

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 527 of 2012(Arising out of **Order-in-Original** No.47/2011-Adjn. (Commr) ST dated 28.11.2011 passed
by Commissioner of Customs, Central Excise, Hyderabad)

M/s Hindustan Aeronautics Ltd., .. **APPELLANT**
Avionics Division,
Balanagar,
Ranga Reddy District,
Telangana – 500 042.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Medchal - GST
Posnett Bhawan,
Tilak Road,
Ramkoti,
Hyderabad,
Telangana – 500 001.

WITH**Service Tax Appeal No. 20264 of 2014**(Arising out of **Order-in-Appeal** No.147/2013 (H-IV) S.Tax dated 27.09.2013 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s Hindustan Aeronautics Ltd., .. **APPELLANT**
Avionics Division,
Balanagar,
Ranga Reddy District,
Telangana – 500 042.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Medchal - GST
Posnett Bhawan,
Tilak Road,
Ramkoti,
Hyderabad,
Telangana – 500 001.

WITH**Service Tax Appeal No. 20265 of 2014**(Arising out of **Order-in-Original** No.71/2013-Adjn.(Commr)ST dated 18.10.2013 passed
by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Hindustan Aeronautics Ltd., .. **APPELLANT**
Avionics Division,
Balanagar,
Ranga Reddy District,
Telangana – 500 042.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**

Medchal - GST

Posnett Bhawan,
Tilak Road,
Ramkoti,
Hyderabad,
Telangana - 500 001.

AND**Service Tax Appeal No. 28568 of 2013**

(Arising out of **Order-in-Appeal** No.147/2013 (H-IV) S.Tax dated 27.09.2013 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals - II), Hyderabad)

Commissioner of Central Tax

..

APPELLANT**Medchal - GST**

Posnett Bhawan,
Tilak Road,
Ramkoti,
Hyderabad,
Telangana - 500 001.

*VERSUS***M/s Hindustan Aeronautics Ltd.,**

..

RESPONDENT

Avionics Division,
Balanagar,
Ranga Reddy District,
Telangana - 500 042.

APPEARANCE:

Ms. Disha Gursahaney, Advocate for the Assessee.
Shri M. Anukathir Surya, Authorized Representative for the Department.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30293-30296/2026

Date of Hearing: 25.02.2026
Date of Decision: 15.05.2026

[ORDER PER: A.K. JYOTISHI]

In Appeal No.ST/527/2012, M/s Hindustan Aeronautics Ltd., (herein after referred to as appellant) are in appeal against the Orders-in-Original dated 28.11.2011, as also, against the Order-in-Appeals dated 27.09.2013 and 18.10.2013, in the Appeal No.ST/20264/2014 and ST/20265/2014. Department is also in appeal against OIA dated 27.09.2013. In Appeal No.ST/28568/2013.

2. In all the three appeals filed by the HAL common issue involved is that the Department alleged that they had imported "Scientific or Technical Consultancy Services" (STC) from a provider located outside India and therefore appellant was required to pay service tax on RCM basis. In Department's appeal, they have only challenged the waiver of penalty imposed under Section 76 and 77, by allowing the benefit of Section of 80 of Finance Act, 1944 in the facts of the case. There is another small issue of "Management, Maintenance and Repair Service" (MMR), which was not contested by appellant at the stage of adjudication itself, as recorded in the OIO, as also at the time of this hearing by the Learned Advocate for the appellant. Therefore, the only issue left is whether they are required to pay service tax under RCM on the service of STC or otherwise.

3. The brief fact of the case is that the appellant had entered into an agreement with Federal State Unitary Enterprise Rosoboronexport, Moscow, Russia (hereinafter referred to as Rosoboronexport) in conformity with the inter-Governmental agreement (IGA) between the Government of India and the Government of Russia Federation, for transfer of licence and technological documentations for production of SU-30 MKI aircrafts in India and for technical assistance in the setting up production setup. As part of the deal, the appellant brought in technology, and for technology transfer it also required transfer of technical documents, Technical assistance for setting of manufacture facility, supply of parts from the project, training of employees etc and for these services/ activities, payment were made to Rosoboronexport, Moscow. Department felt that they have received the service of 'Scientific and Technical Consultancy' (STC) from a provider

located outside India and therefore, they are required to pay Service Tax under Reverse Charge Mechanism (RCM). Department also noticed that they have provided certain Management Maintenance Repair Service to DRDO, which would fall under 'Management, Maintenance and Repair Service' (MMR) and no Service Tax was paid thereon.

