# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## CHANDIGARH

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60385 of 2016**

[Arising out of Order-in-Original No. 28-29/ST/COMMR/PKL/2015-16 dated 01.04.2016 passed by the Commissioner of Central Excise & Service Tax, Panchkula]

**Reckitt Benckiser Pvt Ltd** **……Appellant**
Plot No. 48, Industrial Area,
Sector 32, Gurgaon,
Haryana 122001

*VERSUS*

**Commissioner of Central Goods & Service Tax, Gurugram** **……Respondent**
Plot No. 36-37, Sector 32,
Gurgaon, Haryana

**APPEARANCE:**

Ms. Krati Singh and Ms. Khushbu Sood, Advocates for the Appellant
Shri Siddharth Jaiswal and Shri Narinder Singh, Authorized Representatives for the Respondent

**CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 61739/2025**

DATE OF HEARING: 06.10.2025
DATE OF DECISION: 09.12.2025

**P. ANJANI KUMAR:**

M/s Reckitt Benckiser, the Appellants, assail the order-in original dated 01.04.2016, passed by Commissioner of Service Tax, Gurgaon.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture and sale of various fast moving consumer goods including drugs and are registered with Service Tax Department under various services inter alia Intellectual Property Services ('IPR

Service'); the Appellants entered into licensing agreements with two licensors Le., M/s Reckitt and Colman overseas and M/s Reckitt Benckiser, N.V., wherein, the licensors granted the Appellants non-exclusive right to use intellectual property rights ('IPRs') in connection with design, production, distribution, marketing and sale of the products; the Appellants were discharging service tax on royalty being paid to the licensors under IPR Service under Reverse Charge Mechanism; further, the Appellant in consonance with provisions of Section 3 of Research and Development Cess Act, 1986 ('R&D Cess Act') was discharging R&D Cess @5% on the payments made to the licensors for import of technology; The Appellant was availing exemption on the taxable service involving import of technology from so much of service tax as is equivalent to the amount of cess paid towards the import of technology under R&D Cess Act; this was specifically mentioned by the Appellant in the ST-3 returns filed during the Relevant Period.

2.1. Revenue entertained an opinion that the services received by the Appellant were classifiable under the category of 'Franchise Service' and not 'IPRs and therefore, the Appellant was not eligible to avail the benefit of Exemption Notification; a Show Cause Notice dated 19.10.2012 and Statement dated 16.05.2014 were issued to the Appellants, covering the period 2010-2012 and 2012-13 respectively. Learned Commissioner, vide the Impugned Order, confirmed the demand of Rs. 8,49,98,601 for the period of April 2011 to June 2012, and dropped the demand of Rs. 8,57,94,112, for period April 2010 to March 2011, as being time barred; further, he dropped the demand of Rs.5,68,48,787, for the period of July 2012 to March 2013, as

exemption equivalent to R & D Cess paid, from payment of Service Tax, on import of technology was no longer subject to the condition that import of technology should be "in relation to such intellectual property service".

3. M/s Krati Singh, Learned Counsel submits that the issue stands settled by this Bench 2021 (46) GSTL 41, in Appeal No. ST/55357/2013, in Appellant's own case, on identical issue raised for the previous period i.e. 2005-06 and 2009-10, vide Show Cause Notice dated 22.10.2010, proposing to classify the service received by the Appellant as Franchise service and to deny the benefit of Exemption Notification; Tribunal held that the services are rightly classified by the Appellant under "IPR Service" and the same are not classifiable as "Franchise Service and therefore, Appellant is eligible to avail the benefit of Exemption Notification. The department has challenged the said order of the Hon'ble Tribunal by filing a before the Hon'ble Supreme Court; Hon’ble Apex court issued notice 2021(47) GSTL J60(SC) in the said appeal and the same is pending for disposal. She submits that it is settled principle that the department cannot take different views on the same issue for the same assessee, as held in the following cases:

- SS Engineers Order dt. 07.07.2023 (SC)
- Rosmerta Technologies Ltd 2020-TIOL-916-CESTAT-CHD affirmed by Supreme Court vide order dt. 10.07.2023.
- SRF Ltd 2021-TIOL-523-CESTAT-DEL
- Carrier Air Conditioning and Refrigeration Ltd 2023 (4) TMI 870 (Tri. -Chandigarh)

