

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

Service Tax Early Hearing Application No. 51348 of 2024

(On Behalf Of Appellant)

In

Service Tax Appeal No. 56092 of 2013 [DB]

[Arising out of Order in Original No. 42/Commr/PKL/2012 dated 03.12.2012 passed by the Commissioner, Central Excise, Panchkula]

**M/s. Remfry and Sagar
Consultants Pvt. Ltd.**

Remfry House, Millennium Plaza,
Sector 27, Gurgaon,
Haryana 122009

...Appellant

Versus

**Commissioner of Central Goods
& Service Tax,
Panchkula**

....Respondent

APPEARANCE:

Mr. Akhil Gupta, Advocate & Ms. Anshul Gupta, C.A. for the appellant
Ms. Jayakumari, Authorized Representative for the Respondent

CORAM :

HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MRS.HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: **26/07/2024**

Date of Decision: **09/10/2024**

FINAL ORDER No. 58793/2024

DR.RACHNA GUPTA

Present is an appeal filed to assail the Order in Original No.42/2012 dated 03.12.2012. The facts which have culminated into present appeal, succinctly, are as follows:-

M/s. Remfry and Sagar Consultants Pvt. Ltd., the appellant herein are registered for providing services in the taxable categories of "Support Service for Business or Commerce" as defined under section 65 (105) (zzzq)

read with section 65 (104 c) of Finance Act, 1994. During the audit of the appellant for the period 2006-2007 to 2008 – 2009, it was observed that the appellant had shown income from support services, license fee and had also shown other income. However, the appellant was not paying service tax except on the income from 'service fee' received under 'Business Support Services', that too was being paid w.e.f. 1st May, 2006. On being enquired, the appellant conveyed that they are the owner of the 'Goodwill of their business' and of all rights associated with the name "Remfry and Sagar".

2. A brief background about acquiring the said ownership was also provided to the Department in the manner as below:-

That one Dr. Vidya Sagar was in practice and the profession of attorneys-at-law under the-frame and style of "Remfry & Sagar" and thus was the owner of the goodwill of the said business. The said goodwill was gifted to the assessee company vide deed of gift dated 01.07.2001 and by virtue of this gift deed, the assessee-appellant company (whose shareholders are members of the family of the doner, Dr Vidya Sagar) is now the owner of the goodwill of the name and the professional practice. Subsequently the agreement dated 05.06.2001 was entered into by the appellant-assessee company with the law for "License to the use of Goodwill". The clause of this agreement as referred by the department is:

In consideration of R&S Consultants permitting the said Legal Practitioners and the said Partnership to use the name "Remfry & Sagar" in the carrying on of the Continued Practice and in connection therewith, the said Legal Practitioners and the said Partnership shall pay to R&S Consultants a sum calculated at the rate of 25% of the amount of bills raised by the said Partnership during the currency of this Agreement. The payment shall be

made on monthly basis within fifteen days of the end of each month in respect of bills raised during the previous month.

3. It was further informed that subsequent to this transfer, a law firm consisting of lawyers including Dr. Vidya Sagar himself continued carrying on the practice and the profession under the name and style of "Remfry & Sagar". The law firm has till date been paying royalty for use of the goodwill of the name "Remfry & Sagar" and it is this income which is being booked by them under the head license fees. Copies of gift deed dated 01.06.2001 and agreement dated 05.06.2001 between the assessee and the law firm were obtained from the assessee.

4. From the Gift Deed and the Agreement produced by the appellant, the Department formed the opinion that the law firm is under contractual obligation to make all correspondence in the name of "Remfry and Sagar", however, subject to certain guidelines as given in the agreement. The law firm was permitted to use the name "Remfry and Sagar" for carrying on the practice for which the consideration is being paid on a fixed percent of the total billing of the law firm. Department found that the consideration is being paid against continued practice which also included business addition acquired by the law firm subsequent to agreement. In the light of these observations, the Department alleged that since the appellant has no expertise in the legal field, hence the income that they are receiving against the 'license fee' is nothing but royalty against the right to use the trade mark owned by them. This activity of appellants appeared to be taxable service under the category of "Intellectual Property Right Services" which has been in tax net with effect from 10.09.2004.

5. With these allegations, as above, Show Cause Notice No.278/2009 dated 20th April, 2009 was served upon appellant proposing recovery of Service Tax amounting to Rs.14,50,38,273/- alongwith an amount of Rs.29,00,766/-, an amount of Rs.8,45,368/- towards secondary and higher education cess and an amount of Rs.1,11,972/- towards interest on late payment of Service Tax in respect of associated enterprises transactions. Imposition of penalty upon the appellants under section 76, 77&78 of the Finance Act was also proposed. The said proposal has been partly confirmed by confirming a demand of Rs.13,32,61,214/-alongwith the proposed amount of interest and the penalties. The remaining amount of demand of Rs.1,55,23,194/- was dropped/ vacated. Still being aggrieved, the appellant is before this Tribunal.

6. We have heard Mr. Akhil Gupta, Advocate & Ms. Anshul Gupta, C.A. for the appellant pursuant to their request in Miscellaneous Application No.51348/2024-DB dated 15.07.2024 for early hearing of the matter, which was allowed on 16.07.2024 and Ms. Jayakumari, Authorized Representative for the Respondent.

