

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Application(s) Involved:

**ST/MISC/601/2012 in Service Tax Appeal No. 2017 of 2012**

Appeal (s) Involved:

**Service Tax Appeal No. 2017 of 2012**

[Arising out of Order-in-Original No. 58/2012 dated 23/04/2012 passed  
by the Commissioner of Service Tax, Bangalore]

**SKOL Breweries Ltd. (Now known  
as Anheuser Busch InBev India  
Ltd.)**

6<sup>th</sup> Floor, MFAR Green Heart Building,  
Manyata Tech Park, Nagavara  
Bangalore – 560 045

**Appellant(s)**

*VERSUS*

**C.C.E & C.S.T.-Bangalore Service  
Tax- I**

1st To 5th Floor,  
TTMC Building,  
Above BMTC Bus Stand, Domlur  
Bangalore - 560 071  
Karnataka

**Respondent(s)**

**Appearance:**

Mr. Prasad Paranjape, Advocate

PDS Legal, Advocate (M)  
20th Floor, Express Tower,  
Nariman Point,  
Mumbai – 400 021  
Maharashtra

For the Appellant

Mr. S. Devarajan, Jt. Commr. (AR)

For the Respondent

Date of Hearing: 19/10/2020

Date of Decision: 10/11/2020

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 20823 / 2020**

**Per : S.S GARG**

The present appeal is directed against the impugned order dated 23/04/2012 passed by the Commissioner of Service Tax, Bangalore whereby the learned Commissioner has confirmed the following demands:

- i. Demand of service tax amounting to Rs. 20,03,80,320/- (Rupees Twenty Crores Three Lakhs Eighty Thousand Three Hundred and Twenty only) under Section 73(2) read with proviso to Section 73(1) of the Finance Act, 1994.
- ii. Demand of interest, on the service tax demand confirmed at (i) above, under Section 75 of the Finance Act, 1994.
- iii. Penalty of Rs. 200/- (Rupees Two Hundred only) per day or @2% of the service tax, per month, whichever is higher, starting with the first day after the due date till the actual payment of the outstanding amount of service tax under Section 76 of the Finance Act, 1994.
- iv. Penalty of Rs. 5000/- (Rupees Five Thousand only) under Section 77(1) (a) of the Finance Act, 1994 for violating the provisions of Section 69 read with Rule 4 of Service Tax Rule, 1994.
- v. Penalty of Rs. 20,03,80,320/- (Rupees Twenty Crores Three Lakhs Eighty Thousand Three Hundred and Twenty only) under Section 78 of the Finance Act, 1994.

2. Briefly the facts of the present case are that the appellants are registered under the category of 'Sponsorship Service, Information Technology Software Service, Management Consultant, Consulting Engineers, Banking and Financial, Scientific and Consulting Service, Scientific Testing and Certification Service' etc. During one of the audits conducted for the period April 2005 to February 2010, the audit

party sought details from the appellant, *inter alia*, with respect to expenditure in foreign currency incurred by the appellant, during the financial year 2006-2007. Specifically, one of the items under scrutiny was with respect to assignment of trademark by Foster's Australia Ltd. (Fosters) to the appellant for which the Deed of Assignment dated 12/09/2006 was executed and payment of Rs. 162 crores was made by the appellant to Foster's. Appellant filed reply to the audit objections raised by the respondent and clarified to the audit authorities that this was the case of permanent transfer of all rights, title and interest in the said trademark/brand by Fosters to the appellant and the said transaction qualified as 'permanent transfer' or 'sale transaction' and therefore was not liable to service tax. The Department was not satisfied with the reply of the appellant and thereafter a show-cause notice dated 21/04/2011 was issued raising a demand of Rs. 20,03,80,320/- (Rupees Twenty Crores Three Lakhs Eighty Thousand Three Hundred and Twenty only) along with interest and penalty. Appellant filed detailed reply to the show-cause notice along with all the documents and submitted that it is a case of permanent transfer of brand and is not subjected to service tax. After following the due process, the learned Commissioner passed Order-in-Original dated 23/04/2012 confirming the service tax proposed to be recovered in the show-cause notice along with interest and various penalties. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the material documents on record. He further submitted that the impugned order is contrary to the various precedent decisions passed by the various Benches of the Tribunal. He also submits that the learned Commissioner has clearly erred in not

