Condition Monitoring of Transformer Signature Uhf Sensors and Some Novel Ideas on Using Flurescent	Central Power Remdh Industry
Atpg and Diagnosis of Dsm Circuits (digital /analog /ms/rf)	NXP Semiconductors India Pvt. Ltd.
Technologies for Rural Atm	Vortex Engg. Pvt. Ltd.
Development of Alumina with Defined Physico-chemical Properties.	Indian Oil Corporation Ltd.
Low Noise Low Power Filter and Digital to Analog Converter for Digital Audio	Texas Instruments (India) Pvt. Ltd.
Modelling, Simulation and Development of a Parallel Platform (6 Dof) for Underwater Research	Autodesk India Pvt. Ltd.

5.2 He has also referred to the findings of the adjudicating authority who held that scrutiny of the MOU entered into by the appellant with Renault Nissan Technology and Business Centre revealed that the projects on which research is done are approved by the sponsor and half yearly reports and even completion reports have to be sent by the appellant to the sponsor who will further develop the projects in consultation with the appellant.

5.3 The Ld. Authorized Representative has also relied upon the decisions rendered by the Tribunal, Hyderabad in the case of *Environment Protection Training and Research Institute Vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad IV [2020 (34) GSTL 429 (Tri.- Hyd.)]* and also in the case of *National Remote Sensing Agency Vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad IV [2020 (78) GSTR 278 (CESTAT-Hyd.)]* to affirm that the appellant is rendering Scientific and Consultancy Services and so demand raised is justified.

6. Heard both sides and carefully considered the submissions and evidences on record.

7. The following issues arise for decision in this appeal:

(i) Whether the demand of Service Tax on grants / funds / consideration received by the appellant in respect of projects under sponsored research under Scientific and Technical Consultancy Services is justified and whether there is any provision of service in respect of sponsored research classifiable under Scientific and Technical Consultancy Service?

(ii) Whether the demand of Service Tax on activity / events undertaken by the Appellant at its Convention center is sustainable?

(iii) Whether the Appellant is eligible to avail input service credit on Travel, Postage and freight relating to Scientific and Technical Consultancy services rendered? And

(iv) Whether invocation of extended period in terms of Section 73(1) of the Finance act, 1994 is maintainable or not considering the facts of the case?

8.1 It is important to know at this juncture, what does Scientific and Technical Consultancy mean under Finance Act,

1994. Scientific and Technical Consultancy is defined under Section 65(92) of the Finance Act, 1994, as follows:-

> *"scientific or technical consultancy" means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organization, to any person, in one or more disciplines of science or technology;"*

8.2 From the above statutory definition, the following essential ingredients are required for classification of any service under Scientific or Consultancy Service:-

i. The services must be rendered by a scientist or a technocrat, or any science or technology institution or organization.
ii. The services must relate to one or more disciplines of science or technology, covering specified areas.
iii. The services must be rendered to any person.
iv. The services may be rendered in any manner.
v. The services may be rendered directly or indirectly.

8.3 The dictionary meaning of the word 'advice' is opinion given as to future action. To render advice in the present context means, to give opinion or to make recommendations, regarding a decision or course of conduct. The word 'consult' means 'seek information or advice from (person, book, etc.) take counsel (with)'. The person consulted is the 'consultant', and hence 'consultancy' in the present context will mean rendering of professional advice or services. The Supreme Court in *Union of India vs. Sankalchand Himatlal Sheth [(1977) 4 SCC 193]*, has held that the word 'consult' implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least a satisfactory solution. It will be evident from the above that the scope of consulting covers engaging of experienced and knowledgeable persons to find solution to problems. It involves guiding advising, *etc*., but not executing the advice. The meaning of words 'scientific or technical assistance' has to be

read in that context only. There are a number of consultants who undertake the job of rehabilitating manufacturing units or any sick organization. They employ experts in various disciplines. The person having technical knowledge as well as managerial knowledge or expertise gives advice for such rehabilitation. Thus, even if a technocrat gives advice through other organizations, the same will be liable for Service Tax as the services are rendered indirectly.

