



WEB COPY



W.P.Nos.14460 and 5886 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	09.08.2024
Pronounced On	20.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.14460 and 5886 of 2021
and
W.M.P.Nos.15345 and 6483 of 2021

W.P.No.14460 of 2021

Hypertherm (India) Thermal Cutting
Private Limited,
Represented by its Director
Mr.Kotagiri Pramod Kumar

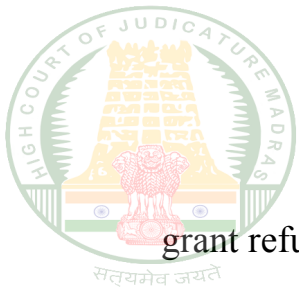
... Petitioner

Vs.

The Assistant Commissioner,
Office of the Assistant Commissioner of
GST and Central Excise,
Thyagaraya Nagar Division,
Chennai South Commissionerate,
No.692, M.H.U.Complex,
Anna Salai,
Nandanam, Chennai – 600 035.

... Respondent

Prayer in W.P.No.14460 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to Order-in-Original Nos.02/2021 to 05/2021 (R) DIN No.20210559TL020000A7DC dated 11.05.2021 passed by the respondent, quash the same as arbitrary and illegal and to further direct the respondent to



W.P.Nos.14460 and 5886 of 2021

grant refund.

WEB COPY

W.P.No.5886 of 2021

Hypertherm (India) Thermal Cutting
Private Limited,
Represented by its Director
Mr.Kotagiri Pramod Kumar

... Petitioner

Vs.

The Additional Commissioner,
Office of the Commissioner of GST &
Central Excise,
Chennai South Commissionerate,
No.692, M.H.U.Complex,
Anna Salai,
Nandanam, Chennai – 600 035.

... Respondent

Prayer in W.P.No.5886 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to Order-in-Original Nos.28 to 30/2020-ADC dated 30.09.2020 in Files C.No.IV/09/63/2015-STC II Adj, C.No.IV/09/97/2016-STC II Adj and C.No.V/15/32/2019-STC II Adj passed by the Respondent, quash the same as arbitrary and illegal.

For Petitioner
(In both W.Ps)

: Mr.Joseph Prabakar

For Respondents
(In both W.Ps)

: Mr.A.P.Srinivas
Senior Standing Counsel



W.P.Nos.14460 and 5886 of 2021

COMMON ORDER

WEB COPY By this Common Order, both the Writ Petitions are being disposed of. In these writ petitions viz., W.P.No.14460 of 2021 and W.P.No.5886 of 2021, the Petitioner has challenged the respective Impugned Order-in-Originals passed by the Assistant Commissioner of GST and Additional Commissioner of GST respectively as detailed below:-

Table-1

Sl. No.	W.P.No.	Impugned Order No. & Date of the Impugned Order	Particulars	Period
1	5886 of 2021	Order-in-Original Nos.28 to 30 / 2020-ADC (dated 30.09.2020)	Rs.2,17,21,291/- (Service Tax and Cesses Payable together with Penalty)	October 2012 to September 2014
				October 2014 to March 2016
				April 2016 to June 2017
2	14460 of 2021	Order-in-Original Nos.02-05/2021 (R)	Rs. 37,88,251/- (Rejection of Refund Claim)	July 2012 to September 2015

2. The Order-in-Original Nos.28-30/2020-ADC dated 30.09.2020 impugned in W.P.No.5886 of 2021 is preceded by a Show Cause Notice and two Statement of Demands issued to the Petitioner for the period in the following Table as detailed below:-



Table-2

Sl.No.	Dated	SCN No.	SOD No.
1	22.04.2015	40/2015-C (ST-II)	-
2	21.04.2017	-	10/2017
3	09.10.2018	-	32/2018 (ADC)

3. Operative portion of the Order-in-Original Nos.28-30/2020–ADC dated 30.09.2020 impugned in W.P.No.5886 of 2021 reads as under:-

“18. In view of the above discussions, I pass the following order:-

ORDER

I. Show cause Notice No. No.40/2015 dated 22.04.2015:-

- (a) I confirm the demand of Rs.76,72,245/- (Rupees Seventy Six Lakhs Seventy Two Thousand Two hundred and Forty five only) being the Service Tax and CESSes payable on the taxable services provided by them during the period October 2012 to September 2014 under Section 73(2) of the Finance Act 1994.*
- (b) I confirm the interest at applicable rate under Section 75 of the Finance Act 1994, on the demand of service tax and cesses made at l(a) above;*
- (c) I impose a penalty of Rs.7,67,225/- (Rupees Seven Lakhs Sixty Seven Thousand Two Hundred and Twenty Five Only) under Section 76 of the Finance Act 1994. M/s HYPERTHEM shall however have the option to pay an amount equal to 25% of this amount provided that they pay*



