CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Application(s) Involved:

Service Tax Early Hearing No. 20336 of 2021
in
Service Tax Appeal No. 20055 of 2015

Appeal(s) Involved:

Service Tax Appeal No. 20055 of 2015

(Arising out of Order-in-Originall No. 12/201415 dated 28/08/2014 passed by Commissioner of Central Excise and Service Tax(Adjudication), Bangalore)

LM Wind Power Blades India Pvt Ltd
Plot No 85, KIADB Industrial Area, Dabaspet,
Nelamangala Taluk
BANGALORE - 562111
Karnataka

Appellant(s)

VERSUS

Commissioner of Central Excise , Customs and Service Tax Bangalore-i
POST BOX NO 5400...CR BUILDINGS,
BANGALORE, - 560001
KARNATAKA

Respondent(s)

APPEARANCE:

Shri Rajat Bose and Ms. Shohini, Advocates for the appellant.
Shri K.B. Nanaiah, Assistant Commissioner(AR) for the respondent.

CORAM:
HON'BLE MR. S.K. MOHANTY, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20230 / 2022

Date of Hearing: 06/05/2022
Date of Decision: 06/05/2022

Per : S.K. MOHANTY

The applicant/appellant has filed this miscellaneous application, seeking early hearing of appeal. Ongoing through the averments made in the said application, we are of the view that the prayer made in support of out-of-turn hearing of appeal can be considered in the interest of justice. Accordingly, the miscellaneous application is allowed. At this stage, learned Advocate appearing for the appellant submitted that the issue arising out of the present dispute is no more res integra in view of the judgment in the case of appellants themselves (Final Order No.21144-21147/2019 dt. 27/11/2019), ABB Ltd. Vs. Commissioner of Service Tax [2008(11) STR 78 –CESTAT Bangalore] and Thermex Ltd. Vs. Commissioner of Central Excise [2014 (36) STR 318 (Tri.)]. On a query from the Bench, whether the present appeal can be disposed of today, the learned AR for Revenue has not objected to such query and conceded that the issue involved in this present case is squarely covered by the above judgments relied upon by the learned Advocate for the appellant. Accordingly, with the consent of both sides, the appeal is taken up for hearing today and the present order is being passed.

2. This appeal is directed against the impugned order dt. 28/08/2014 passed by the learned Commissioner of Central Excise and Service Tax (Adjudication), Bangalore. The Department, in this case, had observed that the appellants herein had entered into an agreement of "know-how transfer" with its parent company, M/s. LM Glassfibre A/S, Rolles Molleveg I, 6640, Lunderskov, Denmark, for receiving the services of technical know-how related to manufacturing and sale of Razor blades in India and abroad; that the right to manufacture and sale were also transferred vide the said agreement. Basing on such observations, show-cause proceedings were initiated, alleging that since the appellants have been receiving the services of intellectual property service, they are liable to pay service tax for the disputed period in terms

of Rule 2(i)(d)(iv) of the Service Tax Rules, 1994. The proceedings arising out of the show-cause notice dt. 20/04/2012, were adjudicated vide the impugned order dt. 28/08/2014, wherein the learned original authority has confirmed the service tax demand of Rs.78,42,628/- along with interest and also imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994. Against the impugned order, the appellants have filed this appeal before this Tribunal.

3. The learned advocate appearing for the appellant submitted that the issue arising out of the present dispute is no more res integra in view of the decisions rendered by this Tribunal in the case of appellants themselves (Final Order No.21144-21147/2019 dt. 27/11/2019), ABB Ltd. (supra) and Thermex Ltd. (supra). Thus, he contended that the adjudged demands confirmed on the appellants cannot be sustained and as such, the impugned order is liable to be set aside.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. We find that the Tribunal vide Final Order dt. 27/11/2019 has held that the payments are made for technical know-how, training etc. and not for the use of logo; and that though the use of logo is permitted in terms of the agreement, then unless a specific payment is made for the same, it cannot be said that the appellants have availed any trademark in terms of the service tax law. On the said observations, it has been held that the appellants are not liable to pay service tax under the taxable category of service of intellectual property. We also find that the issue of classification of technical know-how under IPR has also been settled in the case of ABB Ltd. (supra). Further, in the case of

Thermex Ltd. (supra), it has also been held that there is no law governing trade secrets / confidential information in India and therefore, such rights would not constitute intellectual property right, as defined in law during the relevant period and as such, would not be chargeable to service tax in India.

7. In view of the above settled position of law, we are of the considered opinion that the present adjudged demands confirmed on the appellants cannot stand judicial scrutiny. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in the open court on **06/05/2022**)

(S.K. MOHANTY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...