4. The main argument advanced by the appellant is that Rosoboronexport, Moscow, is a Government organization, acting as sole Russian state intermediary agency, for export of dual use technology and therefore the said entity cannot termed as a "Scientist or Technocrat or as a Science or technology institution" and hence the said activity cannot be classified under the head of 'Scientific and Technical Consultancy Service' (STC). Learned Advocate is relying on the judgments passed by the Co-ordinate Bench in respect of appellant themselves for the unit located elsewhere in India having similar factual matrix, where the Mumbai Bench in CCE Nashik M/s Hindustan Aeronautics Ltd., [2015(40) STR 289 (Tri-Mum)] has taken a view that this will not fall under the category of STC service on the grounds that in order to fall under the said category, the organisation providing such advice or consultancy has to be a scientific or technical institution or organisation, whereas, from the facts on record it was not found to be covered within the category of STC organisation. On this sole ground, the demand was set aside. This order, on appeal by the Department before Hon'ble Supreme Court was subsequently disposed by Hon'ble Supreme Court as "not pressed" reported in Hindustan Aeronautics Ltd., [2016(42) STR 529 (SC)]. Therefore, the order of Tribunal has attained

finality. Further, certain other judgments by other Coordinate Bench in respect of same appellant have also not upheld the Departments view.

5. Learned AR on the other hand, apart from reiterating the findings has also tried to explain that in this case individual experts and technicians were posted to the unit for imparting various advice, consultancy etc., and therefore it should be covered within the definition of STC. He has also submitted that the agreement referred to in the judgment by the Mumbai Bench, *supra*, may or may not be similar to the agreement which is covered in the present appeal and hence the judgment may not be on all fours for the present appeal and will have no precedence value. The Learned AR has also argued that Rosoboronexport, Moscow, is a foreign based Scientific or technical organization and helps in operating within Rostechologies which is an open joint stock company with 100% of its issue owned by Rostechologies as an open joint stock company. He has also relied on the judgment in the case of National Remote Sensing Agency Vs Commissioner of Customs, Central Excise & Service Tax, Hyderabad – IV, [2020(6) TMI 618 CESTAT Hyderabad] in support that in this case these judgments cited have no applicability.

6. Heard both the sides and perused the records.

7. Since, the issue of 'Management, Maintenance Repair Service' (MMR) has not been argued or disputed before the Adjudicating Authority nor the same has been pressed before this bench, we are not deciding the issue and to that extent, the findings in the impugned orders are upheld.

8. In so far as the issue of payment of Service Tax under Reverse Charge Mechanism for the services rendered by Rosoboronexport, Moscow under the category of STC, in pursuance of an Inter Governmental Agreement intended for certain transfer of technology and Technical support in relation of production of air craft, we find that similar issue has been dealt with by Co-ordinate Bench in respect of appellant's other units situated at other locations in India. A similar factual matrix was examined by the Co-ordinate Bench at Mumbai in the case of Commissioner of Central Excise Nashik Vs Hindustan Aeronautics Ltd [2015 (40) STR 289 (Tri-Mum)]. The Department examined whether the said activity would fall under 'Scientific and Technical Consultancy Service' (STC), and thereafter, inter alia, held that the said service would not fall under the category of STC Service. We find that Tribunal disposed of the appeals filed by the appellant (HAL), as also appeal filed by the Department, by way of common order where, inter alia, they relied on certain judgments mainly Kopran Ltd., Vs Commissioner [2011 (23) STR 627 (Tri-Mum)], R.M. Dhariwal (HUF) Vs Commissioner [2013 TIOL 1897 (CESTAT-Mum)] to hold that demand is not sustainable. Therefore, essentially this judgment is in the context of similar agreement with Rosoboronexport, Moscow, wherein, it has been held that Rosoboronexport, Moscow, is neither a scientific and technological institute nor organization. Para 7.3,7.4,7.5 of the order are relevant and are cited below.