7. Ld. Counsel for the appellant has mentioned that assessee is a private limited company and is registered with the service tax department vide STC No.AABCR7466PST001 for providing services under the category of "Business Support Services". It is submitted that Show Notice is presumptive when it says that Dr. Vidya Sagar transferred the Goodwill of Name. Ld. Counsel impressed upon that Dr. Vidya Sagar had Purchased the

Firm of Sir Henry Remfry existing and practicing IPR since 1897. He institutionalized said practice of more than 150 years as none of his children were legal practitioners by gifting the said business of continued practice with the name thereof to the appellant company. The assessee- appellant is thus the owner of the goodwill of business and all rights associated with the name "Remfry & Sagar". It is submitted that decision based on such presumptive SCN is liable to be set aside. Ld counsel further elaborated the events as follows:-

8. The impugned Company was established during the year 1827 under the name of "Grant & Remfry" by a British immigrant, Mr. Henry Oliver Remfry. The firm has been a reputed Intellectual Property (IP) law firm practicing with professional recognition all over the world. For over one hundred and eighty years, the Firm has been engaged in providing counsel, support and other professional services, in the specialized field of Intellectual Property (copyrights, designs, patents and trademarks) & corporate law. The Firm continues to provide its services to, perhaps, the most renowned companies across the globe; some of which have been its clients for over 100 years. "The Firm changed its name from 'Grant Remfry' to 'Remfry & Rogers', than to 'Remfry & Sons' (in the year 1957) and finally to 'Remfry & Sagar' in 1990. The said changes have not in any way affected the firm's continuity and character vis-a-vis its business except that the name of the continued legal practice kept changing.

9. Ld. Counsel further submitted that not only the name but the character of firm also kept changing over the years. The Firm was initially the sole proprietorship of Mr. Henry Oliver Remfry. It got reconstituted on June 1, 1957 by a deed of partnership concluded between:

- 1) Mr. Harold Holloway;
- 2) Ms. Sadie Silverston; and
- 3) Ms. Constance Irene Remfry.

The Firm was further reconstituted under a deed of partnership executed on April 6, 1970 and varied by various supplemental deeds of partnership between the same partners (i.e. Mr. Harold Holloway, Ms. Sadie Silverston and Ms. Constance Irene Remfry).

10. On April 4, 1973, Dr. Vidya Sagar the sole proprietor of the law firm with the name Sagar & Company, Barristers and Solicitors, agreed to purchase the said Partnership Firm, namely, "Remfry & Son", with all the assets including capital assets, properties, chattels, effects and things belonging or appertaining thereto and the name and goodwill in the business thereof. In 1973, Dr. Vidya Sagar practice of the firm in entirety and continued practice under same name viz 'Remfry & Sons' but as the sole Proprietor. Effective January 1, 1990, the practice of the Firm, Sagar & Company, Barristers and Solicitors was merged into the practice of a partnership firm "Remfry & Sons" and Dr. Vidya Sagar continued the practice but in the name of 'Remfry & Sagar' as sole Proprietor thereof. This Firm continued as proprietorship of Dr. Sagar, till May 31, 2001, when he decided to institutionalize 'the practice' by way of gifting the goodwill of its business to Remfry & Sagar Consultants Pvt. Ltd. ("R&S-C"), the appellants where his non-lawyer children were the shareholders.

11. The goodwill of the Firm was valued by A.F. Ferguson & Co., a firm of Chartered Accountants, at Rs. 45 crores, as on March 21, 2001. The valuation report reveals that the valuation was of the "goodwill of Remfry & Sagar" as a going concern and it was not the value of a trade mark, "Remfry & Sagar".

Ld. Counsel impressed upon that the valuation took into account the long standing of the Firm, the professional manner in which the Firm was run and handled its clients and the probability of their returning to the Firm. As the owners of the goodwill in the name "Remfry & Sagar" and the underlying professional practice of the firm, R&S-C agreed to provide the right to use of goodwill of the firm through the license agreement dated 05.06.2001 to a partnership of attorneys comprising Dr. Vidya Sagar himself as senior-most Consultant along with Mr. R. Sampath Kumar, Mr. Ashwin Julka, Mr. Ramit Nagpal and Mr. Prem Sewak as other partners. As part of the multitude of rights associated with the goodwill in "Remfry & Sagar", the clientele and files in respect of the practice were also taken over by the said firm. An appropriate mechanism of checks and balances was installed by R&S.C so as to ensure that the highest order of professional standards were achieved and sustained during the subsistence of the agreement.

12. Ld. Counsel for appellant submitted that in the light of the submissions, the fee received by the appellant for transferring the continued practice is not taxable as the appellant does not provide the 'Intellectual Property Services'. Emphasis is laid on the definition on intellectual property services given under section 65 (55a) and 65 (55b), taxable under section 65 (105) (zzr) of Finance Act 1994.

13. Ld. Counsel further elaborated that the aforementioned agreement dated 05.06.2001 where the Executer had agreed to provide the appellant a license of the use of good-will, the appellant had permitted the partnership to use the goodwill in the name "Remfry and Sagar" in carrying on the continued practice. It is impressed upon that the agreement is thus a permission to use the name "Remfry and Sagar" exclusively for the purpose

of continued practice and for no other purpose whatsoever i.e. with an object to carry on the practice and profession of attorneys-at-law with specialization in the areas of Intellectual Property Law and Corporate Law under the name and style of "Remfry and Sagar". The agreement was simplicitor for carrying on continued practice, with an understanding to maintain the character, the professional and ethical standard, the reputation, the traditions and the practices that have been developed by the said practice of over more than 173 years. Ld. Counsel further brought to the notice that vide the said agreement dated 05.06.2001, it has been expressly mentioned that "if the said license agreement is terminated, "Remfry and Sagar" will be free to enter into a revised arrangement with anyone, including a re-structured partnership, to ensure that the continued practices carried on further efficiently without any brake in its continuity. Hence all these clause have to be read together to ascertain the exact intent of the said agreement. But the department has picked up chosen clause to fasten a wrong liability of paying service tax alleging the activity of the appellants company as the Intellectual Property Right Service. Decision of Hon'ble Supreme Court in the case of **Bihar State Electricity Board, Patna vs. M/s. Green Rubber Industries reported as (1990) 1 SCC 731 (S.C.)** wherein it has been held that for interpretation of an agreement all clauses of the agreement should be read collectively to reach at the true intentions between the parties has been relied upon.

