CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO. 53173 OF 2018

[Arising out of Order-in-Original No. 14/COMMR/ST/BPL-III/2018 dated 05.07.2018 passed by the Commissioner, CGST & Central Excise, Bhopal]

CG Power & industrial Solution Ltd.
(formerly 'Crompton Greaves Ltd.')
(T-3 Transformer Division)
29-31-32, New Industrial Area, Mandideep,
Dist. Raisen (M.P.) **Appellant**

Vs.

The Commissioner, CGST & Central Excise, Bhopal **Respondent**

Appearance:
Present for the Appellant :Ms. Padmavati Pati, Advocate and Shri Nitin N. Mehta, Consultant
Present for the Respondent: Shri S.K. Meena, Authorised Representative

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:09.12.2024
Date of Hearing:07.04.2025

FINAL ORDER No.50468/2025

HEMAMBIKA R. PRIYA

This appeal is against order-in-original 14/COMMR/ST/BPL-III/2018 dated 05.07.2018 passed by the Commissioner, CGST & Central Excise, Bhopal wherein he confirmed service tax demand of Rs.05,60,45,455/- under proviso to section 73 (1) for the period June, 2011 to March, 2014, along with interest. Penalties under section 75 and section 78 of the Finance Act, 1994 were imposed.

2. The brief facts is that **M/s. CG Power & Industrial Solution Ltd.**[1] (formerly "Crompton Greaves Ltd."), is engaged in the manufacture of various types of transformers falling under Chapter 85 of CET at their factory situated at Plot No.29-31-32, New Industrial Area No.1, Mandideep, Dist. Raisen (MP). The appellants hold Central Excise registration No. AAACC3840KM026, and were clearing the finished goods on payment of appropriate Central Excise duty. The Appellant is also engaged in providing various types of services, including service of testing, erection, installation, works contract, transportation, etc. The appellant successfully bid for a tender floated by M/s. Power Grid Corporation Ltd. [PGCIL], a Government of India Undertaking, in response to the International Competitive Bidding tender floated by PGCIL, for supply of 800 kv Shunt Reactors and 765kv Transformer. The terms of the tender floated by PGCIL required that in case of offer by a foreign bidder, the bidder should have a joint venture arrangement with a local supplier, who should be a lead partner, containing provision for transfer of technology to the local supplier. Therefore, the Appellant entered into Joint Venture agreement with foreign bidders, acting as a lead partner, with JV partners M/s. Ganz Transelektro Electric Co. Ltd. Hungary [hereinafter referred to as 'Ganz'], and with M/s. Zaporozhtransformator, Ukraine [hereinafter referred to as "ZTR']. A Joint Venture Memorandum of Understanding was entered with ZTR on 24.07.2009 for bidding and supplying 800 kv Shunt Reactors to Power Grid Corporation Ltd. [PGCIL], and another Memorandum of Understanding dated 25.07.2008 with M/s. Ganz Transelektro Electric Company Ltd.,

1. the Appellant

Hungary [GANZ] for jointly bidding for supplying 765 kv Transformers to PGCIL. As required by PGCIL, the above MOUs also provided for providing technical know-how by ZTR and Ganz to the Appellants, for manufacture of 800 kv Shunt Reactors and 765 kv Transformers, respectively. The Agreements with Ganz & ZTR were entered into on 24.07.2009 and 25.07.2008, i.e. prior to the introduction of the negative list-based Service Tax levy i.e., July 2012.

2.1. However, in relation to Service Tax payable in relation to the said contract, the Principal Commissioner had issued a show cause notice bearing C.No. V (85) 15-69/Adj/BPL-II/2013 dated 13.10.2015, demanding Service Tax amounting to Rs.14.20 Crore, which was adjudicated vide Order-in-Original No. 44/PC/ST/BPL-ST/2016 dated 24.08.2016.