"7.3 We reproduce the definition of the "scientific and technical consultancy service." Under Section 65 of the Finance Act, 1997

""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"

It can be seen from the above reproduced definition, in order to tax the services, it has to be any advice, consultancy or scientific or technical assistance, to be rendered by the scientist or a technocrat. This is the first part of the definition. It is undisputed that the foreign based company "rosobornexport" is not a scientist or a technocrat.

7.4 The 2nd part of the definition indicates that advice, consultancy, or scientific or technical assistance has to be rendered by any science or technology institution or organisation. On perusal of the status of "Rosobornexport" we find that the said status indicates the foreign-based company as a joint-stock company, part of the Russian technologies state Corporation which is responsible for import/export of the full range of defence and Dual use end products, technologies and services. It is also noted that the said "Rosobornexport" only has the right to supply the world market with a full range of arms and military equipments manufactured by the Russian defence industrial complex and approval; the said foreign company is one of the major operators in the world market for arms and military equipments. It is also indicated that the official status of "Rosbornexport" is an exclusive state intermediary agency and provides guaranteed state support of all export import operations. The said status of the "Rosobornexport" is an exclusive state intermediary agency and provides guaranteed state support of all export import operations. The said status of the "Rosobornexport" Indicates that it is neither science or technology institution or organisation. In our considered view, the definition of "scientific and technical consultancy services" may not be applicable in the facts and circumstances of this case. Revenue has not brought on record any evidence to contradict the submissions of the appellant assessee. In the absence of any contrary evidence we have to hold that "Rosobornexport" is not a science or technology institution or organisation which gives any advice, consultancy or technical assistance in one or more discipline of science or technology. Our view is fortified by the judgment and order of the Tribunal in the case of Koprán Limited (supra). The relevant paragraphs are reproduced.

5. After giving careful consideration to the submissions, we have found valid points in the submissions of the counsel. The issue debated before us revolves around the definition of "scientific or technical consultancy" under Section 65 of the Finance Act, 1994. This definition reads thus:-

"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 a client, in one or more disciplines of science or technology"

As rightly pointed out by the learned counsel, three ingredients should be established to bring a service within the ambit of "scientific or technical consultancy" and these are-

- (a) advice, consultancy or scientific or technical assistance should be rendered in any manner to a client;
- (b) it should be rendered by a

scientist or technocrat or any science or technology institution or organization; and (c) it should be rendered in one or more disciplines of science or technology.

The nature of advice/consultancy/technical assistance was illustrated in M.F. (D.R.) Letter dated 9-7-2001 *ibid* thus:

"Such consultation may be in the nature of an expert opinion/advice in regard to scientific or technical feasibility or any other scientific or technical aspect of a project, process or design, recommending an apt technology, suggestion for improvement in existing technology or process, providing consultation on any technical problem or about new technology etc."

We have got to examine the facts of this case in this backdrop. The terms of the relevant agreements indicate that these agreements were intended primarily to cover the following transactions, viz., transfer of brand names/trade marks to Cadila against payment of Rs, 70 crores, transfer of know-how for manufacture of bulk drug against payment of Rs. 20 crores and transfer of technical know-how for make tablets (formulations) against payment of Rs. 5 crores. None of these transactions can be conceptually reduced to mere advice, consultancy or scientific/technical assistance. On the other hand, they involve permanent transfer of intellectual property in one forms or another and are presently covered by "intellectual property service". The Id. JCDRs "essential character test" is not applicable as the service is classifiable only under one sub-clause of clause (105) of Section 65 of the Act, which is sub-clause (zzr). Each agreement covered the transfer of an intellectual property and, therefore, a combination of the agreements (which was envisaged by JCDR a "package deal") would not make any difference. This rules out the applicability of Andhra Petrochemicals (*supra*). Moreover, the appellants-company cannot be said to be a science or technology institution or organization. Even medical colleges, hospitals or diagnostic/pathological laboratories have not been recognized by the department as science or technology institutions or organizations *vide* M.F. (D.R.) Letter dated 9-7-2001 *ibid*: In the show cause notice itself, the appellants-company was held out to be manufacturer of excisable goods only. It was not even alleged that it was a science or technology institution or organization. Even assuming that M/s Koprani Research Laboratories Lt., are a science or technology organization wholly owned by the appellants-company, we are not inclined to deem the latter to be a science or technology institution or organisation. The two companies are distinct legal entities and, therefore, the functional character of one cannot be claimed by, nor infused into, the other. The submissions made in this context by the learned JCDR seemed to suggest that the doctrine of lifting of corporate veil was being invoked. In our view, this doctrine is not applicable to the facts of this case. As rightly submitted by the learned counsel, the Revenue has not alleged and established that the appellants-company provided advice, consultancy or scientific or technical assistance to Cadila in any specific discipline of science or technology. In the result, the argument of the counsel that the service rendered by the appellants-company to Cadila under the relevant agreements cannot constitute "scientific or