14. Ld. Counsel further mentioned that license of use of goodwill to the continued practice is otherwise not a service transaction. The transaction herein is purely a license and not a service. For this reason also the demand has wrongly been confirmed. Service Tax is otherwise a tax on service and cannot be a tax on the Licensor. Decision of Hon'ble Supreme Court in the

case of **All India Federation of Tax Practitioners and others vs. Union of India and others reported as (2007)7 SCC 527 (S.C.)**. It is further submitted that the license to use goodwill, in alternative, may be construed to be a transfer of right to use goods. Such a transfer in terms of Article 366 (29A), (d) of Constitution of India does not attract service tax, transaction being a transaction of deemed sale.

15. Ld. Counsel has also submitted that a demand of Rs.35,06,868/- alongwith the interest and penalty for the period of 16.06.2005 to 30.04.2006 has been confirmed under the taxable category of "Manpower Recruitment or Supply Agency Service". The appellant had provided the secretarial accounting and other Supporting Services to the Law Firm and thus has classified the activity as Business Support Services (BSS) taxable w.e.f. 01.05.2006. It is mentioned that the adjudicating authority below itself had initially accepted the classification. Taking a different stand while confirming the demand is highly unjustified and order is liable to be set aside on this ground as well. The appellants have been discharging their service tax liability towards the activity of rendering BSS. Impressing upon that what has been transferred in the present case is goodwill of business which is much different from intellectual property or trade mark, irrespective that goodwill is also an intangible property. The demand has wrongly been confirmed under Intellectual Property Rights Service.

16. Finally, it is submitted that the extended period has wrongly been invoked while issuing the impugned Show Cause Notice. Nothing can be alleged as an act of suppression. Moreover, no evidence is produced by department to prove the allegation of suppression or misrepresentation.

With these submissions, Id. Counsel has prayed for the order under challenge to be set aside and the present appeal to be allowed.

17. Ld. Counsel for the appellant has relied upon the following case laws:-

1. Hyundai Motors India Ltd. v. Commissioner of GST & Central Excise, Chennai -2018 – TIOL-3703-CESTAT-MAD ; 2019 (28) GSTL 288 (Tri. Chennai)
2. Reliance Industries Ltd. v. Commissioner of Central Excise & Service Tax, LTU Mumbai – 2016 (44) STR 82 (Tri.- Mumbai)

18. While rebutting these submissions, Id. Authorised Representative of the Department (AR) has mentioned that the law firm is under contractual obligation to make all correspondence in the name of 'Remfry & Sagar' and in the font & style as belonged to the appellant. The law firm is permitted by the appellant to use the name 'Remfry & Sagar' for carrying on the practice for which the consideration is being paid on a fixed percentage of the total billing of the law firm. It is evident from the clauses of the agreement dated 05.06.2001 that the appellant has allowed the use of trade name "Remfry & Sagar" for the purpose of continued legal practice, to the law firm along with transfer of goodwill and right to use the same. The impugned activity is squarely covered by the definition of "Intellectual Property Service". Ld. AR further submitted that from a dictionary meaning, "goodwill" is an intangible property in commercial parlance too. If "goodwill" is an intangible property, the same would be covered under the definition of "Intellectual Property" and transfer against license fee thereof shall amount to rendering Intellectual Property Right (IPR) Services for the purpose of service tax statute. Further submitted That the fact that goodwill is a 'capital asset' is recognized under Income Tax Act 1961.

19. Ld. DR has relied upon the case law as follows:-

1. M/s. Cyber India Online Ltd. vs. Asst. Commissioner of Income Tax, Circle 3 (1) in IT Appeal No.1299/Del./2010.
2. Pr. Commissioner of Income Tax-1 vs. M/s. Eltek SGS Pvt. Ltd. in ITA No.475-476/2022 in order dated 01.08.2023.
3. Ramdev Food Products Pvt. Ltd. vs. Arvinbhai Rambhai Patel & Ors [2006 (8) TMI 528-S.C.]
4. Laxmikant v. Patel Versus Chetanbhat Shah & Anr. [2001(12) TMI 839 – S.C.]
5. Uniply Industries Ltd. v. Unicorn Plywood (P) Ltd. [2001 (5) TMI 975-S.C.]
6. East End Hosiery Mills Private Ltd. vs. Agarwal Textiles Mills [1970 (8) TMI 99- Calcutta High Court]

20. Reliance is also placed on the decision of Hon'ble Supreme Court in the case of **Commissioner of Income tax vs. Smifs Securities Ltd in Civil Appeal No.5961/2012 dated 22.08.2012** wherein it has been held that goodwill is an intangible asset eligible for depreciation under the provisions of Income Tax Act, 1961. Hence, it is as good as intellectual property.

21. Ld. DR further impressed upon that seen from this angle, present is not the case of levy of service tax on transfer of goodwill simpliciter. It is rather the case of levy of service tax on rendering Intellectual Property Right services. This is apparent from the Gift Deed also vide which all the rights associated with the name "Remfry and Sagar" including intellectual property right were transferred by Dr. Vidya Sagar to the appellant-Company. Thus, the income from 'license fee' received by appellant company from the law firm is nothing but the right to use the said intangible property which is the

trade mark of the appellant company. Ld. DR relied upon another decision of Hon'ble Supreme Court in the case of **RC Cooper vs. Union of India reported as AIR 1970 (SC) 564** wherein the goodwill of a business is recognized as an intangible asset.