4. Learned Counsel submits further that the Agreement between Appellant and the Licensors is only in relation to grant of license with

respect to IPR in connection with design, production, distribution, marketing, and sale of the products; Section 65(105)(zze) of the Act provides that service provided or to be provided to a franchisee, by the franchisor in relation to franchise is a taxable service; a franchise agreement entails significant assistance that is provided by the franchisor to the franchisee; as the appellants did not receive franchise service, exemption is available; in the instant case t is not a franchise agreement for the following reasons:

- the arrangement is merely that of licensing and not of franchising; the Appellant never loses its individual identity as in a typical franchise agreement; Licensor does not have significant control over the operation of the Appellant; Appellant can bring about change in the products to suit Indian conditions.
- all the products manufactured by the Appellant contain a declaration that the same have been manufactured by the Appellant; trademarks are registered under the name of the Appellant.
- Appellant is not bound by Business Techniques of the licensors; the cost of advertisement and marketing are being borne by the Appellant; Appellant follows its own marketing strategy
- Appellant have granted sub-licensing rights to third parties.

5. She relies on the following cases in support of her contentions.

- Esys Information Technologies Pvt Ltd 2025 (4) TMI 373 CESTAT Chandigarh
- Baxter India Private Limited 2024 (5) TMI 847 CESTAT Chandigarh
- Reckitt Benckiser (India) Ltd 2021 (46) G.S.T.L. 41 (Tri. - Chandigarh)
- Delhi International Airport P. Ltd. 2017 (50) S.T.R. 275

- Mahanagar Telephone Nigam Ltd 2021 (50) G.S.T.L. 292
- M/s Jaypee Sports International Ltd Final Order No.-70060/2024 in Service Tax Appeal No.70547 of 2017 dated 13.02.2024
- M/s Siti Cable Network Ltd. 2021 (44) G. S. T. L. 412 (Tri. - Del.)
- Tata Consultancy Service Ltd. [2021] 90 GS.T.R. 415 (CESTAT-Mum)
- Tata Tech Ltd. 2008 (11) S.T.R. 449
- ST Electricals Pvt Ltd. 2019 (20) G.S.T.L. 273

6. Learned Counsel submits also that the Exemption Notification intends to exempt services where a taxable service is provided by holder of IPR to any person in relation to a "temporary transfer or permission to use/enjoy any IPR; the words used in the Exemption Notification is that it exempts "the taxable service" rather than "exempts the taxable IPR service"; it is not required that the service should be classified under IPR services classifiable under Section 65(105)(zzr) of the Act in order to avail the exemption under Notification dated 10.09.2004; any taxable service provided by the holder of the IPR to any person in relation to IPR service will be entitled to exemption under this Notification; she relies on the decision of the Hon'ble Supreme Court in the case of Jain Engineering Co 1987 (32) ELT 3 (SC); Abrol Watches Pvt Ltd 1997 (92) ELT 311 (SC); Duro flex Ltd 2015 (321) ELT A135 (SC) and Airport Authority of India, 2015 (325) ELT 823 (SC).

7. Learned Counsel submits, without prejudice to the above submissions, hat even if the Appellant is liable to pay service tax, the calculation of the amount is incorrect; gross amount paid by the Appellant to Licensors must be treated as inclusive of the amount of

service tax payable, in terms of Section 67; further, in the instant case, as per Article 7.3 the Agreement, royalty payable is inclusive of all taxes. Learned Counsel submits that the period April 2012 to March 13, is time barred as extended period of limitation as the ingredients for the same are not fulfilled; neither the SCN nor the Impugned Order brings out any evidence or shows any positive act of suppression etc on part of the Appellant; the Appellant was under a *bona fide belief* that the services are rightly classifiable under the category of 'intellectual property service' and paid tax accordingly after availing the exemption under Exemption Notifications; department was already aware about the classification adopted by the Appellant and the same was also specifically reflected in ST-3 returns; further as the issue involves interpretation of the complex provisions of Law, extended period of limitation could not be invoked. She relies on Mahanagar Telephone Nigam Ltd 2023-TIOL-407-HC-DEL-ST; Reliance Industries Ltd 2023-TIOL-94-SC-CX and Hyundai Motor India Pvt Ltd 2019 (29) GSTL 452 (Tri. Chennai) [affirmed by in 2020 (32) GSTL J154 (S.C.)]. She submits that when the demand itself is not sustainable, demand of interest and penalty as is liable to be set aside.

