IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/00244 to 00246/2011

[arising out of Order-in-Appeal No.LTUC/17 to 19/2011-(C), dated 12.01.2011 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s.ALSTOM T AND D INDIA LTD AND SCHNEIDER ELECTRIC INFRASTRUCRURE LTD. — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, LTU, CHENNAI — RESPONDENT

ST/00578/2011

[arising out of Order-in-Original No.LTUC/319/2011-(C), dated 13.09.2011 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s. ALSTOM T AND D INDIA LTD AND SCHNEIDER ELECTRIC INFRASTRUCRURE LTD. — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX , LTU, CHENNAI — RESPONDENT

ST/00273/2012

[arising out of Order-in-Appeal No.LTUC/75/2012-(C), dated16.03.2012 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s. ALSTOM T AND D INDIA LTD AND SCHNEIDER ELECTRIC INFRASTRUCRURE LTD. — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, LTU, CHENNAI — RESPONDENT

Customs, Excise & Service Tax Appellate Tribunal

ST/00244 to
00246/2011,
ST/00578/2011,
ST/00273/2012

Appearance:

For the Appellant Shri Joseph Prabhakar, Adv.
For the Respondent Ms. P. Hemavathy, Commr. (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing/decision **16-11-2017**

FINAL ORDER NO.s. 42942– 42946/2017

Per B. Ravichandran:

The disputes in all the four appeals are similar and hence are taken up together for disposal.

2. The brief facts of the cases are that the appellants are engaged in the manufacture of 'electrical equipment' and in terms of an agreement with their parent company in France, they were permitted to use the Trademark – "AREVA", for their products sold in India. For this permission to use the Trademark, the appellants paid certain considerations. The service tax liability on such payment, was sought to be confirmed against the appellants, on reverse charge basis, in terms of section 66A of the Finance Act, 1994. The lower authority, confirmed the service tax liability in all the proceedings against the appellants. Penalties were also imposed on the appellants.

2. The learned counsel contesting the findings of the lower authority, submitted that in terms of section 65(55a) and section 65(55b) read with section 65(105)(zzr) of the Finance Act, 1994, the Intellectual Property Rights [IPR] availed by the appellants should be recognised under any law for the time being in force in India. The Trademark, which the appellants were using, though, registered in

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France, is not registered or protected under any legislation in India. In such a situation, the tax liability on reverse charge basis will not arise. In this regard, he relied on a large number of case laws in support of his contention.

3. The learned Authorised Representative Ms. P. Hemavathy, Commissioner (AR) for the Revenue submitted that the Trademark used by the appellants were in pursuance of an agreement. It is not legally required for the Trademark to be registered under Trademarks Act for recognition. Even, unregistered Trademark are recognised by Indian law and as such, the assertion of the appellants that the Trademark is not protected by the Indian law and cannot be considered as covered by any law for the time being in force in India, is not correct. The Revenue further contested that provision of law. Trademarks Act, 1999 is very clear that a Trademark used in relation to goods and services, for the purpose of indicating the connection between the person using that mark, is sufficient enough for recognition. Reference was made to the provisions of section 2(zb) of the Trademarks Act, 1999. It is also contended that the Revenue has preferred an appeal against the decisions of the Tribunal in the case of *M/s. Reliance Industries Ltd., Vs Commissioner of Central Excise & Service Tax, LTU, Mumbai* reported in *2016 (44) S.T.R.82 (Tri.-Bom.)* in the Hon'ble Apex Court. The same has been admitted, though, no stay has been granted.

4. We have heard both sides and perused the appeal records.

5. The only point of dispute is the service tax liability of the appellants with reference to the payment of consideration for usage of

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Trademark – "AREVA", which is owned and registered by parent company of the appellants in France. The lower authority held that registration of Trademark in India is not a pre-requisite for tax liability under Intellectual Property Rights Service. It is further held that such Trademark is recognisable under the Trademarks Act, 1999, which will fulfill the condition of tax entry for Intellectual Property Rights Service. We are not able to accept the said proposition of the Revenue. In a large number of decisions of the Tribunal, the matter has come up repeatedly and herein, we refer to a few of such decisions, which are listed below:-

(a) *M/s. Chambal Fertilizers & Chemicals Ltd. Vs CCE, Jaipur-I* reported in *2016 (45) S.T.R.118 (Tri.-Del.)*;

(b) *M/s. Asea Brown Boveri Ltd., Vs Commissioner* reported in *2016-VIL-480-CESTAT-BLR-ST*;

(c) *M/s.Reliance Industries Ltd. Vs Commissioner* reported in *2016 (44) S.T.R.82 (Tribunal)*;

(d) *M/s. Rochem Separation Systems (India) Pvt. Ltd. Vs Commissioner* reported in *2015 (39) S.T.R.112 (Tribunal)*;

(e) *M/s. Tata Consultancy Services Ltd. Vs Commissioner* reported in *2016 (41) S.T.R.121 (Tribunal)*; and

(f) *M/s. Whirlpool of India Ltd. Vs Commissioner* reported in *2016-VIL-57-CESTAT-DEL-ST*.

6. The ratio applied in the above decisions are to the effect that to be categorised for service tax purposes under Intellectual Property Rights, such right should have been registered with the Trademark/Patent Authority. In case, the said right is not recognised,

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by the statutory authorities in India, as per the law time being in force, then the question of taxing on Intellectual Property Rights Service, will not arise. There is no provision of Intellectual Property Rights Service for tax liability on reverse charge basis, when such Intellectual Property Rights/Trademark is not recognised for enforcement in India under any law for the time being in force. The submission of the Revenue that the Trademark used by the appellants were recognised by the Trademarks Act, 1999 as the same is fulfilling the legal requirements, cannot be appreciated. As long as it is legally not recognised by a process under the Act, the same cannot be considered as recognised by the law for the time being in force, as has been decided by the Tribunal in the case of *M/s. Catapro Technologies Vs Commissioner of Central Excise, Nashik* reported in *2017 (48) S.T.R.94 (Tri.-Mumbai)*.

7. We have also examined the Circular dated 17.09.2004 of CBEC, relied on by the original authority. It is clarified therein that IPRs covered under Indian law in force at present alone are chargeable to servi8ce tax. In fact, the clarification supports appellants.

8. In view of the discussion and analysis, we find the impugned orders are without merits and accordingly, the same are set aside and all the four appeals are allowed with consequential relief, if any, to the appellants.

(Dictated and pronounced in open court)

(B. RAVICHANDRAN) 17.11.17
MEMBER (TECHNICAL)

Sulekha Beevi
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asst. Registrar
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चेन्नै / CHENNAI

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