8.4 We find that the appellant is rendering two types of services *viz.,* Consultancy and Sponsored Research Projects. The appellant is discharging Service Tax in respect of Consultancy Services provided. In case of sponsored research projects, the appellant has submitted that the project was undertaken with the prime motive of furthering knowledge through study and research and the focus was solely on the generation and imparting of knowledge. These projects are funded by grants either by private parties or the Government and consideration is received from the sponsor towards the research activities undertaken by the appellant. The appellant has argued that there is no service rendered in respect of these sponsored projects or organizing workshops either to the Government or to the private agencies. These sponsored research projects involves research in specific and demarcated areas of technology in various spheres. The sponsor does not derive any commercial gain from the project that it sponsors. In the course of primary study/research undertaken, there may be specific instances where the research conducted might generate/indicate the possibility of potential commercial value to the sponsor if further study is undertaken. In such an event a separate arrangement would be entered into by ICSR with the particular sponsor for engaging in further study along the lines indicated. In such cases the services rendered by IIT pursuant to the second arrangement would be in the nature of consultancy services and the income there from is offered to service tax. The appellant enclosed sample agreements entered into by ICSR to illustrate the difference in arrangement between sponsored research and consultancy. The appellant further contented that a

perusal of the agreement relating to sponsored research would indicate that it relates to instances where the arrangement is purely to further research and study in specified areas with no benefit to the sponsor, either commercial or otherwise, but, under the second arrangement i.e., for consultancy, ICSR renders consultancy services, the receipts wherefrom are offered to service tax. The appellant further submitted that the sponsored projects were conducted on a no profit- no loss basis and the amount of grant covered the actual expenses incurred by IIT on engagement of project staff (both regular as well as adhoc appointments, including students), staff, purchase of equipments and materials and actual administration expenses. They submitted that the purchase of the materials and equipments required for the research project were subject to the process of tender. The grant received was utilized for defraying of these expenditure. The appellant submitted that the agreements entered into by ICSR with the Sponsor stipulate the period of research and normally provide for the return of any unused portion of the grant to the sponsor. Thus, no Income accrued to IIT from a sponsored research project that would be liable to tax under the purview of service tax. The appellant demarcated the Sponsor projects into Project sponsored by Industries, Project sponsored by Government, Project sponsored by Alumni and Grants received from the Government and other funding agency such as British Council, Asia Specific Center or Energy and Environments and other branches of IIT for conducting workshops and meetings. The appellant summarized the *modus operandi* of activities relating to sponsored research as follows:

i. Applications are received from various entities such as Government, Private Agencies, Alumni and other entities engaged in the furtherance of study and research for carrying out research in specific and demarcated areas.
ii. After detailed discussion regarding the subject and object of the proposed study, the sponsor agrees to sponsor by way of grant, and ICSR agrees to conduct research in an agreed field/ area of study. A formal agreement is entered into by the parties in this regard.

iii. The grant offered covers the incurrence of expenditure in relation to faculty cost, staff cost, equipment cost and cost of overheads, infrastructure and premises cost and other expenditures incurred by ICSR.

iv. Normally, there is a specific clause to the effect that if the actual expenditure incurred by IIT is less than the grant supplied by the sponsor, the excess shall be refunded to the sponsor.

8.5 Thus, the appellant contended that there was no liability towards service tax, since no taxable services were rendered to the Sponsor and the aim of the arrangement between ICSR and the Sponsor was purely to further the cause of education. They further informed that IIT had offered to Service Tax an amount of Rs.25,16,80,454/- for the period April 2010 to March 2011 being the income earned from 'Consultancy' whereas no Service Tax was paid on the receipts from 'Sponsored projects' as there is no provision of service.

8.6 We have gone through the various topics which were chosen either by the sponsor or by the faculty of the appellant in consultation with the sponsors for conducting studies and research. The appellant is also organizing various workshops in order to promote knowledge and to further the cause of education. We are of the considered view that there is no problem referred to or no advice given in order to describe such research as a service. Further, there is no scientific or technical consultancy or assistance. There is no rendering of any expert opinion or advice for any problem or issue referred to ICSR. No rendering of professional advice or assistance as to taking a particular course of action having its origin in the expertise and special knowledge of a scientist or technocrat. The funds are given to the appellant for carrying out research / study on those topics and sharing the results of the research with the sponsors in our opinion is required to be considered not as service but only sharing of knowledge and education. The appellant has submitted that whenever any commercially viable results emerge out of this research separate agreements are entered

into and Service Tax is duly discharged on the amount received for such consultancy / advice.

