IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 269 of 2012

WITH

Service Tax Appeal No. 270 of 2012

WITH

Service Tax Appeal No. 271 of 2012

AND

Service Tax Appeal No. 272 of 2012

(Arising out of common Orders-in-Original No. LTUC/99-102/2012-(C) dated 22.03.2012 passed by the Commissioner of Central Excise & Service Tax, Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai – 600 101)

M/s. Alstom T & D India Limited and Schneider Electric Infrastructure Limited **: Appellant**
19/1, GST Road, Pallavaram,
Chennai – 600 043

VERSUS

The Commissioner of Central Excise and Service Tax, Large Taxpayer Unit **: Respondent**
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension, Chennai – 600 101

APPEARANCE:

Shri Joseph Prabakar, Learned Advocate for the Appellant

Shri M. Ambe, Learned Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40072-40075 / 2023

DATE OF HEARING: 15.02.2023

DATE OF DECISION: 15.02.2023

Order : [Per Hon'ble Mr. P. Dinesha]

These appeals are filed by the assessee against the common Orders-in-Original No. LTUC/99-102/2012-(C) dated 22.03.2012 passed by the Commissioner of Central Excise and Service Tax, Large Taxpayer Unit, Chennai.

2. Brief facts, which are relevant for our consideration, *inter alia*, are that the appellant is a manufacturer of transformers, control panels, relays, switch gears, etc., and are paying Service Tax for Intellectual Property Services for payment of Royalty and Technical Knowhow fees to their associate companies abroad. The Revenue, entertaining a doubt about the payment of Royalty and Technical Knowhow fees, issued a letter dated 11.04.2011, to which the appellant replied vide its letter dated 14.06.2011 stating clearly that the Royalty and Technical Knowhow fees were paid for the Technical Knowhow provided by the foreign companies through design and drawing for carrying out production and in consideration of the rights granted to them to use the technical knowledge.

3. The Revenue, entertaining a further doubt that the appellant had not paid the Service Tax immediately on the above payments, issued Show Cause Notices, as per the tabular column at Page 3 of the impugned Orders-in-Original, proposing thereby to demand Service Tax on the provisions made for the above payments along with interest, apart from penalties under Sections 76 and 77 of the Finance Act, 1994. After hearing the appellant through its representative, the Adjudicating Authority vide impugned Orders-in-Original proceeded to confirm the demands as proposed in the Show Cause Notices, holding that the appellant had not discharged Service Tax immediately after making the provision for payment of Royalty and Technical Knowhow fees to their associate companies abroad. It is the case of the Adjudicating Authority, in a nutshell, that once a provision was made in their books of account, the appellant was statutorily

obliged to assess the tax due and pay the Service Tax immediately before the due date. Aggrieved by the said order whereby the demands have been raised, the appellant has preferred these appeals.

4. Heard Shri Joseph Prabakar, Learned Advocate for the appellant and Shri M. Ambe, Learned Deputy Commissioner for the Revenue. After hearing both the sides and after going through the Appeal Memorandum, we find that the only issue that is to be decided by us is: whether the lower authority was justified in demanding interest under Section 75 of the Finance Act, 1994 ?

4.1 Learned Advocate for the appellant submitted at the outset that the very question of taxability under Intellectual Property Rights has been held to be outside the purview of Service Tax domain in the following cases, namely:-

(i) M/s. Tata Consultancy Services Ltd. v. Commissioner of S.T., Mumbai [2016 (41) S.T.R. 121 (Tri. – Mumbai)];

(ii) M/s. Alstom T and D India Ltd. and Schneider Electric Infrastructure Ltd. v. Commissioner of Central Excise & Service Tax, LTU, Chennai & ors. [2018-VIL-88-CESTAT-CHE-ST];

(iii) M/s. Areva T&D India Ltd. v. Commissioner of Service Tax, Chennai [Final Order Nos. 41132-41142/2018 dated 13.04.2018 – CESTAT Chennai]

5. *Per contra*, Learned Deputy Commissioner for the Revenue, relied on the findings of the lower authority.

6. Heard both sides, perused the documents placed on record and we have also gone through the various orders relied upon during the course of arguments.

7. We find that in the above orders of the CESTAT Benches relied upon by the Learned Advocate for the appellant, it has been held that in order to be categorized for the purpose of Service Tax under Intellectual Property

Rights, such rights should have been registered with the Trademark / Patent authority in India as per the law for the time being in force. That is to say, as long as it is not legally recognized by the process under the Act, the same could not be considered as recognized by the law for the time being in force.

8. In the case on hand, the appellant has categorically canvassed, which is also clear from the grounds-of-appeal urged before us, that wherever Royalty and Technical Knowhow fees were paid to the overseas entities, applicable Service Taxes have been discharged by the appellant and that it is only the interest which is the point of dispute and not the Service Tax.

9. After considering the rival contentions, we find that the scope of the appeals is limited, as contended by the appellant, to the demand of interest alone and when the orders of the CESTAT Benches (*supra*) are considered, we find that since the liability itself was questionable, the Revenue is not justified in demanding the interest also.

10. In view of the above, we set aside the impugned order to the extent it is challenged before us and consequently, allow the appeals.

(Operative part of the order pronounced in the open court)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sdd