WEB COPY



W.P.Nos.14460 and 5886 of 2021

the entire service tax demanded at 1.(a) above along with interest at applicable rate demanded at 1.(b) above including the 25% of the penal amount within thirty days from the date of receipt of this order,

II. Statement of Demand No. No. 10/2017 dated 21.04.2017:-

- (a) *I confirm the demand of Rs.69,27,162/- (Rupees Sixty Nine Lakhs Twenty Seven Thousand One Hundred and Sixty Two only) being the Service Tax and CESSes payable on the taxable services provided by them during the period October 2014 to March 2016 under Section 73(2) of the Finance Act 1994.*
- (b) *I confirm the interest at applicable rate under Section 75 of the Finance Act 1994, on the demand of service tax and cesses made at II(a) above;*
- (c) *I impose a penalty of Rs.6,92,716/- (Rupees Six Lakhs Ninety Two Thousand Seven Hundred and Sixteen Only) under Section 76 of the Finance Act 1994. M/s HYPERTHEM shall however have the option to pay an amount equal to 25% of this amount provided that they pay the entire service tax demanded at II(a) above along with interest at applicable rate demanded at II(b) above including the 25% of the penal amount within thirty days from the date of receipt of this order;*

III. Statement of Demand No. No.32/2018 dated 09.10.2018:-

- (a) *I confirm the demand of Rs.51,47,221/- (Rupees Fifty One Lakhs Forty Seven Thousand Two Hundred and Twenty One*



WEB COPY



W.P.Nos.14460 and 5886 of 2021

only) being the Service Tax and CESSes payable on the taxable services provided by them during the period April 2016 to June 2017 under Section 73(2) of the Finance Act 1994.

- (b) I confirm the interest at applicable rate under Section 75 of the Finance Act 1994, on the demand of service tax and cesses made at III(a) above;*
- (c) I impose a penalty of Rs.5,14,722/- (Rupees Five Lakhs Fourteen Thousand Seven Hundred and Twenty Two Only) under Section 76 of the Finance Act 1994. M/s HYPERTHEM shall however have the option to pay an amount equal to 25% of this amount provided that they pay the entire service tax demanded at III(a) above along with interest at applicable rate demanded at III(b) above including the 25% of the penal amount within thirty days from the date of receipt of this order.”*

4. By the aforesaid Order, the Additional Commissioner has confirmed a demand of service tax on the services provided by the Petitioner to its Group Company, namely, M/s.Hypertherm (S) Pte. Ltd., Singapore.

5. In W.P.No.14460 of 2021, the Petitioner has challenged the Impugned Order-in-Original Nos.02-05/2021 dated 11.05.2021 passed by the 2nd respondent namely the Additional Commissioner.



W.P.Nos.14460 and 5886 of 2021

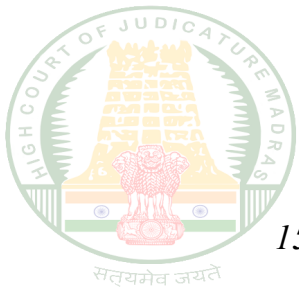
WEB COPY

6. By the Impugned Order, the 2nd respondent namely the Additional Commissioner has rejected the refund of input tax credit (CENVAT Credit) claimed by the Petitioner on the ground that there was no export of service as per the Place of Provision of Services Rules, 2012.

7. Operative portion of the Order-in-Original Nos.02-05/2021 dated 11.05.2021 impugned in W.P.No.14460 of 2021 reads as under:-

“13. It is found that as per the claimants reply, the Marketing research, Product training, Marketing services and Development of business plans with Group's Indian customers and identification of prospective customers are done in India for the Indian customers so as to enable M/s Hypertherm Singapore to sell their products in India. Therefore as per Rule 4 of Place of Provision of Services Rules, 2012 the business support service is provided by the claimant in India to Indian customers for which the claimant receives the service charges in foreign currency does not appear as export of service.

14. Further as per Rule 6A of the Service Tax Rules, 1994 which is effective from 01/07/2012, provisions of the impugned service does not appear to be export of service since the condition (d) there under, i.e., the place of provision of the service is outside India is not satisfied in as much as the services are provided in India to their Indian customers.