appreciating the legislative intent by way of a specific amendment carried out in the service tax legislation with respect to levy of service tax on Intellectual Property Rights Service. He further submitted that after the amendment carried out in service tax law by Finance Act, 2005 by which the words "permanently or otherwise" in the definition of the term "Intellectual Property Rights" were replaced with the word "temporarily". This means that after the amendment of 2005 only temporary transfer of Intellectual Property Rights were liable to service tax. He also submitted that the learned Commissioner has erred in holding that there is no purchase of brand whereas in fact the brand consideration is capitalized in the books of the appellant and admitted even in the Income Tax assessment order for the assessment year 2007-08. He further submitted that the learned Commissioner has relied on Clause 5 of the Deed of Assignment under which, exclusive, perpetual and irrevocable license is granted to the appellant with respect to Foster Brewing Intellectual Property. Foster Brewing Intellectual Property consists of intellectual property rights relating to the brewing and the technical aspects of packaging Foster's Lager in India. Learned counsel also submits that these are technical knowhow rights which are not recognized in India under the laws relating to Intellectual Property Rights and further these are given in perpetuity and irrevocable and are thus as good as sale or assignment. For this submission, the learned counsel has relied upon the following decisions:

- a. Tata Consultancy Services Ltd. Vs. Commissioner of Service Tax, Mumbai reported in 2016 (41) S.T.R. 121 (Tri.-Mumbai)*
- b. ABB Ltd. Vs. Commissioner of C.Ex. & S.T., LTU, Bangalore reported in 2019 (24) G.S.T.L. 55 (Tri.-Bang.)*
- c. Asea Brown Boveri Ltd. Vs. Commr. of C. Ex. & S.T., LTU, Bangalore reported in 2017 (49) S.T.R. 209 (Tri.-Bang.)*
- d. Technova Imaging Systems Pvt. Ltd. Vs. Commissioner of C. Ex., Mumbai reported in 2019 (31) G.S. T.L. 472 (Tri.-*

*Mumbai)*

4.1. He further submits that the learned Commissioner has relied on Clause 7.1 of the Deed of Assignment. This clause is a general commercial clause and has nothing to do with deciding taxability of the transaction under Service Tax law. In fact the very same clause at the end states that the appellant has right to transfer the rights received under the Deed thereby negating the basis to uphold the demand. It is his further submission that in the present case it is evident from the Deed of Assignment on record as well as other corroborative evidence produced by the appellant such as trademark registration obtained by the appellant as owner of the trademark as opposed to user of the trademark, the income tax assessment order for the financial year 2006-07 which records purchase of trademark by the appellant, that the appellant has indeed purchased the trademark from Fosters for the Indian territory under the Deed of Assignment dated 12/09/2006. He further submitted that it is a settled position in law that different branches of Government cannot take different view with regard to the same transaction as held in the case of ***CIT Vs. Anandha Metal Corporation – 273 ITR 262 (HC-Mad.)***. He also submitted that it is a settled position in law that the Deed of Assignment amounts to permanent transfer or sale of the property being assigned thereunder and this fact is also supported by the CBEC circulars, provisions under Chapter V of the Trade Mark Act, 1999 and related jurisprudence. For this submission, he relied upon the following decisions:

- a. Commissioner of Sales Tax Vs. Duke Sons Pvt. Ltd. – 1998 SCC Online Bom 448 (HC-Bom.)*
- b. Classic Equipment's Pvt. Ltd. Vs. Johnson Enterprises and Ors. – 2009 (41) PTC 385 (HC-Del.)*
- c. Hilton Roulunds Ltd. Vs. Commissioner of Income Tax – 2018 SCC Online Del 8556 (HC-Del.)*

*d. Commissioner of Central Excise, Bangalore Vs. Otto Bilz (India) Pvt. Ltd. – 2015 (324) E.L.T. 430 (SC)*

4.2. He also submitted that permanent transfer of a brand is not liable to service tax. For this submission, he relied upon the following decisions:

*a. AGS Entertainment Pvt. Ltd. Vs. Union of India – 2013 (32) S.T.R. 129 (HC-Mad.)*

*b. Thermax Ltd. Vs. Commissioner of Central Excise, Pune-I – 2014 (36) S.T.R. 318 (Tri.-Mumbai)*