8.7 We have gone through the decisions relied upon by the Department in respect of *Environment Protection Training and Research Institute Vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad IV [2020 (34) GSTL 429 (Tri.-Hyd.)]* and *National Remote Sensing Agency Vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad IV [2020 (78) GSTR 278 (CESTAT-Hyd.)]*, the facts in both these cases are entirely different and so distinguishable. In the case of Environment Protection Training and Research Institute *supra* it was held that the institute does not confirm to the definition of State and as it was rendering services regarding training and consultancy in the field of environment its services were held as taxable. In the case of National Remote Sensing Agency *supra* it was held that the supplier of goods and services to be distinct from the person receiving the grants in aid. Such supplier of goods and services will not be automatically exempted from payment of Service Tax or Excise Duty unless there is a specific exemption Notification in respect of such goods or services, though National Remote Sensing Agency is receiving the grants in aid from the Government. In the present appeal what is required to be decided is whether any service is rendered in respect of sponsored research projects and whether such a service can be classifiable under Scientific and Consultancy Services in terms of Section 65(92) of the Finance Act, 1994.

8.8 Further, we find from appeal records that the Appellants have rendered Scientific and Technical Consultancy Services during the period from October 2005 till September 2010 in both Government Sponsored Research Projects and Projects Sponsored by Industries, Alumni, etc. and have received consideration as detailed below:

Category of Sponsored Research Projects	**Amount received (Rs.)**
Project Sponsored by Govt.	14467504

Project Sponsored by Industries	50066396
Projects Sponsored for Alumni Projects	18176473
Amount received in Foreign Currency	23060258
Grants received in conducting workshop	3418691
Total Amount Received	**109189322**

8.9 We find that CBEC Circular B/11/1/2001–TRU dated 09.07.2001, relevant extracts of which have been reproduced below, clarified that Service Tax was liable to be paid when any scientific or technical consultancy service is rendered whether by Public Funded institutions or by private agencies. Further it was clarified that Service Tax is not payable when Public funded research institutions received grants in aid from the Government for conducting research/ project work and service tax is payable only if service is rendered on payment basis:

Point raised for clarification	**Clarification**
Whether public funded research institutions like CSIR, ICAR, DRDO, IITs and IISc., Regional Engineering Colleges etc., which are exempt from payment of income tax are covered under the service tax.	Yes. Service tax is liable to be paid when any scientific or technical consultancy service is rendered whether by public funded institutions or by private agencies.
Many public funded research institutions receive grants or aids from the Government for conducting research /project work. Whether such activities would be covered under the levy?	In the facts of this case, no service is rendered to anyone. Hence the question of payment of service tax does not arise. However, if they render service to anyone on payment basis, service tax will be payable on such services.
Whether the service tax will be leviable on consultancy provided to government departments, public sector undertakings?	If scientific or technical consultancy is provided to a government department for which consultation fees are received, then service tax would be applicable.

8.10 In the instant case, the Appellant is entering into a MOU with their Clients as per which consideration is being paid towards Research & Development and conduct of workshops by IIT, Madras. The Appellant has received consideration in the form of grants for research activities from JK Tyres, Cadbury India Ltd., Tata Steel, etc. during the aforesaid period. Further, we find that the Appellant has received consideration in the form of Grants towards conduct of workshops from various clients against reasons mentioned against each:

Name of Client	**Reasons for receiving consideration for workshop**
Nokia Research Centre	For enabling students to attend international conferences.
BHEL	To meet expenses for holding an international workshop on coal gasification
ACC	Technology assessments in health care and to disseminate research findings to academic community and other researchers
BTCL	To disseminate research findings on Low Carbon technologies to academic community and other researchers
Parryware	For making a science-based programme to create awareness among the public
Synergy Engineering Solutions India	To disseminate research findings on Renewable energy to academic community and other researchers

Besides, the Appellant is also receiving amounts in Foreign Currency from overseas clients like World bank, Chevron Products Corporation, Hewlett Packard Company, Proctor and Gamble, etc. From the above it is clear that the Appellant is conducting research work for various clients and workshops are being conducted for dissemination of research findings to academic community and others involved. The Appellants are receiving consideration from various Sponsors towards grants for the above work. As per the terms and conditions of MOU entered into with Sponsors, the research leading to patentable invention is being used by the Sponsor after entering into a

separate contract in its manufacturing facility and if not, the Appellant has the right to license it to third party to generate revenue and if the Sponsor licenses it to third party, then the revenue generated is shared between the Sponsor and Appellant. If any commercially viable results emerge on account of such a research, a separate agreement is entered into and any consideration received is charged to Service Tax.