8. Learned Authorized Representative for the Revenue, reiterates the findings and relies on Hindustan Construction Company ltd 2025(391) ELT 382(Tri-Bom). He further submits that the issue is sub-judice before the Hon'ble Apex court of India as the Civil Appeal No 194-195 filed by the Revenue against the decision by Tribunal in the case of Air India 2017(7) GSTL 360(Tri-Del) is admitted. Hon'ble Apex Court in the case of M/s West Coast Paper Mills Ltd 2004 (164) ELT 375 (SC) held that

> 38. In the aforesaid cases, this court failed to take into consideration that once the appeal is filed before this court and the same is entertained, the judgement of the High Court or the Tribunal is in jeopardy; the subject matter of the lis unless determined by the last court cannot be said to have attained finality; grant of stay of the judgement may not be of much relevance once this court grants special leave and decides to hear the matter on merit.

9. Learned Counsel submits in rejoinder that the mere fact that the department has filed an appeal against order of the tribunal, cannot be a reason for keeping the instant appeal in abeyance; no interim stay has been granted against the order of this Hon'ble Tribunal. She relies on the following:

- Schneider Electric India Pvt Ltd (2023) 9 Centax 362 (Tri. -Chan)
- Pidilite Industries P. Ltd 1990 (50) ELT 577 (Tribunal)
- M/s Hindustan Zinc Ltd Final Order No. 50649-50661/2025 dated 13.05.2025-Excise Appeal No. 51503 of 2022-CESTAT New Delhi
- HDFC Bank Ltd 2021 (44) G.S.T.L. 155 (Tri. - Mumbai)
- M.B. Anbarasan Factory v1992 (60) ELT 195 (Mad.)
- Century Enka Ltd 1994 (69) ELT 44 (Tribunal)
- Ecko Cables (P) Ltd Final Order No. 60024/2024 dated 25.01.2024
- Kamakshi Trade Exim (India) Pvt Ltd 2016 (338) ELT 528 (Guj.)
- Mohanlal Ghanshamdas 1987 (30) ELT 1014 (Tribunal)
- Western Coalfields Ltd Nagpur-2023 (4) Centax 271 (Tri. - Bom.)
- Airmid Aviation Pvt Ltd. 2019 (370) ELT 1789 (Tri. Mumbai)
- Kamlakshi Finance Corporation Ltd. - 1991 (55) ELT 433 (SC)
- Shree Chamundi Mopeds Ltd. Vs Church of South India Trust Association 1992 (3) SCC 1

10. Heard both sides and perused the records of the same. The Brief issue that requires to be decided in the case is as to whether the services received by the appellant from their overseas companies are services related to IPR or Franchise Service. We find that this

Bench has gone into the issue in the appellant's own case (supra) and held as follows:

> **29.** The issue that arises for consideration in this Appeal is whether the services received by the Appellant under the aforesaid two agreements, each dated 15 July, 2005, would fall under the category of "IPR services" or "franchise services". According to the Appellant, the services received by the Appellant would fall under the category of "IPR service", while according to the Department the services received by the Appellant would fall under the category of "franchise service".
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> **30.** Before examining as to whether service received by the Appellant would be classifiable under IPR service, it is considered appropriate to first examine whether the services received by the Appellant can be classified under the category of "franchise service" with effect from 16 June, 2005.
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> **31.** Prior to 16 June, 2005, the definition of "franchise" was:
>
> > "65(47) "franchise" means an agreement by which -
> >
> > (i) franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be is involved;
> >
> > (ii) the franchisor provides concepts of business operation to franchisee, including know-how, method of operation, managerial expertise, marketing technique or training and standards of quality control except passing on the ownership of all know-how to franchisee;
> >
> > (iii) the franchisee is required to pay to the franchisor, directly or indirectly, a fee; and
> >
> > (iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person. "
>
> **32.** The amended definition of "franchisee" contains only the first condition of the definition as it stood prior to 16 June, 2005 and the other three conditions have been left out. Under the amended definition, "franchise" means an agreement by which the franchisee is granted *representational right* to sell or

manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trademark, service mark, trade name or logo or any such symbol, as the case may be, is involved. Thus, if the condition relating to "representational right" is not satisfied the transaction would not be classified as a "franchisee' service. "Representational right" means that a right is available with the "franchisee" to represent the franchisor and in that case the "franchisee" loses its individual identity and would be known only by the identity of the franchisor. This is what has been observed in the following decisions.

**33.** The Delhi High Court in *Delhi International Airport* also laid down the requirements for an agreement to be considered a "franchise" and the observations are as follows:

> "55. For OMDA (Operations, Management and Development Agreement) to constitute a franchise, it would have to satisfy the requirements of Section 65(47) of the Finance Act, which inter alia requires that the franchisees (Petitioners) should have been granted representational right by franchisor (AAI).
>
> 56. Merely because, by an agreement, a right is conferred on a party to sell or manufacture goods or provide services or undertake a process, would not ipso facto bring the agreement within the ambit of a franchise. What is also required is to establish that the right conferred is a "representational right".
>
> 57. The term "representational right" would necessarily qualify all the three possibilities i.e., (i) to sell or manufacture goods, (ii) to provide service, and (iii) undertake any process identified with the franchisor.
>
> 58. A representational right would mean that a right is available with the franchisee to represent the franchisor. When the Franchisee represents the franchisor, for all practical purposes, the franchisee loses its individual identity and would be known by the identity of the franchisor. The individual identity of the franchisee is subsumed in the identity of the franchisor. In the case of a franchise, anyone dealing with the franchisee would get an impression as if he were dealing with the franchisor."

(emphasis supplied)

**34.** The Mumbai Tribunal in *Global Transgene Limited* also observed that the foremost requisite for a service to qualify as a taxable 'franchise' service is that the "franchisee" should have been granted a representational right and that in a franchisee transaction, the "franchisee" loses its individual identity and represents the identity of the franchisor to the outside world.

**35.** In *Tata Consultancy Services Ltd.*, the Mumbai Tribunal observed that the grant of a representational right would imply that the person to whom such rights have been granted undertakes the entire activity as if it had been undertaken by the person granting such rights.

**36.** In *National Internet Exchange of India*, the Principal Bench at Delhi, after examining the definition of "franchise", observed as follows :-

> "Representational right permits the person to represent himself as someone else to the external world such that the external world feels that he is procuring goods or services from the brand owner which can be termed as franchise rights. For the purpose franchise must surrender his own identity and in addition must step into the shoes of the franchisor."

(emphasis supplied)

**37.** To examine whether the agreement of the Appellant with M/s. Reckitt Benckiser N.V. and M/s Reckitt Colman Overseas would fall under the category of a "franchisee" agreement, it would be necessary to examine the relevant terms of the agreement.

**38.** The preamble of the agreement mentions that the licensor has granted the licensee the sole license with respect to the *use of the IPR* for the production, sale, distribution and marketing of the products.

**39.** Article 2 of the agreement also mentions that the licensor has granted the licensee the sole license with respect to use of IPR for the production, sale, distribution and marketing of the products. Article 2.3 states that the licensor shall supply to the licensee all the documents and other information containing know-how which the licensor, in its reasonable opinion, deems necessary for the purpose specified in the Article. All the products manufactured by the Appellant contain a declaration that the same have been manufactured by the Appellant and there is no

requirement for the Appellant to declare the name of the licensors on the products.

**40.** There is nothing in the agreement which may indicate that the "franchisee" has lost its individual identity and is representing the identity of the franchisor to the outside world. The arrangement is clearly a typical case of a licensing transaction and is in no way similar to a 'franchisee' agreement as understood in the commercial world. In a 'franchisee' agreement, the franchisor owns IPR and allows the franchisee to set up and run the business in the name of the franchisor. The customers coming to the outlets of the franchisor believe that they are directly dealing with the franchisor. A typical example of such an agreement, as has been noticed by a Division Bench of the Mumbai Tribunal in *Global Transgene Ltd.* v. *Commissioner of Central Excise, Customs and Service Tax, Aurangabad* - 2013-TIOL-1259-CESTAT-MUM = 2013 (32) S.T.R. 86 (Tri. - Mumbai), is of McDonalds where the customer are not concerned with who owns the McDonald restaurant because the customers identify the restaurant with McDonalds.

