

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 26/10/2015

To :

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/53230-53231/2015-CU[DB] dated 16/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

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Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
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1	ST/427/2012	Denso Haryana Pvt Ltd Plot No, 3, Sector-3, Imt, Manesar, Gurgaon Haryana.
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2	ST/880/2011	C.S.T. DELHI 17-B, I.P. Estate, IAEA - House, New Delhi.
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Name and Address of
Respondent

3		C.C.E.-Delhi-iii Plot No. - 36 - 37, Sector - 32 Gurgaon, Haryana-122021
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4		-DENSO HARYANA Plot No 3, Sector-3, IMT Manesa, Gurgaon.
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Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

R. Muralidharan (Consultant)
BUILDING 10, TOWER C, 18TH
FLOOR DLF CYBER CITY,
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GURGAON, HARYANA-122002

7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

16 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

17 C.D.R. 18 Office Copy 19 Guard File

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Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing/decision: 16.10.2015

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. B. Ravichandran, Member (Technical)



1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Service Tax Appeal No. 880 of 2011

(Arising out of order-in-original No. 13/SJS/CST (Adj.)/2011 dated 28.02.2011 passed by the Commissioner (Adj.) Service Tax, New Delhi).

CST, Delhi-III

Appellant

Vs.

M/s Denso Haryana Pvt. Limited

Respondent

AND

Service Tax Appeal No. 427 of 2012

(Arising out of order in appeal No. 545/BK/GGN/2011 dated 05.01.2012 passed by Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon).

M/s Denso Haryana Pvt. Limited

Appellant

Vs.

CCE (Appeals), Delhi-III, Gurgaon

Respondent



Appearance:

Shri Ramesh Sharma, Consultant with Sh. D.S. Negi, Manager (Finance & Accounts) for the Assessee.

Shri Ranjan Khanna, DR for the Revenue

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53230 - 53231/2015

Per: **B. Ravichandran**:

These are two appeals, one by the Revenue and another by the assessee, taken up together as issue involved is same in both the appeals. M/s Denso Haryana Pvt. Limited (DHPL) are engaged in the manufacture of dutiable auto components. They entered into an agreement with M/s Denso, Japan in 2002 for transfer of technology for manufacture of auto components. The consideration was to be paid by DHPL to Denso, Japan in the form of upfront lumpsum payment and running royalty based on number of products manufactured by M/s DHPL using the said technology. Proceedings were initiated against the M/s DHPL for recovery of service tax under the category of intellectual property rights on 'reverse charge' basis. Show cause notice dated 12.10.2009^{to} demand a service tax of Rs. 42,54,763/- and another show cause notice dated 23.05.2008 to demand service tax of Rs. 2,66,31,602/- were issued to M/s DHPL. The periods covered were 01.10.2007 to 30.09.2008 and 10.09.2004 to 30.09.2007 respectively. The first notice was adjudicated by the Joint Commissioner who vide order dated 08.10.2010 confirmed the demand of service tax and imposed equal amount of penalty under Section 78 of the Finance Act,



1994. On appeal the Id. Commissioner (Appeals) vide order dated 30.12.2011 upheld the said order. Aggrieved by this, M/s DHPL is before us in appeal. The second show cause notice was adjudicated by the Commissioner (Adjudication) Service Tax, New Delhi. He dropped the demand vide his order dated 28.02.2009. Aggrieved by this order, the Revenue is in appeal before us.

2. Shri Ramesh Sharma, Id. Consultant appearing on behalf of M/s DHPL pleaded that on the same set of facts two different decisions have been arrived at by the departmental authorities. The Id. Commissioner in his order dated 28.02.2011 examined all the legal issues alongwith the terms of the contract and arrived at the decision that the service which is to be taxed w.e.f. 10.09.2004 was received by M/s DHPL much before the said date and as such they are not liable for service tax for the said intellectual right service. The Commissioner (Appeals) who confirmed the lower authorities order vide his order dated 30.12.2011 has taken a different stand in upholding the original order.