W.P.Nos.14460 and 5886 of 2021

WEB COPY

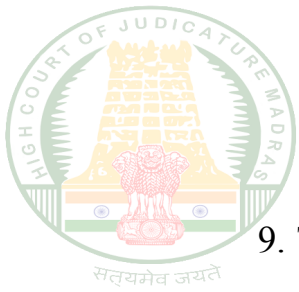
15. *The two cases referred by the claimant relate to the period when PPS Rules was not framed whereas the refund claims filed by the claimant are for the period when PPS Rules are prevalent, Hence the two cases cited by the claimant is not relevant to the present refund claims.*

16. *Therefore, I am inclined to reject all the refund claims on the grounds that the service done by the claimant does not amount to export. Hence I pass the following order,*

ORDER

I reject the following refund claims totalling Rs. 2124338/- (Rupees twenty one lakhs twenty four thousand three hundred and thirty eight only) filed by M/s. Hypertherm (India) Thermal Cutting Private Limited, Chennai under Rule 5 of the CENVAT Credit Rules, 2004 read with Notifications 27/2012-CE(NT) dated 18.06.2012 for the period July'12 to September'15 filed on quarterly basis as detailed in Para 6."

8. The aforesaid Order-in-Original Nos.02-05/2021 dated 11.05.2021 impugned in W.P.No.14460 of 2021 is the culmination of the remand proceedings pursuant to remand orders viz., Orders-in-Appeal No.301/2017 (CTA-I) dated 09.11.2017; 60, 61, 62/2018 (CTA-I) dated 05.02.2018; 450, 451, 452/2018 (CTA-II) dated 28.09.2018 and 13/2019 (CTA-II) dated 31.01.2019 passed by the Commissioner (Appeals).



W.P.Nos.14460 and 5886 of 2021

9. The Petitioner claimed that the Petitioner was exporting the following

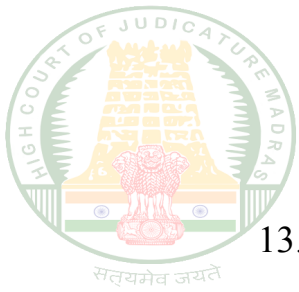
services to its subsidiary namely M/s.Hypertherm (S) Pte. Ltd., Singapore viz.,

- i. Market research;
- ii. Product training for group's Indian customers;
- iii. Marketing services;
- iv. Develop business plans with group's Indian customers and identification of prospective customers.

10. Therefore, the Petitioner assumed that since the above services were being exported to its subsidiary namely M/s.Hypertherm (S) Pte. Ltd., Singapore, the Petitioner was not liable to pay service tax under the provisions of the Finance Act, 1944.

11. Under these circumstances, the Petitioner did not pay service tax for the services provided to the aforesaid Company under the provisions of the Finance Act, 1994 for the period between October 2012 and September 2015.

12. Under these circumstances, the Petitioner also filed a claim for refund of Input Tax Credit (CENVAT Credit) under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE (N.T.) dated 18.06.2012.

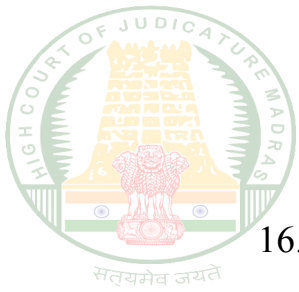


W.P.Nos.14460 and 5886 of 2021

13. The refund claims were sought to be denied by issuance of Show Cause Notices. Similarly, Show Cause Notice / Statements of Demand were issued to the Petitioner as detailed in Table-1 on the ground that the service provided by the Petitioner to M/s.Hypertherm (S) Pte. Ltd., Singapore, did not satisfy the requirements of “export of service” as set out in Rule 6A of the Service Tax Rules, 1994 as in force with effect from 01.07.2012.

14. In the Show Cause Notices / Statements of Demand that preceded the Impugned Order-in-Original Nos.02-05/2021 dated 11.05.2021, the Department had invoked Rule 4 of the Place of Provision of Services Rules, 2012.

15. It is the case of the Petitioner that both Rule 4(a) and Rule 4(b) of Place of Provision of Services Rules, 2012 are not applicable to the facts of the case. Further, the case of the Petitioner is that it is true that the location of the 'provider of service' i.e., Petitioner is in India. However, by a legal fiction in Rule 3 of the Place of Provisions of Services Rules, 2012, service is deemed to have been provided at the location of the 'recipient of service', namely, M/s.Hypertherm (S) Pte. Ltd., Singapore.

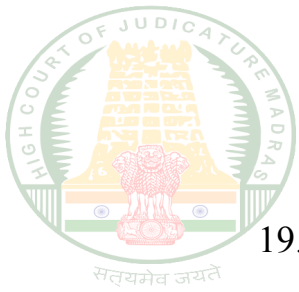


W.P.Nos.14460 and 5886 of 2021

16. It is submitted by the learned counsel for the Petitioner that Rule 4 of the aforesaid Rules will apply only where services provided are in respect of goods that are required to be made physically available by the recipient of service to the provider or to the persons acting on behalf, in order to provide the service.

17. It is also submitted by the learned counsel for the Petitioner that in this case, the Petitioner was providing marketing service and developing business plan for M/s.Hypertherm (S) Pte. Ltd., Singapore and no goods were made physically available by the recipient of service to the provider or to the persons acting on behalf, in order to provide the service.