2.2. Meanwhile, the DGCEI officers conducted searches at the appellant's premises and initiated investigations with reference to the same two MOUs. During the course of investigations, the investigating officers alleged that though no consideration was paid by the Appellant to ZTR and GANZ, parting of business with these JV partners by the Appellant was considered for provision of technical know-how and Service Tax on the same becomes payable on Reverse Charge Mechanism [RCM]. The Appellant ascertained the value of technical know as 3% of sale value and paid Service Tax amounting to Rs. 2,00,43,707/- on such value, along with interest amounting to Rs. 51,35,555/- on the amount of Service Tax.

2.3. Vide their letter dated 25.02.2016, the appellant requested the DGCEI, Bhopal, to treat the proceedings initiated against the Appellants as concluded. However, show cause notice dated

24.10.2016, demanding Service Tax amounting to Rs. 5,60,45,555/- alongwith interest and for imposition of penalty, alleging that value for the purpose of determining consideration for Technical know-how allegedly provided by ZTR and GANZ shall be the gross profit margin for the supply of goods to PGCIL for the respective year in which the goods were supplied by the Appellants to PCIL was issued. The Commissioner, CGST & Central Excise, Bhopal, has adjudicated the case by passing the impugned Order-in-Original No. 14/COMMR/ST/BPL-111/2018 dated 05.07.2018. The present appeal is against the said impugned order.

3. Learned counsel submitted that the MOUs with GANZ and ZTR were entered by the Appellant in July-2008 and July-2009. The manufacture and supply of the goods commenced from 2011. Thus, even if it is assumed that GANZ and ZTR did provide technical know-how services to the Appellants' the same were provided prior to July, 2012. He submitted that prior to July-2012, no Service Tax was payable on technical know-how service under the category of Intellectual Property Service. Learned counsel stated it was not disputed that the Commissioner has confirmed demand for service tax on technical know-how service, by treating the same as Intellectual Property Service. He submitted that during the relevant period, i.e. prior to July-2012, technology transfer service was not covered within the ambit of Intellectual Property Service. He further submitted that technical know-how service is not covered by any law for the time being in force in India. Therefore, learned counsel contended that the said service of technical know-how was not covered by the expression Intellectual Property Right, upto June-2012. In support of his

submissions, learned counsel relied upon the following decisions:

(i) **Chambal Fertilizers and Chemicals** vs. **C.C.E.**[2]**;**

(ii) **Tata Consultancy Services Ltd**. Vs. **C.S.T**[3]**;**

(iii) **Rochem Separation Systems** Vs. **C.S.T.**[4]**;** and

(iv) **Reliance Industries** Vs. **C.C.E.**[5]

4. Learned Counsel further submitted that the Commissioner had completely ignored these decisions, which were specifically brought to his notice. Learned Counsel stated that though the goods manufactured using the technical know-how continued to be supplied even after July-2012, it will not be construed as the services having been rendered after July-2012. The very fact that the manufacture and supply of the goods had commenced much before July-2012, establishes that the services were provided prior to July-2012. At that time the said service was not covered within IPR service and no Service Tax was payable thereon. He relied on the Tribunal's order in the case of **Reliance Industries** (supra), in which while dealing with the similar issue, the Hon'ble Tribunal held as below :

> "11. Insofar as the agreement with Investa Technologies S.A.R. L. is concerned the same was entered into on 14-8-2004, prior 10 1PR services being brought into the net of service tax w.e.f. 10-9-2004. The service itself having been rendered prior to the introduction of the levy, the mere fact that payments for the same were made on a staggered basis over a period of time cannot be a ground for levying service tax merely with reference to the date on which payments were being made. We find that during the relevant period the issue as to whether a transaction is leviable to service tax and if so at what rate was required to be reckoned with reference to the date when the service was rendered and not with reference to the date on which payment is made. The law in this regard is settled by the decision of the High Court in the Appellant's own reported in 2010 (19) S.T.R. 807 as also by the Hon'ble Delhi High Court in the case of CCEV. Consulting Engineering Services India (P) Ltd. 2013 (30) S.T.R. 586. As the service in the case of Investa

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2. 2016(45) STR 118(Tri.-Del)
3. 2016 (41) STR 121 (Tri.-Mumbai)
4. 2015 (39) STR 112 (Tri-Mumbai)
5. 2016 (44) STR 82 (Tri- Mumbai)

> Technologies S.A.R.L, was rendered prior 1o 10-9-2004, the date when the taxing entry was brought to the Statute the mere subsequent payment in respect of services that are already being rendered cannot be brought to lax with respect to the rate applicable on the date on which the payment was effected."

