CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No. ST/150/2010

[Arising out of Order-in-Appeal No.04/2010 (MST) dt. 5.02.2010 passed by the Commissioner of Central Excise (Appeals), Chennai]

Bureau of Indian Standards — Appellant

Versus

Commissioner of Service Tax, Chennai — Respondent

Appearance:

ShriG.Natarajan, Advocate
For the Appellant

Shri Arul C.Durairaj, (AR)
For the Respondent

Appeal Nos.ST/288/2011,ST/289-290/2011

[Arising out of Orders-in-Appeal No.11/2011 (MST), 12/2011 (MST) and 13/2011 (MST) dt. 11.02.2011 passed by the Commissioner of Central Excise (Appeals), Chennai]

Bureau of Indian Standards — Appellant

Versus

Commissioner of Service Tax, Chennai — Respondent

CORAM :

Hon'ble Smt.Archana Wadhwa, Member (Judicial)
Hon'ble Shri B Ravichandran, Member (Technical)

Date of hearing : 21.12.2017

FINAL ORDER No. 43451-43454 / 2017

Per.B.Ravichandran

These four appeals are on the same dispute and are accordingly taken up for disposal together. The appellant is a statutory body functioning under Ministry of Food, Consumer Affairs and Public Distribution. They are set up to promote quality in various goods. They carry out tests and certify the goods for specified standards. They are paying service tax on such activity, under "Technical Testing and Inspection Services".

2. In order to ensure purity of gold sold to consumers, the appellant is operating 'Hall Marking Scheme' under BIS Act, Rules and Regulations. As per the scheme, the jeweller or manufacturer desirous of obtaining a licence applies to appellant for use of Standard Mark (Hallmark) on the jewellery. Based on documents such licence is granted. After such licencing the jeweller has to follow the BIS approved scheme of testing and inspection on continuing basis. This is carried out by Assaying and Hallmarking Centres, who collect certain consideration and remit service tax on the same. From such consideration 10% is paid to appellant. The Revenue held a view that "Hallmark" is an Intellectual Property Right" and appellant would be liable to pay service tax under "IPR Service". Proceedings initiated against the appellant, on such premise, resulted in these impugned orders confirming tax liabilities with penalties.

3. We have heard Ld.Advocate for the appellant and Ld.AR for Revenue. We have perused the appeal papers. We note that the Intellectual Property Right Service in terms of Section 65 (55b) means, transferring, whether permanently or otherwise or permitting the use or enjoyment of, any Intellectual Property Right. The lower authorities held that the appellant is permitting the use of hallmarking to the

assayers and hallmarkers and are receiving 10% royalty charges for the same under the cover of revenue agreement. In our view, the lower authorities misapplied the provisions of tax entry and erred in factual appreciation. In terms of Section 65 (105) (22r) taxable service means any service provided to any person, by the holder of Intellectual Property Right, in relation to intellectual property service. In the present case we note that "Hallmark" is not at all any intellectual property governed by any law for such right. Section 9 of Trade Marks Act, 1999 lays down that certain marks cannot be registered as a trademark. The "Hallmark" only signifies that the products which are hallmarked are in conformity to the standards under the Hallmarking Scheme. Unauthorised use of "Hallmark" is punishable under BIS Act, 1986. This Act is not for any Intellectual Property Right. This is for quality assurance. We note that the lower authorities did not categorically record as to how "Hallmark" is an Intellectual Property Right of appellant. The appellant categorically state that they do not possess any such Intellectual Property Right. The "Hallmark" is worldwide recognised quality mark and not an Intellectual Property Right of appellant. BIS Act is for consumer protection, not dealing with Intellectual Property Right. The appellant is not permitting anybody to use "Hallmark", in the manner trade marks are assigned/permitted for use.

4. We find that the appellant are not providing any Intellectual Property Right service in terms of Finance Act, 1994 and there is no merit in the impugned orders. These orders are set aside and appeals are allowed.

(order pronounced in open court)

(B.Ravichandran)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Vsr/Rkp