technical consultancy" as defined under Section 65 of the Finance Act, 1994 merits acceptance. This argument also stands fortified by the view taken in Matrix Laboratories case where it was held that "scientific or technical consultancy" was not involved in sale of entire technology for a consideration.

7.5 This above view of Tribunal was followed by this Bench in the case of Universal Pharmacy, Final Order No. A/204-205/2015, dated 23-1-2015, wherein on similar set of facts the bench held as under:-

"7. We find that for services to get covered under the said definition, there has to be a scientific or technical institution or organization and they should have rendered the services in one or more disciplines of science or technology as an institution; or scientists or technocrats. It is on record that the appellants herein are manufacturer or pharmaceutical goods and had their own set up, which they have sold to Universal Medicaments Pvt Ltd. On this factual matrix, we find that the judgment of the Tribunal in the case of Modi Mundipharma Pvt Lt., (supra) squarely covers the issue in favour of the appellants. We reproduce the paragraph 6:-

"6. We have carefully considered the submissions from both sides. We also perused the agreement and the show cause notice. In the show cause notice it is alleged that the appellant was granted exclusive right to manufacture, use and sell within the territory, the preparation utilizing the know-how and scientific and technical information and the teachings of the patents on payment of royalty. It is also alleged in the show cause notice that the appellant was receiving know-how during the disputed period. However, from the agreement it is noticed that there is no evidence of continuous providing of information, know-how in relation to the manufacture. Further, it is not disputed that the appellant was manufacturing and selling products in the brand names, Pyricontin, Diacontin, Fecontin, Metocontin, Morcontin, Nitrocontin, and Unicontin which are claimed to be registered brand names of the appellant company. In other words, they are not using the brand name of Mundipharma A.G. Switzerland. Receipt of know-how appears to be a onetime affair. There is no evidence, that their know-how is supplemented by Mundipharma A.G. Switzerland. Therefore, we are in agreement with the submissions on behalf of the appellant that royalty payment in the form of deferred payment for know-how received in 1990. Whether payment for such services rendered is made in one lump-sum or made in instalments or based on quantum of sales by the appellant on an annual basis is not relevant to consider as to when the services were actually rendered. From the available evidences on record, we accept the submission of the learned Sr. Advocate that the services were rendered in 1990 and for the said services payments were being made periodically as provided in the agreement".

9. In the case of Hindustan Aeronautics Ltd., Vs CCE, Lucknow, [2019 (21) GSTL 46 (Tri-All)], where the same appellant had entered into an

agreement with Rosoboronexport, Moscow, in relation to manufacture of SU-30 MKI air craft licence production in India and the terms of agreement provided for transfer of technology in the form of technical documentation technical assistance for setting up of the manufacturing facility, training of employees, the Department had invoked the provision of Section 66A for demand of Service Tax under the category of 'consulting engineer service' for payment made for transfer of technology and Technical assistance. The Co-ordinate Bench examined the scope of definition under Section 65(31), which defines 'consulting engineer' and they also took into account the judgment by the Co-ordinate Bench at Mumbai in the case of CCE Vs Hindustan Aeronautics Ltd., [2015 (40) STR 89 (Tri-Mum)] and after considering the judgment of the Co-ordinate Benches, inter alia, held that the payments were made by the appellant for transfer of technology under Inter Governmental Agreement and not for receipt of any service in India and not in relation to any business of commerce and therefore, it was not covered under consulting engineer service. We also note that in their own case, the Co-ordinate Bench at Bangalore in Hindustan Aeronautics Ltd., Vs CST, Bangalore - I [2020 (38) GSTL 75 (Tri-Bang)], inter alia, examined similar issues. However, in this case the agreement was with Rolls Royce Turbomeca Ltd., U.K., as a part of Inter-Governmental Agreement, though the payments were made towards the transfer technology, designs etc. In this case, the demand was made under "intellectual property rights service". The Co-ordinate Bench examined the scope of intellectual property rights service and, inter alia, held that services received by the appellants from Rolls Royce Turbomeca Ltd., UK are not in the nature of intellectual property service. In this case also the Tribunal relied on the judgment of CCE Vs

Hindustan Aeronautics Ltd., [2015 (40) STR 289 (Tri-Mum)] and Kopran Ltd., [2011(23) STR 627(Tribunal)].