In view of the above legal position, no Service Tax was liable to be paid by the Appellant and the impugned order deserves to be set aside and quashed.

5. In addition, learned counsel also stated that the Commissioner had erred in confirming Service Tax demand by taking the gross profit margin for the sale of the goods manufactured using the technical know-how, erroneously assuming that the entire gross profit margin is on account of the technical know-how. He submitted that profit margin was a result of various efforts and resources put to use for manufacture of particular goods, including capital, labour, management, finance, etc. Technical know-how was only one of the factors contributing to gross profit margin, as was evident from the fact that the manufacture and clearance of the said goods as JV partner by the Appellant were made during the year 2011-12 to 2014-15. Prior to the commencement of supplies under the contract, when the so-called technical know-how was not made available from ZTR and Ganz, i.e. 2010-11 in respect of the Appellants' Mandideep T3 Unit, the total revenue and the profit were as below:

Details for 2010-11	**Rs.(Lakhs)**	**%**
Sales	20695.87	100
Profit /(Loss) after tax	3703.22	17.89

6. As against the above period, learned counsel submitted that when the goods were manufactured by the Appellant using their own indigenous technical know-how, when they manufactured and cleared

the goods using technical know-how of ZTR and GANZ, their revenue and contribution from the supplies made against the contracts, were as indicated in the table below:

Details the total supplied under the contracts	**ZTR Ukraine**	**GANZ Hungary**	**Total Rs.(Lakhs)**	**%**
Sales 2011-12 to 201-15	40784.22	18985.39	59769.61	100
Profit/(Loss) after Tax	3065.82	(-)79.03	2986.79	5
% of Profit/(Loss) after Tax	7.52%	(-)0.42	5.00	
Total Sales for 2011-12 to 2014-15 (including ZTR & Ganz)			160556.25	100
Total Profit/ (Loss) after Tax (including ZTR & Ganz)			17880.68	11.14

Learned counsel submitted that the figures established that the technical know-how provided by GANZ and ZTR had no role in determining the Appellant gross profit margin, and it was grossly erroneous to take the gross profit margin of the Appellant as value of technical know-how provided by GANZ and ZTR.

7. Learned counsel stated that the Principal Commissioner had erred in confirming the demand based solely on the value of Rs.25,71,96,000/- indicated in the contract, and had failed to appreciate that the liability for Service Tax has to be worked out based on the value actually mentioned in the invoices and not based on the value indicated in a contract. He submitted that the demand deserved to be set aside and quashed on the grounds of limitation, as the entire period covered by the demand notice was beyond normal limitation period. He submitted that in the facts and circumstances of the case there was total revenue neutrality as the Service Tax, if any paid on technical know-how on reverse charge basis, was admissible as input

service credit for utilization towards discharge of Central Excise duty liability. Thus, payment of Service Tax on reverse charge basis on the value of technical know-how from ZTR and Ganz, and again taking credit of the same, was revenue neutral. Learned counsel stated that it is a settled legal position that when there is revenue neutrality with reference to the assessee himself, then no malafide intention of evasion of taxes can be attributed on the part of assesse and the extended period of limitation cannot be invoked. In support of his contention, learned counsel relied upon the following decisions:

(i) **Jet Airways** Vs. **C.S.T.[6];**

(ii) **Texyard International** Vs. **C.C.E.[7];**

(ii) **Jain Irrigation Systems Ltd.** Vs**. C.C.E.[8];**

(iv) **Mercantile & Industrial Dev.** Vs. **C.C.E.[9];**

(v) **Monga Brother Ltd.** Vs. **C.C.E.[10];**

(vi) **C.C.E.** Vs. **Reclamation Welding Ltd.[11];** and

(vii) **Castrol India Ltd.** Vs. **C.C.E.[12];**

8. Learned counsel also contended that there was no suppression since full facts were within the knowledge of the Department. With reference to the same MOUs entered with Ganz, another show cause notice no.34/PC/ST/BPL-II/2015 dated 13.10.2015, demanding differential Service Tax amounting to Rs. 14,19,96,871/- has been issued to the Appellants. The said show cause notice was adjudicated by the Commissioner by passing the Order-in-Original No.44/PC/ST/BPL-ST/2016 dated 24.08.2016. Therefore, at the time

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6. 2016(44) STR 465 (Tri- Mumbai)
7. 2015 (40) STR 322 (Tri-Chennai)
8. 2015 (40) STR 752 (Tri- Mumbai)
9. 2014 (313) ELT 553 (Tri-Ahmedabad)
10. 2013 (294) ELT 332 (Tri-Del)
11. 2014 (308) ELT 542 (Tri-Ahmedabad)
12. 2014(311) ELT 71 (Tri-Ahmedabad)

of issue of show cause notice dated 13.10.2015, all the information and copies of MOU were within the knowledge of the Department. He submitted that in the second show cause notice issued with reference to the same facts and documents, the extended period of limitation cannot be invoked. In this regard, the learned counsel relied on the Hon'ble Supreme Court's judgement in the case of **Nizam Sugar Factory** Vs. **C.C.E.**[13], which has been followed in a number of decisions on the subject.

9. Learned Authorized Representative appearing for the department at the outset reiterated the discussions and findings given in the order-in-original. Learned Authorised Representative submitted that the Appellant had deposed that with reference to same MOU entered by them with GANZ, a SCN dated 13.10.2015 was issued by the Bhopal Commissionerate. In view of the above, the contention of the Appellant regarding lack of jurisdiction holds no water, being unsustainable and liable to be rejected.

10. Learned Authorised Representative submitted that the concept of revenue-neutrality does not form part of taxation statute. He contended that the principle had evolved through judicial pronouncements over a period of time, so much so that, there was a propensity to apply it in unwarranted situations and bypass the legal provisions. Indirect tax like service tax is tailor-made for this. The entire exercise of maintaining the whole set of records on Cenvat Credit and scrupulously following the rules would be rendered redundant and useless if the benefit of revenue neutrality is extended. In order to claim the substantive right/benefit of CENVAT Credit, a person has to comply with the conditions prescribed in the rules issued

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13.2006(197) ELT 465 SC

in this regard.

11. Learned Authorised Representative stated that the Appellant had never disclosed the facts to the Department and these facts came to the notice of the Department only at the time of investigation as the Appellant was working under self-assessment system, they were bound by service tax law to assess their service tax liability correctly and thereafter file their ST-3 returns properly. Learned Authorised Representative stated that the appellant did not assess the correct amount of service tax and had also not shown the actual amount in the relevant ST-3 returns. They have willfully suppressed the facts from the department with intention to evade the payment of service tax. Therefore, extended period and penalty under section 78 is invokable. In view of the above, he prayed that present appeal may be dismissed.

12. We have heard the learned counsel for the appellant and learned Authorised Representative for the department. The issue before us is to decide the service tax liability on transfer of technical know-how to the appellant. The admitted facts of the case are as follows:

1. Appellant is registered under Central Excise and Service Tax.
2. Appellant entered into Joint Venture agreement with Ganz and ZTR as per the terms of the international bidding for supply of goods to Power Grid Corporation India Ltd.
3. Two agreements dated 25.07.2008 with Ganz and 24.07.2009 with ZTR were entered by the appellant for sale of goods to PGCIL on payment of Central Excise duty.
4. A third contract was entered for provision of services, which included WCS on which service tax was paid initially @4.12% &

@12.36% after being pointed out by audit.