18. Learned counsel for the Petitioner would submit that in the Order-in-Original Nos.28 to 30/2020 – ADC dated 30.09.2020 impugned in W.P.No.5886 of 2021, the Respondent had also referred to Rule 6 of the Place of Provision of Services Rules, 2012 which will apply only to the services provided by an event manager by way of admission to, or organization of events.



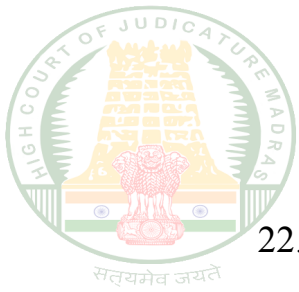
W.P.Nos.14460 and 5886 of 2021

19. Learned counsel for the Petitioner would also submit that in this case,

WEB the Petitioner was only participating in the event for promotion of products of the said group Company namely, Hypertherm (S) Private Limited, Singapore and mere participation of Petitioner will not attract Rule 6 of the Place of Provision of Services Rules, 2012.

20. That apart, the learned counsel for the Petitioner would also submit that the basis on which proceedings were initiated and were confirmed in the Impugned Orders were in variance, inasmuch as the Show Cause Notices were issued and were predicated on Rule 4 of the Place of Provision of Services Rules, 2012, whereas the Impugned Orders rejecting the refunds claimed by referring to Rule 6 of the Place of Provision of Services Rules, 2012 which in any event inapplicable.

21. In support of the above contention, Learned counsel for the Petitioner would place reliance on the ratio of the Hon'ble Supreme Court in **Commissioner of Central Excise, Nagpur Vs. Ballarpur Industries Limited**, (2007) 8 SCC 89.



22. On merits, the learned counsel for the Petitioner would submit that there are plethora of decisions of the Tribunal and also the decisions of the other Courts, where the issue now stands concluded in favour of the Petitioner.

The learned counsel for the Petitioner on the following cases:-

- i. **Commissioner of Service Tax, Mumbai-II Vs. SGS India Pvt. Ltd.** 2014 (34) **S.T.R.** 554 (Bom.)
- ii. **Commissioner of Service Tax, Mumbai-VI Vs. A.T.E Enterprises Pvt. Ltd.** 2018 (8) **G.S.T.L.** 123 (Bom.)
- iii. **Commissioner of Service Tax-VII Vs. Life Care Medical Systems** 2018 (18) **G.S.T.L.** 587 (Bom.)

23. The learned Senior Standing Counsel for the Respondents would submit that the activities performed by the Petitioner are in the nature of market support services including participation in trade shows, exhibitions, meetings, demonstrations in order to increase the sale of the products of M/s.Hypertherm, Singapore are taking place in India. So, by application of Rule 6 of the Place of Provision of Services Rules, 2012, the services are performed in India and not in Singapore where the recipient of service is located.

24. The learned Senior Standing Counsel for the Respondents would also submit that by virtue of Rule 14 of the Place of Provision of Services Rules, 2012, application of Rule 6 of the Place of Provisions of Services Rules, 2012 has to be preferred over Rule 3 of the Place of Provisions of Services Rules,

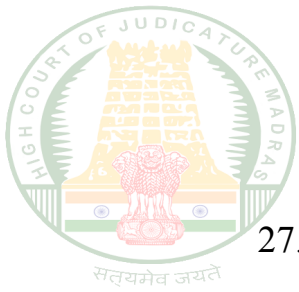


W.P.Nos.14460 and 5886 of 2021

2012, if at all there is some merit in applicability of Rule of the Place of Provisions of Services Rules, 2012 in the instant case.

25. Learned Senior Standing Counsel for the Respondents would also submit that as the services provided by the Petitioner are not eligible to be considered as export under Rule 6A of the Service Tax Rules, 1994. Accordingly, the adjudication process was completed in respect of all four remand orders and consequently the finality of demand of service tax has been made in the Impugned Order-in-Original Nos.28 to 30/2020-ADC dated 30.09.2020.

26. In support of the above contention, Learned Senior Standing Counsel for the Respondents pointed out that Rule 6A of the Service Tax Rules, 1994 was inserted Vide Notification. No. 36 /2012-ST, dated 20.06.2012, with effect from 01.07.2012 and hence after 01.07.2012, for a service to be considered as export, the service should fulfill all the conditions of Rule 6A(1) of the Service Tax Rules, 1994 and thus the Adjudicating Authority has rightly held that even if one condition of Rule 6A(1) of the Service Tax Rules, 1994 is not fulfilled, the service cannot be export of services.



