+CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO – 3

Service Tax Appeal No. 334 of 2010-DB

(Arising out of OIA No.- AKP/314/DMN/SDMN/2009-2010 dated 18/02/2010 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Precision Valve Pvt. Ltd. Appellant

3, Brahmin Mitra Mandal Society,
Opp. Krupa Petrol Pump, Ellisbridge,
AHMEDABAD
GUJARAT
380006.

-VERSUS-

C.C.E. & S.T., Rajkot Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi
Gujarat
396191

Present For the Appellant : Shri H. Ganguly, Advocate

Present For the Respondent : Shri T.K. Sikdar, Asst. Commr.(AR)

CORAM:

HON'BLE MEMBER (JUDICIAL) , MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/ 11706 / 2019

Date of Hearing: 27/08/2019
Date of Decision: 27/08/2019

RAMESH NAIR

The brief facts of the case are that the appellant are paying royalty against receipt of technical know-how for design of their final product manufactured by them. Revenue has contended that the royalty which the appellant is paying towards the use of IPR of foreign company, it is taxable under the head of 'Intellectual Property Rights' as per section 65 (55a). Accordingly, the demand of Service Tax was confirmed and the same was upheld by the Commissioner (Appeal). Therefore, the present appeal.

2. Shri H. Ganguly, Ld. Counsel appearing on behalf of the appellant at the outset submits that identical issue has been considered by this Tribunal by relying on various judgments on the identical issue in the case of M/s Inductotherm Pvt. Ltd. Vide order no. A/11073/2019 dated 05.07.2019 wherein assessee's appeal was allowed.

3. Shri T.K. Sikdar, Ld. Asst. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He also placed reliance on the following judgments:

1. Bharat Heavy Electricals Ltd. vs. CCE, Bhopal 2009 (14) S.T.R. 124 (Tri. Del.)
2. L.G. Balakrishnan & Bros. Ltd. v/s CCE & S.T., Coimbatore 2015 (40) STR (Tri- Chennai)
3. B.E. Gelb Consultancy Services v/s CCE, Coimbatore 2009 (14) STR 241 (Tri- Chennai)

4. We have considered the submissions made by both the sides and perused the records. We find that the issue to be decided is whether the appellant's service is classifiable under 'Intellectual Property Rights Services' and the same is taxable or if not whether a technical know-how fees paid by the appellant to the foreign company is taxable. We find that the very identical issue has been considered by this Tribunal after careful consideration of various judgments in the case of Inductotherm Pvt. Ltd. (supra) wherein vide order dated 05/07/2019 the assessee's appeal was allowed. Order is reproduced below:

> *"This appeal has been filed by M/s Inductotherm Pvt. Ltd. against confirmation of demand of service tax, interest and imposition of penalty.*
>
> *2. Ld. Counsel for the appellant pointed out that the demand has been made of reverse charge basis in respect of technical know-how obtained by the appellant form their foreign principal. Ld .Counsel pointed out that Revenue has not shown if the said technical knowhow is registered or patented in India. He argued that in absence of the said evidence demand cannot be confirmed as is been held in the case of Sicpa India Pvt. Ltd. vs CCE & ST Siliguri 2018 (15) GSTL 375 (Tri. Kolkata), Asea Brown Boveri Ltd. vs CCE & ST, LTU, Bangalore 2017 (49) STR 209 (Tri. Bang.).*
>
> *3. Ld. AR relies on the impugned order.*
>
> *4. We have considered the rival submissions. We find that identical issue has been decided in the case of Sicpa India Pvt. Ltd. (supra) wherein following has been observed.*
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>> ***5.** Rebutting the contention of the appellant that no liability of service tax arises on the Agreement between appellant and SICPA Holding Switzerland, since the Agreement was for providing technical assistance, the Ld. Counsel for the department contended that in view of Article 5 of Technical Collaboration Agreement (page 123 of the Appeal Paper-Book), SICPA Holding Switzerland has granted to the appellant exclusive technical information under all the relevant Patents and in view of that, Royalty of 5 per cent on the net sale of all the products was to be paid. Article 7 of the said Agreement clearly states that the licensee will be given right to Patents in India in respect of the products on payment of Royalty. As regards the contention of the appellant that no Patents are registered in India, the Learned Counsel for the department submitted that Switzerland being a notifying country under Section 133 of the Patent Act, 1970 for the purposes of Patents, clearly shows that substantial protection under the Patent's Act was available to the appellant as well, and the appellant is liable to service tax on the services given by SICPA Holding Switzerland to the appellant. It is also the contention of the Learned Counsel for the department that the transfer of knowhow as per the Technical Agreement was not on one time*

basis but was on continual basis, and was to be transmitted to enable the appellant to manufacture the products on continual basis. In so far as the contention of the appellant that they are entitled to abatement for the R & D. Cess paid for correct computation of the liability, the Learned Counsel for the department submitted that the Learned adjudicating authority has clearly observed that in the absence of disclosure of the total amount of Royalty paid to the appellant, vide letter dated 5-6-2008 issued by the jurisdictional Range Officer, the appellant had not been able to substantiate their claim of incorrect computation of liability. As regards the limitation aspect, the contention of the Learned Counsel for the department is that pursuant to the said Agreement in 1991, though they received services six to seven months prior to the levy of Tax on the said services, but they did not register themselves with the department, nor did they pay any Service Tax during the period May, 2005 to March, 2009, which clearly establishes an intention to evade payment of Service Tax and hence, the demand is not time-barred.