4.3. He also submitted that the learned Commissioner has not adduced any evidence to the contrary, except recording his understanding in para 67 as to why the Deed of Assignment does not amount to permanent transfer. According to the counsel, the learned Commissioner has totally misread and misconstrued various clauses in the Deed of Assignment and has wrongly come to the conclusion that it is not the permanent transfer of brand in favour of the appellant. Learned counsel also submitted that the entire demand is barred by limitation and show-cause notice has been issued by invoking the extended period of limitation. The present show-cause notice was issued on 21/04/2011 and the Deed of Assignment was executed on 12/09/2006 and during the same period, the appellant was audited by the Revenue and separate show-cause notice No. 67/08-09 dated 31/03/2009 was issued for the period 10/09/2004 to 31/03/2008 and the present show-cause notice for the over lapping period being the second show-cause notice for the same period cannot be issued by invoking the extended period of limitation. He further submitted that since the transaction of Deed of Assignment having been disclosed in the books of account and with the Income Tax authorities and there being sufficient support to contend the non-taxability of the transaction under service tax legislation, the dispute involved is pure

question of law and interpretation and the appellant cannot be charged with suppression or misrepresentation in such a case thereby enabling the Revenue to invoke extended period of limitation. Learned counsel also submitted that imposition of simultaneous penalty under Section 76 and 78 cannot be imposed in view of the decision of the Panjab & Haryana High Court in ***Commr. of Central Excise Vs. Pannu Property Dealers, Ludhiana – 2011 (24) S.T.R. 173 (P&H)*** and ***Commissioner of Central Excise Vs. First Flight Courier Ltd. – 2011 (22) S.T.R. 622 (P&H)***.

5. On the other hand, the learned AR defended the impugned order and reiterated the findings of the impugned order. He further submitted that earlier show-cause notice No. 67/08-09 dated 31/03/2009 has been challenged by the appellant by way of a Writ Petition and the same is pending before the Hon'ble High Court of Karnataka. He further submitted that since the same issue is pending before the High Court, hence the Tribunal should not proceed to decide the present case. In reply to this objection raised by the learned DR, the counsel for the appellant submitted that the said show-cause notice pending before the Hon'ble High Court of Karnataka has other issues besides one of the issue involved in the present case. He also submitted that the Hon'ble High Court has not issued any Stay Order whereas in the present case the appellant contested the show-cause notice, filed the reply and submitted to the jurisdiction of the Department and hence the Tribunal is competent to proceed and decide the issue in the present case. The learned AR in support of his submission also relied upon the following decisions:

- a. *M/s. Alstom T and D India Ltd. and Schneider Electric Infrastructure Ltd. Vs. Commr. of Central Excise & Service Tax, LTU, Chennai – 2018 (2) TMI 148 – CESTAT Chennai*
- b. *Mahyco Monsanto Biotech (India) Pvt. Ltd. (Formerly known as Mahyco Monsanto Biotech (India) Ltd., Subway Systems*

*India Pvt. Ltd. Vs. Union of India & others – 2016 (8) TMI 717 – Bombay High Court*

*c. M/s. Poonam Roofing Products Pvt. Ltd. Vs. Commr. of Central Excise, Pune-III – 2018 (2) TMI 236 – CESTAT-Mumbai*

*d. The Commr. of Central Excise Vs. M/s. Mehta & Co. – 2011 (2) TMI 2 – SC*

6. We have considered the submissions made by both the parties and have perused the material on record. The only issue involved in the present case is whether the appellant is required to pay service tax on a reverse charge basis for the payment made to Fosters Australia towards permanent transfer of Fosters trademark and brand under the Deed of Assignment. Before we proceed to examine the said question, it would be apposite to take note of relevant provisions of the Finance Act, 1994 relating to Intellectual Property Rights.