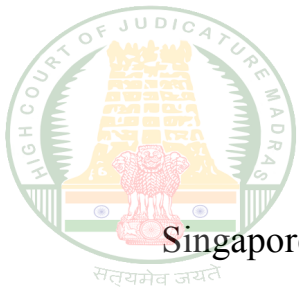
W.P.Nos.14460 and 5886 of 2021

27. Learned Senior Standing Counsel for the Respondents would submit that the location of the service recipient and the place of provision of service need not be co-existent or coterminous and they are independent of each other.

28. The learned Senior Standing Counsel for the Respondents would further submit that if Rule 3 of the Place of Provision of Services Rules, 2012 is interpreted to mean that the place of service is always the location of the service receiver, regardless of any circumstance, then Rule 6A(1)(d) of the Service Tax Rules, 2012 would be rendered redundant and otiose. Therefore, it is submitted that even if the recipient of service is outside India, the service cannot be considered an export of service if it is performed within India.

29. It is also submitted by the Learned Senior Standing Counsel for the Respondents that in this case, the Petitioner had explored new markets and prospective potential buyers for products of M/s.Hypertherm, Singapore by participating in exhibitions / tradeshow / trade fairs in different parts of India.

30. It is further submitted by the Learned Senior Standing Counsel for the Respondents that the Petitioner in their replies dated 26.11.2018 and 15.05.2019, have also admitted the 'exhibition' of products of M/s.Hypertherm,

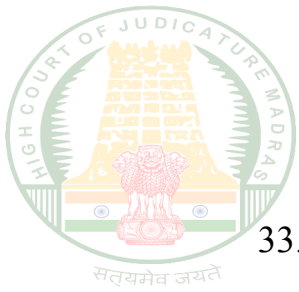


W.P.Nos.14460 and 5886 of 2021

WEB ~~CO~~ Singapore in such events in India. Thus, it is clear that the service provided by the Petitioner is performed in India and hence does not amount to export of service.

31. Learned Senior Standing Counsel would contend that though the Additional Commissioner, Nandanam, Chennai, the Respondent in W.P.No.5886 of 2021 referred to Rule 6 of the Place of Provision of Services Rules, 2012, while passing the Order, he arrived at the right conclusion by holding that the services rendered by the Petitioner are taxable and do not qualify for export of services in terms of Rule 6A of the Service Tax Rules, 1994 and therefore there is no scope for interference with the Impugned Orders. With these submissions, the learned Senior Standing Counsel for the Respondents sought for dismissal of the Writ Petitions.

32. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents. I have perused the Impugned Orders passed by the Respondents in the respective Writ Petitions, demanding service tax vide Order-in-Original Nos.02-05/2021 dated 11.05.2021 and Order-in-Original Nos.28-30/2020-ADC dated 30.09.2020, seeking to deny the refund of Input Tax Credit (CENVAT Credit) under Rule 5 of the CENVAT Credit Rules, 2004.



W.P.Nos.14460 and 5886 of 2021

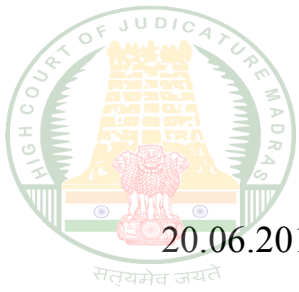
33. Since there are no disputed questions of facts and only pure questions of law are involved, these writ petitions are taken up and disposed on merits although Petitioner has an alternate remedy before the Appellate Commissioner in terms of Section 85 of the Finance Act, 1994.

34. The dispute has arisen purely on account of interpretation of Rule 6A of the Service Tax Rules, 1994 and Rules 3, 4 and 6 of the Place of Provision of Services Rules, 2012.

35. It is the case of the Petitioner that the Petitioner has exported service within the meaning of Rule 6A of the Service Tax Rules, 1994 and therefore the Petitioner is not required to pay service tax on the export of service to its group Company namely, Hypertherm (S) Private Limited, Singapore.

36. Therefore, it is the further case of the Petitioner that the Petitioner was also entitled to refund of the Input Tax Credit (CENVAT Credit) under Rule 5 of the CENVAT Credit Rules, 2004.

37. To answer the issue, it will be useful to refer to Rule 6A of the Service Tax Rules, 1994, inserted vide Notification. No. 36 /2012-ST, dated



W.P.Nos.14460 and 5886 of 2021

20.06.2012, with effect from 01.07.2012, which deals with export of services.

WEB COPY It reads as under:-

“6A. Export of Services

(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the provider of service is located in the taxable territory,

(b) the recipient of service is located outside India,

(c) the service is not a service specified in the Section 66D of the Act,

(d) the place of provision of the service is outside India,

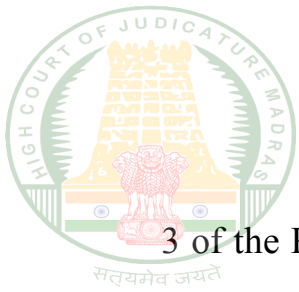
(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of Section 65B of the Act.