8.11 In respect of Government of India Sponsored projects the grants are received by an order from the Ministry of Science and Technology (MST), Government of India for which separate audited accounts are maintained for each project. As per the Order, we find that even if interest is earned by way of keeping the grant in bank accounts, the Ministry should be accordingly informed. Further the Appellants are required to furnish to the MST utilisation certificate and audited statement of accounts pertaining to the grant immediately after the end of each financial year. Therefore, it is found that the grants are meant to be utilised only for research work for the Government of India under which the Appellant is also functioning. We find that as per the CBEC Circular *ibid*, it was clarified that Service Tax is not payable when Public funded research institutions receive grants or aids from the Government for conducting research/ project work. Had the nature of service was in the form of consultancy service for which consideration was received, then service tax could have been payable as per the said clarification. Therefore, we are of the considered opinion that the Service Tax is not payable when Public funded research institutions like IIT receive grants or aid from the Government for conducting research / project work.

8.12 In view of the above detailed discussion, we come to the conclusion that in respect of sponsored research, there is no provision of service. The services provided are in the nature of furtherance of education and promotion of sharing of knowledge. Many times, the projects include organising workshops, international conferences and conducting seminars. As such, the impugned Order-in-Original No. 11/2013 (RST) dated 31.05.2013 demanding Service Tax in respect of

sponsored research projects cannot be sustained. We order so accordingly.

9.1 Regarding demand of Service Tax on Convention services, we find that the CBEC Circular No. 86/04/2006-ST does not pertain to clarification on Convention services and hence not applicable to the facts of the case. The relevant definition of the Finance Act, 1994 has been reproduced below:

> ***"Convention"*** *means a formal meeting or assembly which is not open to the general public, and does not include a meeting or assembly the principal purpose of which is to provide any type of amusement, entertainment or recreation;*
>
> *(Section 65(32) of the Finance Act, 1994)*

> ***"Taxable Service"*** *means any service provided or to be provided [to any person], by any person in relation to holding of convention, in any manner;*
>
> *(Section 65 (105) (zc) of the Finance Act, 1994)*

9.2 We find that the Centre for Industrial Consultancy and Sponsored research (IC & SR) building of the Appellant had facilities for conferences, meetings and video conferencing and facilities were available to respective departments of the Appellant, the cultural affairs secretary and private industries, industrial associations and other professional bodies, for organising seminars/ technical sessions and conferences and a tariff was fixed for them and collected by the Appellant. The Appellant collected amounts from the departments, cultural affairs secretary and private parties like First Source Ltd., Comnosieur Electronic Pvt. Ltd. who use the hall for the purpose of meetings/ demonstrations/ cultural programs and hence they are covered under the scope of levy of convention services. The contentions of the Appellant have been discussed by the Adjudicating Authority in the impugned order and we find no reason to differ with the ultimate conclusion arrived at. We agree with the contention of the appellant that some of these conferences / meetings may be open to the public and students and some of the events may be related to cultural activities. But, taking an overall view that there is no convention service is not supported by evidence and facts. So,

the demand in respect of convention services is required to be upheld.

10. Regarding availment of CENVAT Credit on 'Travelling and Postal Expenses, *etc.'*, the lower adjudicating authority has disallowed the CENVAT Credit concluding that these services are not input services under Rule 2(l) of CENVAT Credit Rules, 2004. However, we find that the appellant is rendering 'consultancy services' and also discharging Service Tax. As such, we do not find any reason for disallowing the CENVAT Credit on these services.