**41.** The terms of the agreements, therefore, leave no manner of doubt that the agreement is not a 'franchisee' agreement.

**42.** This apart, in a 'franchisee' agreement, the franchisor has the authority to exert a significant degree of control over the method of operation of the franchisee. The agreement executed between the parties in the instant Appeal clearly shows that the licensor does not have any *significant control* over the manner in which the Appellant conducts its operation. The Appellant is free to procure the raw materials as per its will and it has a right to fix the selling price of the final product. It is also free to run its business, marketing, distribution, sourcing and other activities as per its own choice without any inference by the licensors. It also makes its own marketing strategy. The only right which the licensor have is to supervise whether the products manufactured by the Appellant are in conformity with the quality, since the brand name of the licensor is being used by the Appellant. This singular right under the agreement will not constitute any control, much less *significant control* over the operations of the Appellant. Therefore, also the arrangement between the Appellant and the licensors will not constitute a franchisee agreement, since the licensor does not have any significant control over the operations of the Appellant.

**43.** In this connection it would be pertinent to refer to the decision of the United States District Court in *Englert, INC*. The Court examined an agreement that was executed between the parties for the distribution of LeafGuard gutters. It allowed Seamless Gutters to sell and instal LeafGuard gutters in a limited territory. The agreement provided that Seamless Gutters would purchase a LeafGuard gutter-fabricating machine from the plaintiff for $26,000, and would comply with numerous conditions including the payment of royalties for each linear foot of LeafGuard gutters produced by the gutter-fabricating machine and certain reporting and minimum sales requirements. The Court examined whether the agreement executed between the parties was 'franchise' or 'a license agreement'. It noticed that though the actual agreement between the parties was captioned as 'a license agreement', but what was important to find out was whether the relationship was covered by the 'Franchise Rule'. A dispute arose between the plaintiff and defendant LeafGuard involving payment of royalty. The defendants asserted that the agreement between the parties created a franchise relationship and failure to provide FTC franchise disclosure statement under the 'Franchise Rule' amounted to violation of unfair Trade Practice. This decision holds that what has to be seen is -

(i) Whether the relationship involves distribution of goods or services associated with a franchisor trademark or trade name? A dispute arose between the plaintiff and defendant LeafGuard involving payment of royalty. The defendants asserted that the agreement between the parties created a franchise relationship and failure to provide FTC franchise disclosure statement under the 'Franchise Rule' amounted to violate of unfair Trade Practice;

(ii) Whether the franchisor has authority to exert a significant degree of control over the franchisee's method of operation or provide a significant assistance in the franchisee's method of operation? and

(iii) Whether the franchisor must pay a certain amount after the franchise business begins?

**44.** There was no dispute about the first requirement as the agreement did involve sale or distribution of goods associated with the trademark of the plaintiff. In regard to the second and third requirement, the Court found that from a perusal of the agreement it was reasonable to conclude that *Englert* exercised control over the defendants only in regard to a single product line and that *Englert* did

not have the ability to control any of the product of the defendant other than LeafGuard gutters which was one of the multiple products and services provided by the defendants. The level of control exerted by *Englert* over the defendant's method of operation was, therefore, not "*significant*" for the purpose of the FTC Franchise Rule and so the agreement between the parties was not 'franchise' but a 'license agreement'.

**45.** It would now have to be seen whether the services received by the Appellant can be classified as 'IPR service'.

**46.** The definitions of IPR and intellectual property service as contained in Section 65(55)(a) and Section 65(55)(b) of the Act have been reproduced above. The taxable service under Section 65(55)(zze) of the Act has been defined 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. The agreement executed between the parties is clearly for a temporary transfer of IPR as will be seen from the Preamble and Article 2 of the Agreement. Under Article 3 of the Agreement, the licensee acknowledged that all rights, title, interest or goodwill in the IPR is and remains vested in the licensor and shall not impair the rights of the licensor in the IPR. Article 6 provides that in consideration of the rights and IPR granted by the licensor under the agreement, the licensee shall pay the licensor royalty equivalent to 5% of net sales of products in India and royalty equivalent to 8% on exports in India. It is, therefore, clear that the services have been correctly classified by the Appellant as IPR.