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.”

38. It is the case of the respondent that the Place of Provision of Services

Rules, 2012 is not outside India as service was provided in India. As per Rule

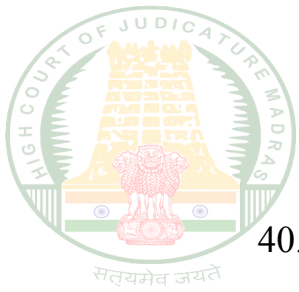


W.P.Nos.14460 and 5886 of 2021

3 of the Place of Provision of Services Rules, 2012, the “**place of provision of service**” is generally the location of the service recipient. However, it is subject to certain exceptions under the said Rules.

39. Rule 3 of the Place of Provision of Services Rules, 2012 was amended vide Notification No.46/2016-ST dated 09.11.2016 with effect from 01.12.2016. *Proviso* to Rule 3 of the Place of Provision of Services Rules, 2012 both before and after the amendments are reproduced below:-

Place of Provision of Services Rules, 2012	
Rule 3. Place of Provision generally	
Before Amendment	After Amendment
<i>(Inserted vide Notification No.28/2012 dated 20.06.2012 – with effect from 01.07.2012)</i>	<i>(Inserted vide Notification No.46/2016 dated 09.11.2016 – with effect from 01.12.2016)</i>
The place of provision of a service shall be the location of the recipient of service: Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.	The place of provision of a service shall be the location of the recipient of service: Provided that in case of services other than online information and database access or retrieval services , where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.



W.P.Nos.14460 and 5886 of 2021

40. Proviso to Rule 3 of the Place of Provision of Services Rules, 2012,

is irrelevant as the “**location of recipient of service**” is known i.e., in Singapore.

41. As per the *Proviso* to Rule 3 of the Place of Provision of Services Rules, 2012, the “**place of provision of services**” shall be the “**location of service provider**” only when the “**location of service recipient**” is not available in ordinary course of business.

42. There is no definition for the expression “**location of service recipient**” in Place of Provision of Services Rules, 2012. However, there is a definition for the expression “**location of the service receiver**” in Rule 2(i)(b)(i) and (ii) of the Place of Provision of Services Rules, 2012. The above definition reads as under:-

Rule 2. Definitions	
(i) “ location of the service receiver ” means-	
(a)Where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained	(b) Where the recipient of service is not covered under sub-clause (a) -
	(i) the location of his business establishment; or
	(ii) where services are used at a place other than the business establishment, that is to say, a fixed



Rule 2. Definitions

	establishment elsewhere, the location of such establishment; or (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and (iv) in the absence of such places, the usual place of residence of the recipient of service.
--	---

“Explanation 1: For the purposes of clauses (h) and (i), “usual place of residence” in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2: For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address;

(j) “means of transport” means any conveyance designed to transport goods or persons from one place to another;

(k) “non-banking financial company” means-

- i. a financial institution which is a company; or
- ii. a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
- iii. such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;

(l) “online information and database access or retrieval services” has the same meaning as assigned to it in clause (ccd) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(m) “person liable to pay tax” shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(n) “provided” includes the expression “to be provided”;

(o) “received” includes the expression “to be received”;

(p) “registration” means the registration under rule 4 of the Service Tax Rules, 1994;

(q) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio text services,



W.P.Nos.14460 and 5886 of 2021

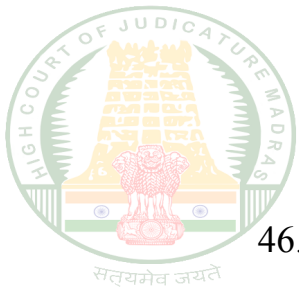
video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting [and online information and database access or retrieval] services;

(r) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.”

43. The definition of “**location of the service receiver**” in Rule 2(i)(b)(i) and (ii) of the Place of Provision of Services Rules, 2012, makes it clear that the “**location of recipient of service**” is either the location of its “**business establishment**” or where services are used at a place other than the “**business establishment**”, that is to say, a “**fixed establishment**” elsewhere, the “**location of such establishment**”.

44. In this case, there is no ambiguity regarding the “**location of service recipient**”, which is Singapore.

45. Reference to Rule 4 and Rule 6 of the Place of Provision of Services Rules, 2012 in the Impugned Orders is misplaced. They are irrelevant to this case.