11.1 Regarding, the invocation of extended period, we find that in a similar case of *Indian Institute of Technology (IIT) Vs. Commissioner of Service Tax-II, Mumbai* reported in *[2016 (42) S.T.R. 406 (Tri. - Mumbai)]*, wherein it was held as follows:

> *"6.----------We find that the appellant M/s. IIT is a reputed Technical Education Institute of Government of India, therefore, there cannot be mala fide intension for the reason that there is no individual who can be benefitted by taking wrong Cenvat credit. Therefore, mala fide intension does not exist. The judgments relied upon by the Ld. Counsel are all related to Government agencies and penalties were dropped on this count which are applicable to the present case also. We also seen that issue involved is wrong availment of Cenvat credit due to reasons that either some of the input services were not used in the taxable output services or input services are not admissible input services in terms of definition of input services. We considered that the institution is one single entity and carrying out various activities related to education as well as scientific analysis simultaneously where some of the services are taxable and some are exempted or not liable to service tax. The appellant have declared the entire Cenvat credit availed by them to the department. In view of this fact, the appellant made out-fit case for waiver of penalty under Section 76 invoking Section 80 of Finance Act, 1994. However, there is failure on the part of the appellant inasmuch as they have not maintained separate accounts therefore, they are liable for penalties under Section 77 and Rule 15(3) of CCR, 2004. Appellant on pointing out by the department paid entire Service Tax along with interest and now they are not disputing the same.*
>
> *We find the ratio of facts of the above case are squarely applicable to the facts of this case and in a number of decisions cited by the Appellant and hence hold that the invocation of extended period is not justified in this case. Hence the demand for the normal period only sustains. The Appellant is also liable for levy of Interest on Service Tax payable by them. and the penalty payable under Section 77 of FA is upheld."*

11.2 In the case of National Remote Sensing Agency Vs. Commissioner of Central Excise & Service Tax, Hyderabad *supra*, regarding invocation of extended period, it was held as follows:

> *"24. In view of the above, we find that the demands, as raised in the SCN, need to be upheld on merits. However, we find that the assessee in this case is an autonomous organisation under the department of Space, Government of India. It is not a private business entity. They have, of course, undertaken several research projects for a price and that is part of their revenue model. They generate funds from these projects which are used for running the organisation. For these projects, they get paid by other Governmental and non-Governmental organisations under various heads. If the assessee was clearly aware that they had to pay service tax, they could have billed their clients for the Service Tax as well. By not paying the service tax, the assessee is not gaining anything. It is a Governmental organisation run by bureaucrats and scientists, none of whom have any personal interest in evading service tax. In fact, by evading service tax nothing would be gained either by anyone individually or by their organisation. Revenue's argument is that the assessee had not come forward to disclose all their activities and therefore, they have suppressed the fact which is sufficient to invoke extended period of limitation. We do not agree with this contention. The assessee could have genuinely believed that they were not liable to pay service tax and not disclosed facts to the department or sought any advice or guidance from the department regarding taxability of their services. In this factual matrix, by no stretch of imagination can we hold that the assessee has committed fraud or collusion or wilful misstatement or suppression of facts with an intent to evade payment of service tax. Under these circumstances, we find the extended period of limitation cannot be invoked in this case. The demand, if any, within the normal period of limitation can only survive."*

11.3 Similarly, we find other decisions cited by the Appellant in Para 4.8 are relevant to their cause. In the instant case, the Appellant is an Autonomous Organisation under the Ministry of Science and Technology and cannot be attributed with any *malafide* intention for non-payment of service tax in as much as they are already registered with Service Tax for various services and regularly paying Service Tax and filing periodical returns and being so, their records were always available for audit and scrutiny. The Appellant were under the reasonable belief that the Services rendered by them were not liable for Service Tax. Further taxability of sponsored research is interpretational in nature.

12. After appreciating the facts and the evidence placed before us and following the judgement cited *supra*, we are of the considered opinion that the extended period of limitation is not invokable in this case and the penalty imposed under Section 78 of Finance Act, 1994 in the impugned order is set aside.

13. In view of the above discussion, the demand raised in respect of Scientific and Consultancy Services is set aside being not sustainable. The demand in respect of convention service is upheld for the normal period. We hold that the appellant is eligible for the CENVAT Credit availed on Travelling and Postal Services, *etc.,* being a service provider of Consultancy Services. Penalties imposed are also ordered to be set aside.

14. Thus, the Appeal is partly allowed as above with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 19.12.2023)

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

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

MK