22. With respect to Manpower Recruitment or Supply Agency tax liability Ld. DR submitted that when the appellant has provided their staff to others for consideration and the said staff is working as per the directions of the service recipient, as per two agreements dated 05.06.2001 for Manpower Recruitment and Supply Agency Service for running the office of the law firm, it is clear that the demand under Manpower Agency has rightly been confirmed. With these submissions, the appeal is prayed to be dismissed.

23. Having heard the parties at length, perusing the entire record of the present appeal, we observe following to be the admitted facts:-

- (i) In 1827 Mr. Henry Oliver Remfry established 'Grant and Remfy', as practice in Intellectual Property Rights. It was continued to be carried on by his five generations as sole proprietorship.
- (ii) In 1957 practice changed into partnership and name got changed to 'Remfy & Sons'.
- (iii) In 1973 practice in its entirety was bought by Dr. Vidya Sagar a leading Indian Lawyer practicing Intellectual Property related disputes at his age of 48 years. Practice continued under same name 'Remfy & Sons' however with Dr. Vidya Sagar as the sole proprietor of the merged practice.
- (iv) In 1990 Dr. Vidya Sagar (then 65 years age) merged his own practice in name 'Sagar & Co.' with 'Remfy & Sons' and

continued to be the sole proprietor of the merged practice under the name 'Remfry & Sagar'.

- (v) In 2001 Dr. Vidya Sagar (then 76 Years age) transferred the Goodwill of his 173 years old practice & profession of attorneys-at-law by executing a Gift Deed dated 01.06.2001 in favour of the appellant Company where his non-lawyer children are shareholders.
- (vi) The Appellant company entered into a license agreement dated 05.06.2001 permitting the legal practitioners use of 'Goodwill' in practice established by 'Remfry & Sagar'. We observe that the agreement is in between appellant company as first party with 5 legal practitioners including Dr. Vidya Sagar, the donor, also.
- (vii) Additionally Appellant made **two more** agreements to allow the said legal practitioners with IP Support Service India Pvt. Ltd. (IPSS), a Law Firm, to use infrastructure, personnel and systems of the appellant.
- (viii) Partnership law firm formed exclusively to continue the practice of "Remfry & Sagar".

24. From these apparent and admitted facts we observe that the name & composition of impugned legal business kept changing. However, based on these facts only, the department has alleged that the transfer of Goodwill by appellant company to the firm of legal practitioners is the transfer of Trade Mark which amounts to rendering of Intellectual Property Right service. Hence the license fee received from the said transfer of Goodwill is alleged as the consideration for rendering said taxable service. We also observe that the appellant have defended the allegations by submitting that the arrangement vide Gift Deed dated 01.06.2001 and vide agreement dated

05.06.2001 is that the long standing 'Goodwill' in business of legal practitioners is transferred which is an intangible property but is different from Trade Mark, the Intellectual Property, also for the reason that no law in force in India protects Goodwill.

25. In the light of this disputed fact, we frame the following question of law to be adjudicated for deciding present appeal:

Whether goodwill is covered in the definition of IPR Service as per the Finance Act and that is this same as trademark as has been held by Original Authority ?

To adjudicate the same, foremost, we have perused the Gift Deed dated 01.06.2001. The relevant clauses as relied upon by Department to confirm the demand are as follows:-

(i) "the doner (Dr. Sagar) is the owner of the **goodwill in the practice and profession of attorneys-at-law along with the name** "Remfry & Sagar" and all rights associated therewith (including intellectual property right)"

(ii) "whereas to ensure continuity of the said practice the **donor is desirous of institutionalizing the said goodwill**"

(iii)"Whereas the shareholders of the Donee include the family members of donor"

(iv) "Whereas in pursuance of his objectives foregoing, the donor wishes to donate to donee the said goodwill"

(v) "Now therefore the donor doth hereby grant, convey, transfer, give and assure by way of gift unto and to the use of the donee, freely, voluntarily and without consideration **the goodwill in the profession and practice**

along with the name "Remfry & Sagar" and all rights associated therewith (including intellectual property rights)

26. The perusal makes it clear that the donor, a legal practitioner has institutionalized the Goodwill of his profession/business associated with the name of his business with all associated rights including intellectual property rights in favour of his family members. The words 'Goodwill in name' used in addition to other rights are patently clear to show that Goodwill in name and Goodwill in Business were intended to be two different things though both are intangible in nature. 'Name' is the brand/trade mark, the intellectual property whereas 'Business' is the reputation. As brought to notice that the Goodwill Valuation Report also reveals that the valuation was of the "goodwill of Remfry & Sagar" as a going concern and it was not the value of a trade mark, "Remfry & Sagar". In view thereof, we hold that what that the valuation took into account is the long standing of the Firm, the professional manner in which the Firm was run and handled its clients and the probability of their returning to the Firm. It is clear that valuation was for an intangible property but being different from the Intellectual Property(Trade Mark).

