

GIB/GJ/CADILA HEALTHCARE/27.04.2021/OTHERS-21

Others Category : LEVY OF SERVICE TAX

State : Gujarat

Order No.: GIB/GJ/CADILA HEALTHCARE/27.04.2021/OTHERS-21

Name of Entry :
CADILA HEALTHCARE LIMITED

Date : 27-04-2021

Breif Issue :

FACTS OF THE CASE:

In this case the appellant M/s Cadila Health Care Ltd. is a public limited company engaged in the business of manufacturing of pharmaceutical products as well as providing various services, i.e., Maintenance & Repair Services, Advertising Agency, Intellectual Property Services, Consulting Engineer, Management Consultants, Manpower Recruitment Agency, Business Auxiliary Services and IPR services, Scientific & Technical Consulting Services, Online information and Database Retrieval Services, Market Research Agency, Business Support Services, Clearing and Forwarding Services, Renting Of Immovable Property Services, Recovery Agents, Technical Inspection and Certification services, Banking&Financial Services which are classifiable under taxable services definition under section 65 of the Finance Act, 1994, for which they are registered with Service tax department.

The appellant entered into a partnership agreement with a partnership firm M/s Zydus Healthcare As per the terms of the addendum of the partnership agreement, appellant agreed to provide certain services to firm partnership M/s Zydus Healthcare related to promotion and marketing of firm's product and various related services. The appellant towards the said services received remuneration from M/s Zydus Healthcare on which they have paid the service tax and also paid interest whenever there is a delay in paying the service tax. Subsequently, when they realised on the basis of their consultant's advice that the services provided by a partner to a partnership firm does not fall under the ambit of services as per Finance Act, 1994, they had filed for refund claims. The said refund claims were rejected by the Assistant Commissioner of Service Tax, Ahmedabad. Being aggrieved by the rejection of refund claim, the appellant filed appeals before the Commissioner (Appeals) which came to be rejected. Therefore, the present appeals filed by the appellant.

ISSUE OF THE CASE:

Whether the appellant is liable to pay the Service Tax when the appellant is a partner and the

service recipient is a partnership firm?

If the appellant is not liable to pay the Service Tax, whether the Service Tax so paid by the appellant along with interest, is refundable, even when the assessment of payment of service tax was not challenged?

Whether the appellant is a service provider and the recipient M/s Zydus Healthcare is a service recipient having relationship of partner and partnership firm can be categorised as service provider and service recipient?

Decision of Advance Ruling Authority :

DECISION:

It is held that any amount received by the partner from the partnership firm as per the obligation of the partnership deed would be treated as profit share in the partnership business.

Applying the same ratio in the present case also, the appellant received remuneration from its partnership firm towards certain activities performance in terms of the partnership deed is nothing but profit in partnership sharing and the same cannot be treated as consideration towards provision of service under Finance Act, 1994.

It is also observed that the impugned activities of the appellant are undisputedly its obligation as a partner as per partnership deed. There is no separate contract of services between the appellant and the partnership firm. Therefore, the remuneration received by the appellant is merely a special share of profits in terms of the partnership deed. Therefore, such remuneration cannot be considered as consideration towards any services between two persons, and, hence, not liable to Service Tax.

It has been settled that the firm is not a different entity or person in law than its partners. It is merely an association of individuals and a firm name is only a collective of those individuals who constitute a firm. With this law laid down by the Apex Court, it cannot be said that the appellant being the partner and M/s Zydus Healthcare being a partnership firm have relationship of service provider and service recipient.

The appellant have clearly declared that they have not recovered the amount of Service Tax from Zydus Health Care and the burden of Service Tax was not passed on to the Zydus Health Care. It shows that both the authorities have ignored this declaration made by the appellant. Therefore, the contention made by them that the appellant has not satisfied that the incidence of Service Tax, for which refund claim was made, has not been passed on is apparently erroneous. As per our above discussion and finding, the appellant are entitled for the refund of the claim made by them. Accordingly, all the impugned orders are set aside and appeals are allowed with consequential relief, in accordance with law.