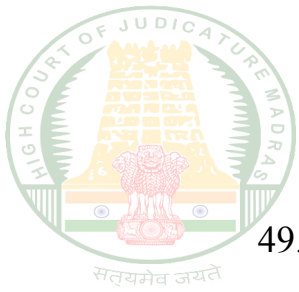


W.P.Nos.14460 and 5886 of 2021

46. However, Rule 4 of the Place of Provision of Services Rules, 2012 pertains to services provided in respect of goods that are required to be made physically available by the “recipient of service” to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service. In this case, services provided are not in respect of any goods that are required to be made physically available by the “recipient of service” to the provider of service and thus Rule 4 of the Place of Provision of Services Rules, 2012 is irrelevant.

47. This stand was also given up in Order-in-Original Nos.28-30/2020-ADC dated 30.09.2020, which is subject matter of challenge in W.P.No.5886 of 2021. Instead, Rule 6 of the Service Tax Rules, 1994 was invoked. Similarly, Rule 6 of the Place of Provision of Services Rules, 2012, is also irrelevant.

48. As per Rule 6 of the Place of Provision of Services Rules, 2012, the place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.



W.P.Nos.14460 and 5886 of 2021

49. Rule 6 of the Place of Provision of Services Rules, 2012, will apply

only to services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, and not to mere participation in a trade fair to promote the products of the said group Company namely, Hypertherm (S) Private Limited, Singapore.

50. As noted above, the said Rule deals with the Place of Provision of Services relating to Events.

51. These aspects has not been fully examined by the Respondents in W.P.No.5886 of 2021 while passing the order in respect of the entire amount since the tax liability has been saddled on the gross recipient of the Petitioner from the said Company.

52. Although in the Impugned Order-in-Original Nos.28-30/2020-ADC dated 30.09.2020, a reference has been made to Rule 14 of the Place of Provision of Services Rule, 2012, it has to be stated that the aforesaid Rule will apply only where the provision of service is *prima facie* determinable in terms



W.P.Nos.14460 and 5886 of 2021

of more than one Rule in which case, the place of provision of service shall be determined in accordance with the Rules that occurs later among the many Rules that merit equal consideration. Hence, this is not the situation under contemplation in the facts of the present case and therefore, reference to the aforesaid Rule was irrelevant in the Impugned Orders.

53. Although the decision of the Hon'ble Supreme Court in **Commissioner of Central Excise, Nagpur Vs. Ballarpur Industries Limited**, (2007) 8 SCC 89 was referred during argument, it has no relevance.

54. In this case, bulk of the service has been provided in India by the Petitioner to its group Company namely, Hypertherm (S) Private Limited, Singapore. Therefore, the **“place of provision of services” / “location of recipient of service”** is Singapore, although the service was actually provided in the Indian Soil.

55. The above position also stands clarified in the “Taxation of Services: An Education Guide” by Tax Research Unit, Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, dated 20.06.2012 operationalized from 01.07.2012. The above literature is also to be considered



as *Contemporanea expositio* of law. Relevant portion of the said literature is

reproduced below:-

“Guidance Note 5

Place of Provision of Services Rules, 2012

5.1 Introduction

5.1.1 What is the relevance of the ‘Place of Provision of Services Rules, 2012’?

The ‘Place of Provision of Services Rules, 2012’ specify the manner to determine the taxing jurisdiction for a service. Hitherto, the task of identifying the taxing jurisdiction was largely limited in the context of import or export of services

...

5.1.3 What is the basic philosophy of these rules?

The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied. In terms of this principle, exports are not charged to tax, as the consumption is elsewhere, and services are taxed on their importation into the taxable territory. However, this determination is not easy. Services could be provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. ...

...

5.3 Main Rule-Rule 3-Location of the Receiver 5.3.1 What is the implication of this Rule?

The main rule or the default rule provides that a service shall be deemed to be provided where the receiver is located.

The main rule is applied when none of the other later rules apply (by virtue of rule 14 governing the order of application of rules-see para 5.14 of this guidance paper). In other words, if a service is not covered by an exception under one of the later rules, and is consequently covered under this default rule, then the receiver's



WEB COPY

location will determine whether the service is leviable to tax in the taxable territory. The principal effect of the Main Rule is that:—

A. Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.

B. However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

5.3.2 If the place of provision of a taxable service is the location of service receiver, who is the person liable to pay tax on the transaction?

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory. Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted. Following illustration will make this clear:— A company ABC provides a service to a receiver PQR, both located in the taxable territory. Since the location of the receiver is in the taxable territory, the service is taxable. Service tax liability will be discharged by ABC, being the service provider and being located in taxable territory.