**47.** The Commissioner committed an error in holding that the service received by the Appellant would fall under 'franchisee' service. The Commissioner completely overlooked that in a franchisee agreement, what was required to be examined was whether any "representational right" was granted to sell or manufacture goods or to provide service or to undertake any process identified with the franchisor. It is only because the Appellant was engaged in the manufacture and sale of products identified with the franchisor that the Commissioner concluded that the agreement was a franchisee agreement, without considering whether any 'representational right' was granted.

**48.** At this stage, the decisions relied upon by the Learned Authorized Representative of the Department need to be examined.

**49.** Paragraph 10 of the decision of the Kolkata Bench of Tribunal in *Timken India Limited*, on which reliance has been placed, is reproduced below :-

> "10. A plain reading of the above contract makes it clear that the agreement between the Appellant and the Timken (USA) is not limited to use Timken's Intellectual Property *i.e.* proprietary technical information, know-how etc. for manufacture of products and for service of the main products as is defined in the intellectual property service. Rather the various terms of the contract as given above indicate that the Appellant has to represent the *Timken (USA)* to their various customers in such a way that the Appellant loses its own individual identity and would perhaps be known only by the identity of Timken (USA)."

**50.** This decision will not come to the aid of the Department since a finding therein was recorded that the Appellant had lost its individual identity and would only be known by the identity of *Timken (USA)*. This is not the factual position in the present Appeal as it has been found as a fact that the Appellant has not lost its individual identity to be known only by the identity of the licensor.

**51.** Likewise, the decision of the Principal Bench of the Tribunal in *Amway India Enterprises Pvt. Ltd.* will also not help the Department. The Tribunal found as a fact that the licensor had given a representational right to sell its products to the licensee.

**52.** The decision of the Principal Bench in *Delhi Public School Society* is also of no benefit to the Department. The Tribunal found that in terms of the unamended definition of franchisee, all the four requisite conditions were satisfied and, therefore, a taxable service was provided.

**53.** Thus, when the services received by the Appellant would merit classification under IPR service, the Appellant would also be entitled to abatement of Service Tax available to a holder of IPR under the notification dated 10 September, 2004.

**54.** In this view of the matter it is not necessary to examine whether the Appellant would also be entitled to the benefit of the Notification dated 10 September, 2004 even if it is held that the service received by the Appellant would be in the nature of a 'franchisee' agreement, nor would it be necessary to examine whether the extended period of limitation was correctly invoked in the show cause notice.

11. In view of the above, we find that we need not go into the issue once again as the same stands settled by this Bench. Learned Authorized Representative for the Revenue submits that Hon'ble Supreme Court has admitted an appeal filed by the Department against the above cited order passed by this Bench and therefore, the issue may be kept pending till disposal by the Hon'ble Apex Court. We find that the learned Counsel for the appellants, on the other hand, submits that as no Stay has been granted by the Hon'ble Apex Court, mere pendency of the appeal is no reason to keep the issue pending. We find that the order of the Tribunal has been appealed against and the same has been admitted. No stay however, is granted. Now the question arises, as to whether the subsequent proceedings be kept pending. We find that the decision of the Apex Court is not applicable to the facts of the case before us for two reasons. Firstly, the Hon'ble Apex Court's decision in west coast paper mills is not in respect of taxation related issues. Secondly, the Hon'ble supreme Court observed that in cases where is appeal is allowed, the decision of the Tribunal is in jeopardy; to our understanding it is to say that the order of the Tribunal is not final and that during the pendency of the Appeal before Apex Court the order of the Tribunal cannot be implemented to the detriment of the interests of the appellant; it is not to say that decision cannot be taken in a subsequent proceeding. We find that Tribunal has distinguished the judgment in the following cases.