27. The above quoted admitted facts also reveal that 'Name' and 'composition' of the impugned business / legal profession kept changing since 1887 till the year 1990. The Gift Deed also clarifies that Dr. Vidya Sagar was in practice and the profession of attorneys-at-law under the-frame and to be style of "Remfry & Sagar" and thus was the owner of the goodwill of the business of the Firm including the name. Said goodwill was gifted to the assessee company vide deed of gift dated 01.07.2001. By virtue of this gift deed, the assessee company M/s. 'Remfry & Sagar Consultants Pvt. Ltd. (R

& S Pvt. Ltd.) (whose shareholders are members of the family of the doner) is now the owner of the goodwill of the business including the name thereof. In the Gift Deed the actual words used are "goodwill in the name 'Remfry & Sagar'". Thus, we hold that the words used in the impugned Order have been wrongly used to omit and rephrase the most important words and the subject matter of the Deed of Gift got wrongly changed from 'goodwill' to 'name' under the head 'License Fees'. As already observed above, even the Goodwill Valuation Report reveals that the valuation was of the "goodwill of Remfry & Sagar" as a going concern and it was not the value of a trade mark, "Remfry & Sagar". It has also been brought to notice that subsequent to this transfer, a law firm consisting of lawyers including Dr. Vidya Sagar the bequeathee continued carrying on the practice and the profession under the name and style of "Remfry & Sagar" and the law firm has been paying royalty for use of the goodwill of the name "Remfry & Sagar".

28. We have also perused the license agreement dated 05.06.2000. The clauses in the said Agreement about the use of Goodwill which clearly indicate that the subject matter of the Agreement is goodwill of Legal Profession/ Business and not just the name are as follows:-

- (i) The partners desirous of forming themselves into partnership ("the Partnership") to carry on the practice and profession of attorneys-at-law with specialization in the areas of intellectual property law and corporate law with the object of carrying on with effect from June 1, 2001 in the National Capital Region and Mumbai the said Practice (hitherto carried on by Dr V Sagar) without a break in its continuity; the practice and profession to

be carried on by the Partners being hereinafter referred to as **"the Continued Practice"**.

- (ii) The Partnership shall always have a "Senior Partner". He shall be nominated unanimously by the Partners and **approved by R&S Consultants**. If the Partners fail to achieve unanimity R&S Consultants shall nominate in writing one of the Partners as Senior Partner.
- (iii) The Partners hereby nominate Dr V Sagar as the first Senior Partner and hereby acknowledge that R&S Consultants has given its approval to said nomination. In the event of Dr V Sagar's disassociation from the said Practice on account of retirement or death, the remaining Partners will forthwith unanimously nominate a Senior Partner from amongst themselves and review the powers to be exercised by him. Should such remaining Partners fail to achieve unanimity either with respect to the nomination of a Senior Partner and/or with respect to the powers to be exercised by him, **the decision of R&S Consultants shall prevail and the remaining Partners shall respect such decision**.
- (iv) The Law Firm is obligated to work in every possible manner to enhance the value of the **Goodwill while maintaining its characteristics, reputation and ethical standards of the Continued Practice**.
- (v) Any **augmentation** to the Goodwill by virtue of operation of this Agreement or otherwise **will accrue to the Appellant** and not to the Law Firm.

- (vi) **The Law Firm in the normal course of carrying on the Continued Practice shall not enter into any bond or obligation or cause or suffer to be done anything whereby the Goodwill or the Continued Practice may be exposed to jeopardy.**
- (vii) Termination of License Agreement will result in termination of practice of the Law Firm and terms of partnership shall dissolve upon expiry of License Agreement and/or other agreements with R&S. **Even after the termination of this Agreement/termination of the Law Firm, the Law Firm undertake to cooperate fully with the Appellant to ensure continuity of the practice without any break under any revised arrangement that the Appellant may enter into with anyone.**
- (viii) Agreement also has many other clauses which cannot be part of any licensing agreement of trademark but only can be part of an Agreement for licensing of Goodwill.
- (ix) The Law Firm shall ensure to provide on an ongoing basis, full information and truthful explanation in all matters relating to its affairs to the Appellant. The decisions related to appointment of the senior partner who is essentially the managing partner and finances are dependent on the consent of the Appellant.

29. Thus, it is clear that agreement of license has dealt with different words differently as follows:

(1) Trademark (point no.3.11)

- (ii) Name 'Remfry & Sagar' (point no.3.4)
- (iii) Goodwill of Trademark 'Remfry & Sagar' (point no.3.8)
- (iv) Trademark/goodwill of trademark in the name 'Remfry & Sagar' (point no.3.11)
- (v) Goodwill and also name 'Remfry & Sagar' (point no.14)
- (vi) Goodwill and also trade-name 'Remfry & Sagar' (point no.3.5)
- (vii) Goodwill and also trademark 'Remfry & Sagar' (point no.3.6)

It is, therefore, imperative to note the circumstances necessitating the formation of arrangement leading to execution of Deed of Gift and subsequent execution of the Deed of Partnership and the License Agreement, wherein Dr. Vidya Sagar kept the Goodwill of practice and profession of attorneys-at-law at the centre of the arrangement to ensure continuity of the said practice. The simple reason being the Goodwill is directly and indistinctively related to practice and not to the name 'Remfry & Sagar'.

30. In Corpus Juris Secundum, it has been observed that 'goodwill' has no existence except in connection with the continuing business. In view thereof and in view of above quoted clauses, we hold that had the subject matter of the arrangement was just the name 'Remfry & Sagar', Dr. Vidya Sagar could not have achieved his objective of ensuring continuity of the practice.