5. Department undertook correspondence with the appellants in respect of the contract and a show cause notice dated 13.10.2015 was issued demanding differential service tax. The said show cause notice was adjudicated and demand of Rs.2,82,92,476/- was confirmed.

13. We note that the appellant entered into Joint Venture Agreement dated 25.07.2008 between Ganz Transelektro Electric Co. Ltd. Hungary [Ganz] for joint bidding for supply of 765 KV Transformers to PGCIL. Similarly, another Joint Venture Agreement dated 24.07.2009 was entered between the appellant and Zaporozhtransformator, Ukraine [ZTR-Ukraine] for joint bidding for supply of 800 KV Shunt Reactors for supply to PGCIL. A third contract was also signed by the appellant for provision of various services after the supply of equipment by GANZ. We note that in terms of the 1st Contract, in relation to supply of the goods by Ganz, Hungary, the goods were imported directly by PGCIL on CIF basis and Bills of Entry were filed in the name of PGCIL. The ownership and transfer of title in goods passed on to PGCIL on landing of the goods at the Port of Import. In relation to 2nd Contract, the transfer of title in respect of the goods supplied by the appellants were on the terms of sale of the goods Ex-works basis. Therefore, the ownership and transfer of the title and property of the goods was passed on to the buyer viz. PGCIL at the factory gate of the appellants.

14. In relation to 3rd Contract, the appellants had initially paid service tax at concessional rate of 4.12% and on being pointed out by the audit started to pay @ 12.36% i.e. full applicable rate. The 3rd

contract also included provision of Civil Works, which were covered within Works Contract Service and on which the party paid service tax under the category of Works Contract.

15. Learned counsel has submitted before us that there was correspondence between the Appellant and the Central Excise Authorities in this regard. Thereafter, show cause notice dated 13.10.2015 was issued by the Commissioner proposing to add the value of transformers to the assessable value for the purpose of payment of service tax and accordingly proposed to demand differential service tax. The show cause notice was adjudicated by Order-in-Original dated 24.08.2016 confirming the demand of Rs.2,82,92,476/- along with interest by holding that service tax was payable on the total contract price for service of Rs. 25,71,96,000/-, and the service tax of Rs.2,07,37,860 paid was appropriated. The said order was challenged by the Appellant and the Tribunal vide its final order No.51900/2021 dated 03.09.2021 in Appeal No.ST/53026/2016 remanded the matter for computation of service tax, after having held that service tax was not payable on transportation charges; service tax was not payable on training charges; service tax was liable to be paid on installation/erection charges (including civil work) after adjusting the amount of VAT and service tax. Presently, the said matter is pending before the adjudicating authority.

16. We note that despite one round of litigation in respect of the Agreements, DGCEI initiated proceedings demanding service tax on the technical know-how, claiming that Joint Venture Agreement between ZTR-Ukraine and the Appellant were not submitted. We note that in spite of the fact that the said Joint Venture Agreements dated

25.07.2008 and 24.07.2009 were the basis for confirmation of demand in the earlier proceedings wherein the period covered was June 2011 to January 2012, as against the current initiation of proceedings for the period June 2011 to March 2014.

17. The basis of the current show cause notice was that receipt of technical knowhow through foreign entities was in lieu of business provided by Appellants to the said Joint Venture Partners and this sharing of business was considered as 'consideration' for provision of IPR service and demand of service tax was proposed to be recovered from the Appellants under RCM.