6. *From the records it appears that identical issue has come up before the Tribunal in the case of Reliance Industries Ltd. v. CCE & ST, LTU, Mumbai [2016 (44) S.T.R. 82 (Tri.-Mumbai). The relevant portion of the said judgement is reproduced below :-*

> *"6. While deciding this we have to bear in mind that? India is a signatory to the Paris Convention for the Protection of Industrial Properties. The said convention was the first major step taken to help creators of intellectual property to ensure that their intellectual works were protected in other countries. In furtherance to the same a Patent Cooperation Treaty, was signed by member countries, the same has been embodied in Chapter XXII of the Patents Act, 1970. The said treaty spells out a detailed mechanism for the filing of international applications by an inventor and provides that once such an application is made and registered in the member country, then the IPR would be protected in that member country. Thus, there appears to be a codified law providing for Recognition and Protection under the Indian Laws even in respect of Patents registered overseas. In our view, when the legislature has specifically provided that an Intellectual Property Right, that could be taxed as an IPR service is a right to an intangible property, which is recognised under any law for the time being in force, obviously the law being referred to here has to be an Indian Law and not the recognition of the intangible property right under the law of a third country. If an intangible property right was to refer to a right which is recognised by any country, then the legislature would not have used the expression "under any law for the time being in force". The legislature would have merely stated that an Intellectual Property Right would mean any right to an intangible property. There would have been no need for it to qualify the same with a recognition under any law for the time being in force."*

7. *Further the issue came up before the Tribunal in the case of Chambal Fertilizers & Chemicals Ltd. v. CCE, Jaipur-I [2016 (45) S.T.R. 118 (Tri.-Del.)]. Relevant portion of the said judgement is reproduced below :-*

> *"5. We have heard both sides and examined the appeal records. The only point for decision is that whether or not the appellant received taxable service under the category of "Intellectual Property Right service" during the relevant period. The admitted facts of the case are that the technical know-how, engineering design licence involved in these agreements with foreign service providers are not registered in India under Indian law. However, the original authority held that registration of IPR under Indian law is only for obtaining protection from its infringement. He observed that the levy of tax is not dependent on the fact of such registration. We find that such conclusion is not legally tenable and is beyond the scope of taxable service as defined in Finance Act, 1994 : "Section 65(105)(zzr) of the Act defines in the taxable IPR service tax as under : "Taxable service" means any service provided or to be provided to any person by the holder of intellectual property right, in relation to intellectual property service; Section 65(55a) of the Act defines "Intellectual Property Right" to mean as under : "Intellectual Property Right" means any right to intangible property, namely, trade marks, designs, patents or*

> *any other similar intangible property, under any law for the time being in force, but does not include copyright."*
>
> *6. The IPR as defined should be a right under any law for the time being in force. The legal position on this issue has been examined by various decisions of the Tribunal which are as under : (a) Rochem Separation Systems (India) Private Limited v. Commissioner of Service Tax, Mumbai-I - 2015 (39) S.T.R. 112 (Tri.- Mum.) [para 8]; (b) Whirlpool of India Limited v. C.C.E & S.T., Delhi - 2016-VIL-57-CESTAT-DEL-ST [para 7]; (c) Tata Consultancy Services Limited v. C.S.T., Mumbai - 2015-TIOL-2370-CESTAT-MUM = 2016 (41) S.T.R. 121 (Tri.) [para 4.1]; (d) Asea Brown Boveri Ltd. v. C.C.E & S.T., Bangalore - 2016-VIL-480-CESTAT-BLR-ST [para 6.7.1]; (e) Reliance Industries Ltd. v. C.C.E. & S. Tax, Mumbai - 2016-TIOL-1654-CESTAT-MUM = 2016 (44) S.T.R. 82 (Tri.) [para 2]. 7. It has been held that to be categorized for service tax purpose under IPR, such right should have been registered with trade mark/patent authority. In the present case, admittedly, there is no right recognized as IPR under any law for the time being in force in India. As such, there can be no provision of IPR service for tax liability on reverse charge basis. 8. In view of the settled legal position as held in various decisions of the Tribunal discussed above, we find that impugned order is without merits and accordingly set aside the same. The appeal is allowed."*

> *In the instant case too no evidence of any regulation in India of Technical know-how as IPR has been produced. Thus, the technical know-how cannot be treated as an IPR under any law for the time being in force. Relying on the aforesaid decision in identical case, the appeal is allowed."*

Since this Tribunal has taken a view on this issue that since so-called IPR claimed by the Revenue is not governed by any Indian Law, the same will not fall under IPR services. Accordingly, no Service Tax can be demanded under the head of 'Intellectual Property Right Services'. The impugned order is set aside and appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member(Technical)

Diksha