31. The perusal of these documents makes it patently clear that the appellant company has not simply lent the name "Remfry & Sagar" to the partnership firm of the legal practitioners/Consultants but it also maintained complete hold on the conduct of business to ensure the Goodwill therein

associated with name 'Remfry & Sagar'. This observation stands further corroborated from the fact that:

a). The agreement "clearly stipulated" that the License Agreement, the Deed of Partnership, the Agreement for use of infrastructure and the Agreement for Support Services as executed simultaneously were all an integral part.

b). Vide Partnership dated 5th June 2001 between Dr V. Sagar and four other partner it was agreed to carry on the practice and profession of Attorney-at-Law with the specialization in the area of IPR and Corporate Law with the object of carrying on, without break and in continuity, the practice, hitherto carried on by Dr V. Sagar. Thus, what is licensed by R&S is goodwill and associated rights to practice, and not the trademark or any other similar intangible property.

c). By gifting the goodwill to the Appellant, Dr. Vidya Sagar ensured continuity of the practice. **By just transferring the name, the practice would not have been transferred.** Accordingly, only by transferring the goodwill of the practice, the right to continue the practice can get transferred. **Had it been the transfer of name, it would not have been mentioned viz. "and all rights associated therewith (including intellectual property rights)".**

32. Thus it is clear that if the intention of Dr. Vidya Sagar, a pioneer in the practice of IPR laws, was to gift just the name of his firm, he would have used the word trademark in the Deed of Gift and more specifically and technically 'unregistered trademark' as the name 'Remfry & Sagar' was not registered with the Registrar of Trademark at the time of gifting. Otherwise the names were never same the name of the practice was first changed from 'Grand Remfry' to 'Remfry & Son' before Dr. Vidya Sagar

bought the business on 04.04.1973 and from 'Remfry & Son' to 'Remfry & Sagar' in 1990 by Dr. Vidya Sagar. **This fact clearly indicates that there is hardly any importance attached to the name under which the practice is carried on and for this reason Dr. Vidya Sagar never got 'Remfry & Sagar' registered as a trademark.** Thus, whatever has been done is to ensure that the practice of law of Dr. Vidya Sagar continues without break and royalty is for the Goodwill of Dr. Vidya Sagar's practice to remain entrusted with the legal heirs of Dr. Vidya Sagar.

33. From the facts above, it stands established that Dr. Vidya Sagar being 76 years age without any Lawyer as his legal heir, in the first place separated the Goodwill of 173 years old practice and profession from his proprietorship Firm and institutionalized the same by way of gift. The said Goodwill of the practice and profession including all rights, which was valued at 45,00,00,000.00 as on 31.3.2001, was gifted to the Appellant, while the other assets of the proprietorship Firm were sold to the Appellant by way of a separate arrangements. A few of the legal practitioner working in the proprietorship Firm of Dr. Vidya Sagar were brought in as partners in the Law Firm which was formed to carry on the Continued Practice of Dr. Vidya Sagar without break, while other legal practitioners were absorbed as consultants in the Law Firm. Non-technical staff of the proprietorship Firm of Dr. Vidya Sagar was absorbed by the Appellant. **Contemporaneously, the said institutionalized Goodwill in the practice and profession of attorneys-at-law was licensed by the owners/donors to the Law Firm by way of the License Agreement to carry on the continued practice.**

34. It is also on record that the same License Agreement dated 05.06.2000, for permitting the use of Goodwill was under consideration before the Income Tax Appellate Tribunal also in the case of the Law Firm praying for allowing the license fee paid therein as business expense to the Law Firm. The Income Tax Tribunal, after analysing the gift deed, license agreement and other corroborating documents held as follows:

“Dr V. Sagar arranged his affairs by way of gift deed and subsequent license agreement in such a way to entrust the goodwill earned by him over the years to his non-lawyer children. The documentation shows that this is a very well thought out strategy by Dr V. Sagar to retain his hard earned as well as purchased goodwill and to use it for his future generations, irrespective of the fact whether they were in the practice of law or not.

35. After the factual analysis, as above, we proceed to look into the statutory provisions. Section 65(55a) defines "Intellectual Property Right" to mean any right to intangible property, namely, trademarks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright

As per section 65(55b) "intellectual property service" means

(a) transferring temporarily; or

(b) permitting the use or enjoyment of,

any intellectual property right.

36. Further, as per Section 65(105)(zzr) "taxable service" means any service provided or to be provided to any person, by the holder of intellectual property right, in relation to intellectual property service;

37. From these definitions, we opine that the 'Intellectual Property Right' has following tangents for the purpose of Finance Act, 1994:

(a) There must be an underlying 'right' in an intangible property of specific genre similar to trademark, designs, patents; AND

(b) The right in that intangible property should be recognized under a law for the time being in force.

Cambridge dictionary defines goodwill as part of a Company's value that includes things that cannot be directly measured, for e.g. its good reputation or its customer's loyalty.

As per Collin's dictionary the goodwill of a business is something such as its good reputation which increases the value of the business.

In Earl Jowitt's Dictionary of English Law, 1959 edition, "goodwill" is defined thus:

"The goodwill of a business is the benefit which arises from its having been carried on for some time in a particular place, or by a particular person or firm, or from the use of a particular trade mark or trade name."

Lord Macnaghten in the case reported in **IRC vs Co.'S Margarine Ltd. 1901 AC 217** had observed:

" What is Goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in customs. It is the one thing which distinguishes an old established business from a new business at its first start if there is one attribute common to all cases of Goodwill it is the attribute of locality. For Goodwill has no independent existence. It cannot subsist by itself. It must be attached to business.

Destroy the business, and the Goodwill perishes with it, though the elements remain which may perhaps be gathered up and be revived again."

The statute nowhere defines 'Goodwill' hence we look into its dictionary meaning.