18. We are of the opinion from the facts stated above that when same agreements which were considered 1st SCN dated 13.10.2015 and based on the same facts, the impugned SCN dated 24.10.2016 has once again been issued, allegation/findings of suppression, etc. is not sustainable. It is a settled position of law that second SCN issued invoking extended period is barred by limitation, as held inter-alia in the following judgments:

(a) In **P & B Pharmaceuticals (P) Ltd**. vs. **Collector of Central Excise,**[14] the Hon’ble Supreme Court observed as follows:

> 12. Mr. Lakshmikumaran, the learned Counsel appearing, for the appellant, contends that so far as the demand of duty on the basis of the distributor being a related person is concerned, all facts in this regard were placed before the concerned authorities and, therefore, there has been no suppression of fact; in any event, submits the learned Counsel, when the show cause notice was issued in 1985 and, thereafter, when two more show cause notices were issued in 1988, all these facts were before the concerned authorities, therefore, it was not open to the Central Excise authorities to invoke proviso to Section 11A of the Act for making a demand of duty for the extended period.
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> 13. Mr. Jaideep Gupta, the learned Senior Counsel for the Revenue has, on the other hand, contended that insofar as the

14. 2003 (153) ELT 14 (SC)

question of related person is concerned, as the assessee had failed to give such a declaration in a separate form along with the classification list, there is, in that, suppression of fact and the authorities were justified in invoking the proviso to section 11A of the Act for demand of duty for the extended period.

14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period.

(b) In **ECE Industries Ltd**. vs **Commissioner of Central Excise, New Delhi**[15] the Hon'ble Supreme Court observed as follows:

"3. Some few facts necessary for a decision on this point are as follows :-

> The appellants were using parts, in respect of which the CENVAT credit was availed. Even though they have not paid duty, they did not reverse the credit. The Department, therefore, issued show cause notices on 28th May, 1993 and 4th November, 1993. By these two show cause notices the appellants were called upon to show cause as to why duty and penalty be not levied on them for not having reversed the CENVAT credit. These show cause notices were adjudicated by an order dated 2nd March, 1994. Thereafter, the concerned show cause notice dated 27th May, 1994 was issued. This has been adjudicated by an order dated 13th November, 1997.

4. In the case of M/s. P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [2003 (2) SCALE 390]**,** the question was whether the extended period of limitation could be invoked where the Department has earlier issued show

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15. 2004 (164) ELT 236 (SC)

> cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked.
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> 5. In our view, the principles laid down in above case fully apply here. As earlier proceedings in respect of same subject matter were pending adjudication it could not be said that there was any suppression and the extended period under Section 11A was not available.
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> 6. To this extent the impugned judgment requires to be and is set aside. Ordered accordingly.
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> 7. It must also be mentioned that as there is no suppression, penalty cannot be imposed.
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> 8. The appeal stands disposed of accordingly. There will be no order as to costs."

(c) In **Hyderabad Polymers (P) Ltd.** vs. **Commissioner of Central Excise, Hyderabad[16],** the Hon'ble Supreme Court observed as follows:

> This Court has in the case of ECE Industries Limited v. Commissioner of Central Excise, New Delhi reported in 2004 (164) E.L.T. 236 (S.C.) held as follows :-
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>> "4. In the case of M/s. P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [2003 (153) E.L.T. 14 (S.C.) = 2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked.
>>
>> 5. In our view, the principles laid down in above case fully apply here. As earlier proceedings in respect of same subject-matter were pending adjudication it could not be said that there was any suppression and the extended period under Section 11A was not available."
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> On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the

16. 2004 (166) ELT 151 (SC)

Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct."

(d) In **Nizam Sugar Factory** vs. **Collector of Central Excise, Andhra Pradesh**[17], the Hon'ble Supreme Court observed as follows:

"9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.

10. For the reasons stated above, Civil Appeal Nos. 2747 of 2001 and Civil Appeal No. 6261 of 2003 filed by the assessees are accepted and the impugned orders are set aside on the question of limitation only. The demands raised against them as well as the penalty, if any, are dropped. Civil Appeals @ Special Leave Petition (C) Nos. 9271-9278 of 2003 filed by the department are dismissed. Questions of classification and marketability are left open. Parties shall bear their own costs."