*“Intellectual Property Right” as defined under Section 65(55a) of Finance Act, 1994 is as follows :*

*[(55a) “intellectual property right” means any right to intangible property, namely, trademarks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright;*

*Which has been inserted by Finance Act, 2004 dated 10-9-2004 (made effective from 10-9-2004)*

*“Intellectual Property Service” as defined under Section 65(55b) is as follows :*

*(55b) “intellectual property service” means, -*

*(a) transferring, [temporarily]; or*

*(b) Permitting the use or enjoyment of, any intellectual property right;]*

*“Taxable Service” concerning intellectual property service as defined in Section 65(105)(zzr) is as follows :*

*Section 65(105) “taxable service” (concerning intellectual property right) means any [service provided or to be provided] -*

*(zzr) to any person, by the holder of intellectual property right, in relation to intellectual property service.*

From the above provisions concerning ‘Intellectual Property Right’, ‘Intellectual Property Service’, and ‘Taxable Service of Intellectual Property Right’, we find that for any services to be covered under the taxable service concerning intellectual property right, the following ingredients need to be present :

(i) The said service need to have the element of the ‘intellectual property right’ and covered as such by the definition of ‘intellectual property right’ given in the Section 65(55a) of the Finance Act, 1994.

(ii) There has to be temporary transfer of any intellectual property right OR there has to be the permission to use or enjoy any intellectual property right.

(iii) The said transfer or permission for use or enjoyment of intellectual property right has to be by the holder of the said intellectual property right. In other words the provider of service has to be the holder of related intellectual property right.

6.1. Further, we find that the Commissioner in para 67 of the impugned order has recorded a finding that the Deed of Assignment dated 12/09/2006 does not show that there is a actual purchase of

brand and hence the Commissioner has come to the finding that the appellants are liable to service tax under the category of Intellectual Property Service covered by Section 65(105) (zzr) of the Finance Act, 1994. We have gone through the various clauses in the Deed of Assignment. After going through the contents of Deed of Assignment, we find that the intention of the parties while executing the Deed of Assignment is the permanent exclusive and irrevocable transfer of trademark as well as Intellectual Property Rights in favour of the appellant. Here it is pertinent to reproduce Clause 5 and Clause 7.1 of the Deed of Assignment which is reproduced herein below:

Clause 5 of the Deed reads as follows:

*“The Assignor hereby grants (and will procure that any relevant member of the FGL Group grants) to the Assignee an exclusive (save as expressly agreed otherwise between the Parties) perpetual, irrevocable license, effective from the Commencement Date, relating to the Foster’s Brewing Intellectual Property, to use, enjoy and adapt it (in accordance with any other terms agreed by the Parties) for the purpose of brewing, packaging and marketing Foster’s Beer within the Territory with a right to sub-license such right to any licensee of the Foster’s Brand for use in the Territory, subject however to compliance with other terms agreed in writing by the Parties.”*

Clause 7.1 of the Deed reads as follows:

*“No party may assign or otherwise deal with a right under this document, or allow any interest in such right to arise or be varied, in each case without prior written consent of the other parties, which consent must not be unreasonably withheld or delayed. Any assignment or purported assignment in breach of*

*clause 7.1 will be of no effect. For the avoidance of doubt, whilst the parties have agreed certain conditions subject to which the Trademarks or Foster's Brand Intellectual Property may be transferred, nothing in this clause 7.1 will be construed as restricting the Assignee's right to transfer the Trademarks or Foster's Brand Intellectual Property."*

After seeing the above clauses of the Deed of Assignment, we find that the impugned order has wrongly interpreted the terms of the Deed to mean that there is only grant of right to use the trademark and no permanent transfer of trademark to the appellant in India. The learned Commissioner has ignored the substance of the clauses and has picked a part of the clause to suit his purpose and used the same to hold that there is no assignment of the trademark and the brand IP, but there is only a transfer of right to use. We also find that in the case of **Rainbow Colour Lab and another Vs. State of Madhya Pradesh and others – 2000 ST2-GJX-0044-SC** wherein it has been held by the Hon'ble Supreme Court that the dominant intention of the contract has to be considered. Regard has to be paid to the dominant intention of the contract and not to each and every word of the agreement. Further we find that besides the Deed of Assignment clearly showing that there is an exclusive perpetual and irrevocable transfer of trademark and Intellectual Property Rights in favour of the appellant from the other corroborative evidence produced by the appellant which has not been considered by the Commissioner at all. The appellant has also produced on record the Income Tax Assessment Order for the financial year 2006-2007 wherein the Commissioner has recorded the purchase of trademark by the appellant. Further we find that the appellants have got registered in his favour Foster's trademark as a proprietor under the Trademark Act, 1999.