'Goodwill' as 'a thing very easy to describe, very difficult to define'. It has been stated that the term 'goodwill' signifies the value of the business in the hands of a successor, so far as increased by the continuity of the undertaking being preserved in the shape of the right to use the old name and otherwise. It is something more than a mere chance of probability of old customers maintaining their connection, though this is a material part of the practical fruits. 'Goodwill' may be the whole advantage belonging to the firm, its reputation as also connection thereof. It, thus, means that every affirmative advantage as contrasted with negative advantage that has been acquired in carrying on the business whether connected with the premises of business or its name or styles everything connected with or carrying the benefit of the business.

(i) Goodwill on the other hand is an intangible asset developed over a period of time, due to distinct reputation gained on account of several factor, like, quality of service, connection with clients/customer etc, together with the circumstances which make the connection durable;

In Halsbury's Laws of England (Fourth Edition) Volume 35 at page 114, Goodwill is defined in the following terms:

"201. Goodwill generally; right to use name; sale to a partner. The goodwill of the business carried on by a partnership forms part of the assets to be realized on distribution.

In the aforementioned volume of Halsbury's Law the goodwill is generally considered to be an asset of the partnership.

38. Hon'ble Supreme Court of India has also distinguished Goodwill of Business from Goodwill of Trademark holding that the Goodwill of business is nothing but a reputation related to business as a whole, where as the trademark is associated only with the products. The expression 'Goodwill' has been considered and explained by the apex court in the case of **S. CCambatta & Co. (P) Ltd. Vs Commissioner of Income Tax, reported in (1961)41 ITR 500 SC**, wherein their lordships having considered the judgements of various courts, have held as under:

6." It will thus be seen that the Goodwill of a business depends upon a variety of circumstances or a condition of them. The location, the service, the standing of the business, the honesty of those who run it, and the lack of competition and many other factors go individually or together to make up the goodwill, though locality always play a considerable part. Shift the locality, and the goodwill may be lost. At the same time, locality is not everything. The power to attract customers depends on one or of the other factors as well. In the case of a theatre or restaurant, what is catered, how the service is run and what the competition is, also contribute to goodwill."

39. In an another decision in the case of **R C Cooper vs Union of India reported in AIR 1970 SC 564**, The Apex court has held that the goodwill of a business is an intangible asset representing the whole advantage of reputation and connection formed with the customers together with the circumstances making the connection durable than mere Trade Mark. This decision is relied upon by the department but it doesn't support their case as

The decision distinguished the name of the business from its repute / Goodwill.

40. In yet another decision of Hon'ble Supreme Court in the case of **Ramniwasji Vallabhdas Madhavan's vs Taraben Pravinlal Madhavani reported as (2004) 1 SCC 497**, it was observed that the term 'Goodwill' signifies the value of business in the hands of a successor, so far as the increased by the continuity of the undertaking being preserved in the shape of the right to use the old name or otherwise. It is something more than a mere chance or probability of old customers maintaining their connection, though this is a material part of a practice fruit. Thus, Goodwill is a whole advantage belonging to the firm, its reputation and connected material thereof. **The Hon'ble court clarified that there exists no law in India which either recognises or protects Goodwill as an intellectual property right in India. The department was alleged to have extended the meaning of 'any other similar intangible property in section 65(55b) of Finance Act, 1994 to include Goodwill also by erroneous interpretation.**

41. Also Section 37 of Trade and Merchandise Marks Act, 1958 provides for assign ability and transmissibility of registered Trade Marks as under;

" Notwithstanding anything in any other law to the contrary, a registered Trade Mark shall subject to the provisions of this chapter, be assignable and transmissible, whether with or without the goodwill of the business concerned and in respect either of all the goods in respect of which the trade mark is registered or of only some of those."

A joint reading of the judgements above vis-à-vis the provision of Trade and Merchandise Act, 1958 makes it clear that irrespective the Goodwill is also an intangible asset but 'Goodwill' and 'Trade Mark' are two separate and distinct concepts. Amendment in section 52(2)(b) of this Act also corroborates the same. Prior to amendment, this section provided for the levy of tax on capital gains in relation to capital asset, being Goodwill of a business. Insertion of words," registered Trade Marks or Brand name association with the business" by the amending Finance Act,2001 depicts the intention of the legislature to levy tax in relation to capital asset, being a

trade mark or brand name associated with the business, which was not eligible to tax during the relevant assessment year.

On application of principle of 'ejusdemgeneris', we hold that the only interpretation which can be arrived from the words 'any other similar intangible property' is that other intangible properties which come under the 'Cinematographic Act,1952', The Biological Diversity Act,2002', The Seeds Act,1966', Protection of Plants Varieties and Farmers Rights Act,2001', The Geographical Indications of Goods(R & P) Act,1999', The Information Technology Act,2000, etc. which are recognised under Intellectual Property Law in India. As already held above that Goodwill is not recognised under any law, same cannot be held as similar intangible property as trademarks, designs & patents.

Though department has relied upon the decision of Hon'ble High Court Delhi in the case of **Commissioner of Income Tax vs. Hindustan Coca Cola Beverages Pvt. Ltd. Reported in 2011-TIOL-33-HC-Del-IT**. But we observe that in that case the court was analysing the issue with regard to depreciation of Goodwill and in that context it was held that Goodwill is similar to Technical knowhow, Patents, Copyright, Trademark etc. Thus, the goodwill in the nature of intangible asset was not the question that is answered in the said case by Hon'ble Delhi high court. Rather, the Hon'ble High court of Karnataka in the case of **Commissioner of Income Tax vs. Associated Electronics and Electrical Industries (Bangalore) Pvt. Ltd. Reported in (2016) 6 ITR-OI 471 (Kar.)** while dealing with the issue of capital gains on transfers of Trademark has observed: **Trademark and Goodwill are two distinct separate concepts. It was stated therein that Goodwill has no existence except in connection with continuing business. Goodwill not being an intellectual Property right, the demand raised cannot sustain.**

42. In another decision in the case of CED v. Smt. Pushpa Anand, Hon'ble Supreme Court after making a reference to the decisions reported as **IRC v. Muller and Co.'s Margarine Ltd. [1901] AC 217 (HL); Rustom Cavasjee Cooper v. Union of India [1970] 40 CC 325; CIT v. B.C.**

Srinivasa Setty MANU/SC.0285/1981 ; [1981] 128 ITR 294 (SC);

Hon'ble Supreme Court culled out the following principles:

"(i) The goodwill of a business is an intangible asset. It is the advantage or reputation and location found with the customer. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features.