19. We go on to examine this case on merits as well. We find that MoU with GANZ and ZTR were entered by the appellant is in July 2008 and July 2009. We also note that it has been submitted that the manufacture of the goods began soon after. Therefore, it is evident that GANZ and ZTR provided the technical know-how, prior to July 2012. In this context, it would be pertinent to see the definition of ''Intellectual Property Service' and 'Intellectual Property Rights' which reads as follows:

"a) Section 65(55a): "intellectual property right" means 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.

b) Section 65(55b): "Intellectual property service means, -

(a) Transferring, temporarily; or
(b) Permitting the use of enjoyment of, any intellectual property right

c) Section 65(105) (zzr) "taxable service" means any service

17. 2006 (197) ELT 465 (SC)

provided or to be provided- ……

> "(zzr) to any person, by the holder of intellectual property right, in relation to intellectual property service."

19.1 In this regard when the service was made chargeable to Service Tax, the following clarification was issued vide Circular No. 80/10/2004-ST dated 17.09.2004.

> "9. Intellectual property services (other than copyrights):
>
> 9.1 Intellectual property emerges from application of intellect, which may be in the form of an invention, design, product, process, technology, book, goodwill etc. In India, legislations are made in respect of certain Intellectual Property Rights (i.e. IPRs) such as patents, copyrights, trademarks and designs. The definition of taxable service includes only such IPRs (except copyright) that are prescribed under law for the time being in force. As the phrase 'law for the time being in force' implies such laws as are applicable in India, IPRS covered under Indian law in force at present alone are chargeable to service tax and IPRS like integrated circuits or undisclosed information (not covered by Indian law) would not be covered under taxable services.
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> The term 'under any law for the time being in force' appearing in Section 65(55a) implies that the Intellectual Property Right should be protected under any Indian law in force, and only then it become taxable service."

19.2 In the instant case, it is an admitted fact that the technical know-how was transferred to the appellant in 2009, soon after the signing of agreements. It is also an admitted fact that the appellant shared a portion of the PGCIL business with GANZ & ZTR in lieu of transfer of technical know-how. It is noted that no service tax was payable on technical know-how service under the category of intellectual property service prior to this date. IPR service was covered under section 66E (c) with effect from 1.7.2012, and the confirmation of demand on technical know-how service cannot be sustained prior to this date. We note further that transfer of technical know-how service cannot be treated as IPR as the same was not registered under any law in India. Accordingly, we hold that no service tax can be confirmed under this head.

19.3 In this context, we note that in the case of **Chambal Fertilizers & Chemicals Ltd.** vs. **Commissioner of Central Excise, Jaipur-I**[18]**,** this Tribunal has observed as under :-

> "5. We have heard both sides and examined the appeal records. The only point for decision is that whether or not the appellant received taxable service under the category of 'Intellectual Property Right service' during the relevant period. The admitted facts of the case are that the technical Know-how, engineering design licence involved in these agreements with foreign service providers are not registered in India under Indian law. However, the original authority held that registration of IPR under Indian law is only for obtaining protection from its infringement. He observed that the levy of tax is not dependent on the fact of such registration. We find that such conclusion is not legally tenable and is beyond the scope of taxable service as defined in Finance Act, 1994 :
>
> "Section 65(105)(zzr) of the Act defines in the taxable IPR service tax as under :
>
> "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;
>
> Section 65(55a) of the Act defines 'Intellectual Property Right' to mean as under :
>
> "Intellectual Property Right" means 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"
>
> 6. The IPR as defined should be a right under any law for the time being in force. The legal position on this issue has been examined by various decisions of the Tribunal which are as under :
>
> (a) Rochem Separation Systems (India) Private Limited v. Commissioner of Service Tax, Mumbai I - 2015 (39) S.T.R. 112 (Tri.-Mum.) [para 8];
>
> (b) Whirlpool of India Limited v. C.C.E & S.T., Delhi - 2016-VIL-57-CESTAT-DEL-ST [para 7];
>
> (c) Tata Consultancy Services Limited v. C.S.T., Mumbai - 2015-TIOL-2370-CESTAT-MUM = 2016 (41) S.T.R. 121 (Tri.) [para 4.1];
>
> (d) Asea Brown Boveri Ltd. v. C.C.E & S.T., Bangalore - 2016-

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18. **2016 (45) S.T.R. 118 (Tri.-Del.)**

VIL-480-CESTAT-BLR-ST [para 6.7.1];

(e) Reliance Industries Ltd. v. C.C.E. & S. Tax, Mumbai - 2016-TIOL-1654-CESTAT-MUM = 2016 (44) S.T.R. 82 (Tri.) [para 2].