However, if ABC were to supply the same service to a recipient DEF located in non-taxable territory, the provision of such service is not taxable, since the receiver is located outside the taxable territory. *If the same service were to be provided to PQR (located in taxable territory) by an overseas provider XYZ (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. However, since the service provider is located in a nontaxable territory, the tax liability would be discharged by the receiver, under the reverse charge principle (also referred to as “tax shift”).”*

56. Thus, it is clear that only Rule 3 of the Place of Provision of Services



W.P.Nos.14460 and 5886 of 2021

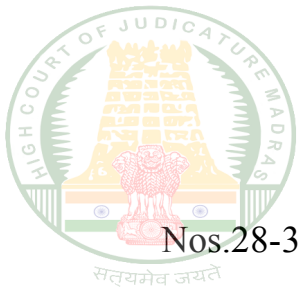
Rules, 2012 is to be applied, even if the service is provided in India. Despite

the fact that service is provided in India to a recipient located outside the taxable territory, it is deemed to have been provided abroad if the conditions of Rule 6A of the Service Tax Rules, 1994 are satisfied. In these cases, admittedly services were provided by the Petitioner to Hypertherm (S) Private Limited, a Company from Singapore. Therefore, there is export of service.

57. Apart from the above, payments have been received by the Petitioner in convertible foreign exchange for the export of service to its group Company namely Hypertherm (S) Private Limited, Singapore. This also satisfies the requirement of Rule 6A(1)(e) of the Service Tax Rules, 1994. Since payment was received in Convertible Foreign Exchange, it has to be held that there was export of service.

58. Therefore, this Court is of the view that the Petitioner is not liable to pay service tax under the provisions of the Finance Act, 1994. On the other hand, the Petitioner is entitled to refund of Input Tax Credit (CENVAT Credit) under Rule 5 of the CENVAT Credit Rules, 2004. Therefore, the Impugned Orders are not sustainable.

59. Under these circumstances, the Impugned Order in Order-in-Original



W.P.Nos.14460 and 5886 of 2021

Nos.28-30/2020-ADC dated 30.09.2020 is set aside and the case is remitted

back to the Respondents to segregate those services which are deemed to be provided outside India in terms of Rule 3 of the Place of Provision of Services Rules, 2012 and those services which are deemed to have been provided in India as per Rule 6 of the Place of Provision of Services Rules, 2012.

60. While dropping/confirming the demand, after segregation, the Respondents are also bound to redetermine the taxable value by treating the proportionate consideration as the amount received inclusive of the service tax component and thereafter re-determine the taxable value and thereby arrive at the net tax liability of the Input Tax Credit (CENVAT Credit) that was available to the Petitioner. The Petitioner is entitled to give a fresh reply / written submission in support of its plea in the light of the above observations contained in this Order.

61. Since the refund also pertains to the period prior to insertion of **Rule 6A of the Service Tax Rules, 1994, i.e., prior to 01.07.2012**, under the provisions of the Finance Act, 1994 read with the Service Tax Rules, 1994 and the Place of Provision of Services Rules, 2012, it is expected that the Respondents will process the refund claim as expeditiously as possible,



W.P.Nos.14460 and 5886 of 2021

preferably, within a period of 3 months from the date of receipt of a copy of this

order.

WEB COPY

62. Needless to state, before Final Orders are passed, the Petitioner shall also be heard. No costs.

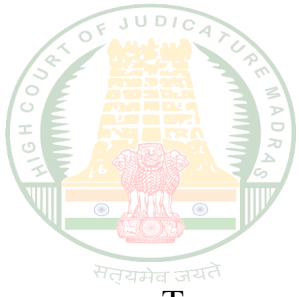
63. In the result,

- i. Impugned Order-in-Original Nos.28-30/2020-ADC dated 30.09.2020 is quashed. W.P.No.5886 of 2021 is allowed by way of remand.
- ii. Impugned Order-in-Original Nos.02-05/2021 dated 11.05.2021 is also quashed. W.P.No.14460 of 2021 is allowed with a direction to the respondents to process the refund claim (along with interest) as expeditiously as possible, preferably, within a period of 3 months from the date of receipt of a copy of this order.
- iii. Connected Writ Miscellaneous Petitions are closed.

20.02.2025

Neutral Citation: Yes / No

rgm / arb



W.P.Nos.14460 and 5886 of 2021

To:
WEB COPY

- 1.The Assistant Commissioner,
Office of the Assistant Commissioner of
GST and Central Excise,
Thyagaraya Nagar Division,
Chennai South Commissionerate,
No.692, M.H.U.Complex,
Anna Salai,
Nandanam, Chennai – 600 035.

- 2.The Additional Commissioner,
Office of the Commissioner of GST &
Central Excise,
Chennai South Commissionerate,
No.692, M.H.U.Complex,
Anna Salai,
Nandanam, Chennai – 600 035.



WEB COPY



W.P.Nos.14460 and 5886 of 2021

C.SARAVANAN, J.

rgm / arb

Pre-delivery Common Order in
W.P.Nos.14460 and 5886 of 2021
and
W.M.P.Nos.15345 and 6483 of 2021

20.02.2025