(ii) The goodwill is comprised of a variety of elements. The location, the service, the standing of the business, the honesty of those who run it are some of the factors which contribute to the goodwill of the business,

(iii) The goodwill is acquired during the course of a number of years of business. It is founded on the belief and faith of the customer. It rarely springs from the very inception of the firm.

(iv) Under the Estate Duty Act each and every right which passes on death has to be valued on the assumption that there is a willing purchaser for the right or property.

(v) The interest of a partner in a partnership firm is property within the meaning of Section 2(15) of the Act. Such interest extends to a share in all partnership assets including goodwill.

(vi) On death of a partner his interest in the entire unit of the firm including goodwill passes and the value of the goodwill has to be added to the principal value of the estate for the purpose of the Act of 1953."

(vii) 'Trademark' is an intangible property acquired from 'intellect' whereas 'Goodwill' is generated over a period of time and is directly related to the business. 'Goodwill' is a broader term while trademark is only related to the

name. The differentiation between these terms and exclusion of 'goodwill' from the definition of 'intellectual property right' service under the Finance Act has been well explained in by the **Hon'ble CESTAT in the case of Hyundai Motors India Ltd. v. Commissioner of GST 2018-TIOL-3703-CESTAT-MAD**. Further reliance is placed on the decision of Income Tax Tribunal in the case of **Additional Commissioner of Income Tax v. Kwaliti Frozen Foods Ltd. in IT Appeal No. 5023 (Mum.) of 2001**.

43. Reverting back to the facts, we observe that the License Agreement read with the partnership deed of the Law Firm, fundamentally requires the continuity of 173 years old practice of Dr. Vidya Sagar wherein the control and benefits lie with the Appellant Company (legal heirs of Dr. Vidya Sagar). Only a 'Goodwill' licensor would be in position to control and reap benefits to this extent as 'Goodwill' is directly related to business or profession, which may or may not have a 'Trademark'. Hence we hold that the Goodwill transferred by appellant Company is the Goodwill of Business which is an intangible property but it has wrongly been held as Intellectual Property (Trade Mark). Service Tax demand based on said presumption is therefore liable to be set aside.

44. Coming to the another limb of demand of service tax on alleged Manpower Supply Service whereas appellant is asserting it to be "Business support services'(BSS). We observe that BSS are essentially the services which are provided by the service provider to service recipient in the form of specific support. The essence of 'business support service' is to outsource a specified work to another person in lieu of compensation. On the contrary, 'manpower recruitment or supply agency' service is limited to supply of manpower that too by Manpower Supply Agency to another. The distinctive

nature can be established through the fact that under 'business support services' a particular work, assignment or project is outsourced to be handled by another person, whereas, under 'manpower supply' executives or personnel are supplied by one person to another.

45. In the present case, the Appellant has been engaged by the Law Firm to provide specialized services in the fields of secretarial, accounting and other similar support areas by use of its own manpower, equipment and its expertise. The Appellant is privy to the transaction and is responsible for the effective outcome from the assigned work. In the arrangement of 'manpower supply', the service provider generally cannot be held responsible for the quality of work. But in the instant case, the Appellant is completely responsible to the Law Firm for all bad quality of work delivered using Appellant's employees and Appellant's equipment. Top of that appellant is not a Man Power Supply Agency. Hence we hold that order under challenge has wrongly confirmed the demand of Service Tax under Manpower supply service

46. Coming to another line of submission about invocation of extended period of limitation, we observe that there is no denial to the fact that the appellant was regularly paying tax vis-à-vis the taxable activity of providing business support service and was filing the regular returns. Even 'Nil' returns were being filed vis-à-vis the 'license fee' and other income received. This acknowledgement is sufficient for us to hold that there is no act of suppression, as alleged, has been committed by the appellant. We do not find any other evidence from department which may support the allegation of suppression. It has already been held that impugned Show Cause Note is an outcome of presumption based on wrong and unharmonious reading of

the Gift Deed, license agreement and other documents executed simultaneously on or in proximate to 05.06.2000. We hold that extended period has wrongly been invoked while issuing the SCN. Hence it is held to be barred by findings. Order is liable to be set aside on this count as well. We draw our support from the decision in the case of Anand Nishikawa Co Ltd. vs. CCE, Meerut reported in 2005 (188) ELT 149 (S.C.) which is held as follows:-

Suppression of facts can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression.

47. In the present case it is not even the failure to declare. Department has presumed violation of impugned notification. Also in the case of Hindustan Steel Ltd. vs. State of Orissa reported in 1978 (2) ELT (J159) (SC) it is held that Penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. The Hon'ble Court further held that even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to involve penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from the bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Thus,

on the same analogy the party are not liable for any penal action and so the penal proceedings initiated in the SCN merits to be dropped.

48. In Light of entire above discussion we answer the question as framed above in favour of the appellant. We hereby set aside the order under challenge. Consequent thereto the appeal is hereby allowed.

[Pronounced in the open Court on 09/10/2024]

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Anita