6.2. Further our attention was drawn to C.B.E. & C. Circular F. No. B2/8/2004-TRU, dated 10-9-2004 which was issued when the

individual service namely intellectual property service (other than copyrights) was introduced by the Finance (No. 2) Bill, 2004, which was enacted on 10-9-2004. In respect of 'Intellectual Property Service' the said C.B.E. & C. Circular in its Para 9 says as below :

**“9. Intellectual property services (other than copyrights) :**

*9.1 Intellectual property emerges from application of intellect, which may be in the form of an invention, design, product, process, technology, book, goodwill etc. In India, legislations are made in respect of certain Intellectual Property Rights (i.e. IPRs) such as patents, copyrights, trademarks and designs. The definition of taxable service includes only such IPRs (except copyright) that are prescribed under law for the time being in force. As the phrase 'law for the time being in force' implies such laws as are applicable in India, IPRs covered under Indian law in force at present alone are chargeable to service tax and IPRs like integrated circuits or undisclosed information (not covered by Indian law) would not be covered under taxable services (emphasis supplied).*

*9.2 A permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a 'holder of intellectual property right' so as to come under the purview of taxable service. Thus, there would not be any service tax on permanent transfer of IPRs.*

*9.3 In case a transfer or use of an IPR attracts cess under Section 3 of the Research and Development Cess Act, 1986, the cess amount so paid would be deductible from the total service tax payable (refer Notification No. 17/2004-S.T., dated 10-9-2004).”*

From the contents of above Para 9 of C.B.E. & C. Circular dated

10-9-2004 it is clear that the wordings "under any law for the time being in force" means the laws as applicable in India. It clarifies that IPRs covered under *Indian Law in force alone* are chargeable to Service Tax. It further says that IPRs like integrated circuits or *undisclosed information (not covered by Indian law)* would not be covered under taxable services of 'Intellectual Property Services'. Revenue has not been able to prove in any manner that right to any of the intangible properties is covered as IPR(s) under any of the relevant Indian law. In case of undisclosed information this C.B.E. & C. circular itself says that *an Indian law does not cover such undisclosed information*.

6.3. Further we refer to CESTAT, Mumbai's decision in the case of **Rochem Seperation Systems (supra)**. CESTAT, Mumbai has *inter alia* observed in the paras of the said decision as under :

*"8 .... However, the Commissioner failed to analyze the Agreements in detail and came to a hasty conclusion that the entire amount of royalty is towards transfer of Intellectual Property Right. The definition of intellectual property right such as trademark, patent etc. have, to be construed in the same sense as in the Intellectual Property Right Acts such as the Patent Act and the Trademark Act. Only rights which are registered with the trademark/patent authorities are considered as Intellectual Property Right. The Commissioner has failed to go into these aspects in detail and has clubbed the entire service as Intellectual Property Right service."*

**Rochem Seperation Systems (supra)** is the case that though discusses the issue of 'Intellectual Property Right' it concluded there that "the demand is time-barred, we are deciding the matter only on the basis of limitation." Further we refer to CESTAT, Mumbai's decision in case of **Tata Consultancy Services Ltd. (supra)**, where it held

that intellectual property right not covered by Indian laws would not be covered under the taxable service in the category of IPR services. In this regard we are reproducing below Paras 4, 4.1, 4.2 and 4.3 to make the position more clear :

*“4. The taxable service under consideration is defined under Section 65(105)(zzr) to mean any service provided or to be provided to any person, by the holder of Intellectual Property Right, in relation to Intellectual Property Service. Intellectual Property Service is defined under Section 65(55b) to mean (a) transferring (temporarily) or (b) permitting the use or enjoyment of, any intellectual property right. And Intellectual Property Right as defined under Section 65(55a) 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.*

*4.1 Short question to be decided is whether the transfer of technical ‘know-how’ received by the appellant is a service which may be categorized under “Intellectual Property Right Services”. We find that the definition of Intellectual Property Right must be satisfied to term the services received by the appellant as Intellectual Property Right Services. We find no clue at all in the records as to which type of Intellectual Property Right is being assigned to the “Technical know-how” received by the appellant. It is obvious from the definition of Intellectual Property Right that the right has to be a specific Right under a specific Law. Examples are given under the definition such as the Trade Mark which is a right provided under “Trade Marks Act”. Similarly the right mentioned as ‘design’ in the definition is a right under the “Design Act”. Therefore we find that the technical know-how received by the appellant and the royalty payment made by the appellant to Unisys is nowhere established to result from the use of any*