3. Ld. Consultant strongly contends that the agreement entered into by them with Denso, Japan on 20.06.2002 is for transfer of technology and the right to manufacture and sell auto components using the said technology. Such transfer / permission to use technology had happened much before the service tax was introduced on intellectual property services. The payment for such transfer of technology either in lumpsum or over a period in the form of running royalty has no effect on the service tax liability. He further contended that in terms of proviso to Rule 6(1) of Service Tax Rules, 2004 no service tax shall be payable for



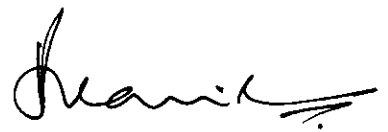
the part or whole of the services which is attributable to services provided during the period when such services were not taxable. Ld. Consultant relied on the decision of the Tribunal in the case of **Modi-Mundipharma Pvt. Ltd. vs. CCE, Meerut – 2009 (15) STR 713 (Tri. Del.)** and **Petronet LNG Ltd. vs. CST, New Delhi – 2013-TIOL-1700-CESTAT-DEL**. He pleaded for setting-aside order dated 30.12.2011 of the Id. Commissioner (Appeals). On the Revenue's appeal against Commissioner (Adjudication) Service tax order dated 28.02.2011 he submitted that the said order correctly follows the principle laid down by the decisions of the Tribunal (supra) and as such prayed for upholding the same.

4. Ld. AR Shri Ranjan Khanna stated that the Commissioner has erred in dropping the demand. He submitted Articles 3 and 8 of the impugned agreement will indicate that though the agreement entered into is in 2002 there is a provision for revision of technology and provision to make available such revised technology to M/s DHPL. He contended that the party's plea that the transfer of technical know-how is completed as soon as the agreement is entered into is not correct. It is his view that as long as components are made using the said technology it should be considered that the service is continuing. Accordingly, he submitted that after the introduction of the service tax on IPR the party is liable for service tax on reverse charge basis. The consideration for the transfer of technology was also being paid over a period of time including after the introduction of the service tax on IPR. Hence, M/s DHPL cannot escape liability of service tax after 10.09.2004.



5. Having heard both the sides and examined the terms of the agreement and other facts of the case, we find that the point for decision is whether or not IPR service was received even after 10.09.2004 by M/s DHPL in terms of agreement entered into in 2002. We find similar issue came up before this Tribunal for decision. In the case of **Modi-Mundipharma Pvt. Ltd.** (supra) it was held that whether payment for such services is made in one lumpsum or made in instalments or based on quantum of sale by the appellant on an annual basis is not relevant to consider as to when the services were actually rendered. It was held that the technical know-how was transferred in terms of the agreement and appellant manufacturing and selling product over a period using the technical know-how and making payment periodically will not affect the fact of one time transfer which is held to be not a taxable event as the same was prior to 10.09.2004. The Tribunal did not agree with the argument of Revenue that use of formula and the know-how will amount to continuous used service covered by the periodic payment.

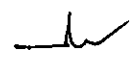
6. In the case of **Petronet LNG Ltd. vs. CST, New Delhi** (supra) the Tribunal held that regarding taxability of appellant in respect supply of tangible goods the date of long term charter agreement will be relevant though the tangible goods were continued to be used even after the introduction of service tax liability on such service. The Tribunal held that the taxable event of supply of tangible goods for use has taken place prior to the introduction of tax on such service; and that though hire charges for the actual use were remitted subsequently and periodically, no service tax is leviable.



7. We find the facts and the legal analyses as made in the above two decisions are applicable to the present case. Here the agreement for grant of license or transfer / permission to use technology was affected before 10.09.2004. The fact that M/s DHPL continued to manufacture and sell using such transferred technology even after the introduction of service tax on IPR cannot be considered as continuous supply of service. The rendering of service is effectively determined by the date of transfer / permission to use technology by M/s Denso, Japan which was prior to the introduction of tax liability on such service.

8. We find the Id. Commissioner (Adjudication) Service Tax, Delhi in his order dated 28.02.2011, in para 3.6.2, categorically examined the legal position and concluded that the allegation in the show cause notice that the service was provided on continuous basis is incorrect. Only payment of service was spread over a period of time. The service was performed as soon as the technology was transferred. We are in full agreement with the said findings of the Id. Commissioner (Adjudication).

9. Considering the above findings, we reject the appeal filed by the Revenue against the order of Commissioner (Adjudication) and allow the appeal filed by M/s DHPL against the order of Commissioner (Appeals).


(Justice G. Raghuram)
President


(B. Ravichandran)
Member (Technical)

Pant