10. Therefore, essentially we find that in the appellant's own case, in respect of various agreements entered by them with certain foreign entities including Rosobornexort, Moscow for technology transfer and technical assistance etc for manufacture of aircraft in India under Inter Government Agreement (IGA), the same was the subject matter of demand of Service Tax under various categories, namely Scientific and Technical Consultancy Service, consulting engineer service, intellectual property rights service etc. The Co-ordinate Bench examined the scope of the service and, inter alia, took into account the nature and status of the company is Rosoboronexport, Moscow and also other company located outside India and the circumstances in which the agreement has been entered by the appellant. Thereafter, in view of various reasons, it has been held that Service Tax was not leviable. We find that these judgments and particularly in the case Commissioner of Central Excise, Nashik Vs Hindustan Aeronautics Ltd., supra, where similar factual matrix and status of same Rosobornexport are involved, are relevant and applicable to factual matrix of present appeals in as much as, the agreement entered between the appellant and Rosoboronexport, Moscow Dated 04.10.2000 is in terms of IGA entered between Government of India and Government of Russia Federation and it also involves transfer to the Indian party certain licence and technology documentation etc for production of SU-30 MKI etc. Therefore, from the agreement, as well as from the judgments cited, supra, it is obvious that Rosoboronexport, Moscow is a Governmental organization and therefore, the said entity cannot be termed

as a Science or Technocrat or scientific or technology institution or organisation and hence it the activity cannot fall under the category of "Scientific and Technical Consultancy Service". There is no other evidence on record to support that appellant had received any service by way of any advice, consulting or technical assistance by any individual scientist or technocrat and payments have been made to them in individual capacity. We find that the judgment in the case of CCE, Nashik Vs Hindustan Aeronautics Ltd., [2015 40 STR 289 (Tri-Mum)] has attained finality as the Hon'ble Supreme Court has disposed of the civil appeal filed by the Department against this order of Bombay Bench.

11. In so far as argument of Learned AR, we are not inclined to accept this argument as Department has never taken this ground in respect of similar agreements, when they came up before the Co-ordinate Bench at Mumbai, Allahabad and Bangalore in the matter relating to the same appellant and same Rosoboronexport, Moscow. Therefore, this argument, without any substantive basis, cannot be allowed at this stage to consider that they are a scientific or technical consultancy organization when a clear view has been taken by Co-ordinate Benches on the status of Rosoboronexport and even the Department has not pressed this aspect when they filed appeal against the Tribunal's is order in the case of CCE, Nashik Vs Hindustan Aeronautics Ltd., supra, before Hon'ble Supreme Court. Therefore, we find that respectfully following the decisions under similar factual matrix by other Co-ordinate Benches this argument cannot be a ground for considering that Rosoboronexport, Moscow is a scientific or technical organization.

12. In view of various submissions and the case laws cited by appellant in their own case, involving identical factual matrix, we find that impugned orders cannot be sustained on merit to that extent it relates to demand of Service Tax under STC and imposition of penalty thereon. Therefore, as the impugned orders are set aside to that extent. However, confirmation of demand of Service Tax on MMR and penalty thereon is sustained. Accordingly, the Appeal Nos. ST/257/2012, ST/20264 & 20265/2014 are allowed partly.

13. Appeal No. ST/28568/2013 filed by Department to the extent it relates to waiver of penalty in respect of confirmation of demand on STC is not tenable since the appeals of the appellant have been allowed on merit itself. Further, the appeal filed by the Department would also not sustain where the only limited issue was the waiver of penalty in relation to MMR by invoking Section 80, as we find that same has been rightly invoked. The appeal of the Department is accordingly dismissed.

(Pronounced in the open court on 15.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)