12. In the case of Hanil Era Textiles Ltd 2010 (251) ELT 87 (Tri. – Mum), tribunal held that

3. The learned counsel has pointed out that the Development Commissioner's order cancelling earlier DTA sale permission was challenged before the Hon'ble High Court in a Writ Petition (W.P. No. 1718 of 2003). However, in answer to a query by the Bench, the counsel submits that he is not aware of any order of stay having been passed by the High Court against the Development Commissioner's order. In this context, he has also referred to the Supreme Court's judgment in *Union of India* v. *West Coast Paper Mills Ltd*. - 2004 (164) E.L.T. 375 (S.C.) wherein the Apex Court had observed *inter alia* that where an appeal was filed against a final order of the Tribunal and such appeal was admitted by the Apex Court, the finality and credence of the Tribunal's order was in jeopardy. On this basis, it has been argued that, even though there is no stay order from the Hon'ble High Court in W.P. No. 1718 of 2003, it should be deemed that the Development Commissioner's order challenged before the High Court did not attain finality. We are unable to accept this view. In the case considered by the Apex Court, the question pertained to the effect of an order of the Tribunal during the pendency, before the Supreme Court, of an appeal filed thereagainst. Such is not the present case. Against the Development Commissioner's order, the party chose to invoke the writ jurisdiction of the Hon'ble High Court but yet they did not, or could not obtain any interim relief in the Hon'ble High Court's equitable jurisdiction. Such situation is different from the one considered by the Hon'ble Supreme Court in *West Coast Paper Mills* (supra).

13. Tribunal held, in the case of Galaxy Entertainment Corporation Ltdv2010 (259) ELT 427 (Tri. – Mumbai), that

11. The contention of the learned DR that the order of the Tribunal was challenged before the Hon'ble Apex court and as the matter was sub-judice before the Apex Court, the appellant is not entitled for refund claim, is not acceptable in terms of the Board Circular dated 8-12-2004. The reliance placed by the DR in the case of *UOI* v. *West Coast Paper Mills* - 2004 (164) E.L.T. 375 (S.C.) is not applicable to this case as correctly submitted by the learned Advocate. The same has been rendered in Article 136 of the Constitution of India, which confers special power to the Apex court and the said decision does

not hold that consequents which fails non-compliance of the Customs Act.

14. Tribunal Held in the Case of Andhra Cylinders Pvt Ltd, Nalin Khara, Managing Director 2020 (1) TMI 189 - CESTAT Hyderabad, that

> 14. In view of the above, we find that at least four different High Courts have struck down the constitutional validity of Rule 8(3A) of Central Excise Rules, 2002 and appeals against such judgments have been admitted by the Hon'ble Supreme Court and have yet to be decided. There was a stay in one case i.e., Indsur Global Ltd (supra) only but there was no stay in respect of the other judgments. Learned departmental representative relies on the judgment of Larger Bench of Hon'ble Supreme Court in the case of West Coast Paper Mills (supra) to assert that once an appeal has been admitted before the Hon'ble Supreme Court, the judgment of the High Court or Tribunal is in jeopardy and cannot be followed. We find that this judgment was of the year 2004. What needs to be decided in this factual matrix is where there are judgments by four different High Courts holding Rule 8(3A) as ultra vires and there is no judgment of any High Court upholding it and where the appeals against these judgments have been admitted and are under consideration of the Hon'ble Apex Court, whether the ratio of these judgments bind this tribunal or otherwise. We find that the last in the series of judgments was passed by the Hon'ble High Court of Bombay in the case of Nashik Forge Pvt Ltd (supra) on 17.09.2018 holding that the ratio of the judgment of the Hon'ble High Court of Madras, Gujarat and Punjab & Haryana apply. Respectfully following the decision of the Hon'ble High Court of Bombay, we follow the ratio of the aforesaid judgments of the Hon'ble High Courts and hold that the demand is unsustainable and needs to be set aside. Consequently, penalties imposed upon the appellant also need to be set aside and we do so.

15. In view of the above, we find that there is no reason as to why we should disagree with this Bench order in the case of the appellants themselves (Supra) and as to why we need to keep it pending. Therefore, following the same we allow the appeal.

(Order pronounced in the open court on 09/12/2025)

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

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

PK