*Intellectual Property Right.*

4.2 We may further go on to add that the Intellectual Property Right should be a right under the Indian Law. Intellectual Property Right not covered by the Indian laws would not be covered under taxable service in the category of Intellectual Property Right Services. We are fortified in our view by Board Circular F. No. 80/10/2004-S.T., dated 17-9-2004 which clarified that “Intellectual Property emerges from application of intellect, which may be in the form of an invention, design, product, process, technology, book, goodwill etc. In India, legislations are made in respect of certain Intellectual Property Rights (i.e. IPRs) such as patents, copyrights, trade marks and designs. The definition of taxable service includes only such IPRs (except copyright) that are prescribed under law for the time being in force. As the phrase “law for the time being in force” implies such laws as are applicable in India, IPRs covered under Indian law in force at present alone are chargeable to service tax and IPRs like integrated circuits or undisclosed information (not covered by Indian law) would not be covered under taxable services”.

4.3 We are fortified in our view by the Tribunal decision in the case of *Rochem Separation Systems (India) P. Ltd. v. Commr. of S.T., Mumbai-I* - [2015 \(39\) S.T.R. 112](#) (Tri.-Mumbai) = 2015-TIOL-120-CESTAT-MUM in which it was held that mere transfer of technology is certainly not related to service provided in relation to Intellectual Property Right service which involves the transfer or use of any Intellectual Property Rights.”

6.4. We also refer to CESTAT, Mumbai’s decision in the case of **Thermax Ltd. (supra)**. CESTAT, Mumbai in the said decision has observed that the subject transaction has to satisfy the requirement of Section 65(55b) of the Finance Act, 1994 so as to cover the same under the service concerning Intellectual Property Right. We reproduce

Para 5.5 of the said decision which says that for any transaction to be covered under IPR services has to be first covered under the category of an IPR under an Indian law. CESTAT, Mumbai in the said decision in Para 5.5 has observed as below :

*“5.5 From the above circular, it becomes very clear that to come under the category of IPR, there should be a law in India, Governing such IPR and only IPR covered under the Indian law in force are chargeable to Service Tax. It is well known that there is no law governing trade secrets/confidential information in India and therefore, the rights obtained by the appellant does not constitute intellectual property right as defined in law. Secondly, it is also very clear from the said Circular that a permanent transfer of intellectual property right does not amount to rendering of service. In the present case, the appellant has become a co-owner of the intellectual property which would mean that the transfer is permanent. Therefore, the transaction does not come under the purview of Section 65(55b) of the Finance Act, 1994.”*

6.5. We have gone through the decisions relied upon by the learned DR. These decisions cited supra are not applicable to the facts of the present case and are distinguishable on facts.

7. In view of our discussion, analysis and the case-laws quoted, it is our considered opinion that the assignment of trademark and the IPR amounts to permanent transfer and no service tax is applicable on permanent transfer of IP Rights by Foster's to the appellant. As far as invoking the extended period of limitation is concerned, we find that the Department was fully aware of the Assignment Deed executed by the appellant with Foster's Australia. The Deed of Assignment was executed on 12/09/2006 and the present show-cause notice was issued on 21/04/2011 and during the same period the Department audited the appellant and also issued a show-cause notice No.

67/08-09 dated 31/03/2009 for the period 10/09/2004 to 31/03/2008 which was challenged by the appellant and the same is sub judice before the Hon'ble Karnataka High Court. Further, the transfer of Deed of Assignment was disclosed by the appellant in the Books of Accounts and with the Income Tax Authorities and was also registered in their name as proprietor under the Trademark Act, 1999. All these facts clearly show that the appellant has not suppressed any material facts from the Department and the Department was very much aware of the said transaction, hence alleging suppression on the part of the appellant is not sustainable and we hold that the entire demand is also barred by limitation.

8. In the result, the appeal is allowed on the above terms by setting aside the impugned order with consequential relief, if any.

(Order was pronounced in Open Court on **10/11/2020**)

**(S.S GARG)**  
**JUDICIAL MEMBER**

**(P. ANJANI KUMAR)**  
**TECHNICAL MEMBER**

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