It has been held that to be categorized for service tax purpose under IPR, such right should have been registered with trade mark/patent authority. In the present case, admittedly, there is no right recognized as IPR under any law for the time being in force in India. As such, there can be no provision of IPR service for tax liability on reverse charge basis."

Therefore, we hold that services received by the appellant-assessee are not covered under Intellectual Property Rights services, under Section 65(105)(zzr) of the Finance Act, 1994, therefore, no service tax is payable by the appellant-assessee."

20. Similarly, in the case of **Commissioner of Service Tax, Delhi-III** vs. **Denso Haryana Pvt. Ltd**[19], the Principal Bench of this Tribunal observed as follows:

"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 installments 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

19. 2016(42)S.T.R. 754(Tri.-Del.)

the agreement for grant of license or transfer / permission to use technology was effected 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."

21. In the case of **M/s. Catapro Technologies** vs. **Commissioner of Central Excise, Nashik[20],** the coordinate bench in Mumbai held as follows:

"4. On careful consideration of the submissions made by both sides, we find that in the appellant's own case this Tribunal after considering the entire facts which is also prevailing in the present case has allowed the appeal of the appellants, therefore, the issue particularly in the appellant's case is no longer res integra. The Tribunal in the said order decided the matter as under:-

"5. It is apparent from the definition of the taxable service that the liability will arise in relation to intellectual property service provided by the holder of intellectual property right This right is defined as 'any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright' in section 65 (55a) of Finance Act, 1994. Thus, while the taxable service stems from the relationship of two entities, the right that is vested in the holder is protected from the rest of the world within the jurisdiction of the law referred to in section 65(55a). To be liable to the tax, the provider must be the holder of the intellectual property right which one that is enforceable against all others, and not just against the recipient of the service.

6. The enforceability of the right vis-a-vis the recipient is protected by the law of contract for the limited purpose that the statute has been legislated for. That enforceability does not subsist against any other entity in the absence of registration under the patent, trademark or design protection laws of the country. It is the contention of the appellant that such proprietary rights do not vest in them and Revenue has not been able to show that it does. Accordingly, the right that is transferred is the technical know-how which may be a service but is not in relation to intellectual property service which pertains to intellectual property rights.

7. In **re ELGI Rubber Products Ltd.,** the Tribunal was called upon to decide the legality of demand on 'reverse

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20. 2017 (6) TMI 276 - CESTAT MUMBAI

> charge basis' on receipt of a service that was volunteered by the recipient as 'intellectual property service' which Revenue sought to tax under a different entry. The ingredients that render the service taxable under section 65(105)(zzr) was not subject to scrutiny by the Tribunal and a reference to technical know-how therein can hardly be adduced as settling the classification of the activity as the taxable service. Per contra, paragraph 9.1 of circular no.B2/8/2004-TRU dated 10th September 2004 of Central Board of Excise & Customs, cited by Learned Counsel for appellant docs amplify the object of tax as intellectual property rights under prescribed laws applicable in India.
>
> 8. Such has been the consistent stand of the Tribunal as is evident in decisions in re Tata Consultancy Services Ltd and in **re Thermax Ltd** in **re Indofil Chemicals Company**, the Tribunal predicated taxability on the additional requirement of identification of the specific class of intellectual property right that is provided to the recipient. In this too, we notice a lack in the impugned order.
>
> 9. The demand is, therefore, without authority of law and we set it aside Appeal is allowed."

22. In view of the above discussions, we are of the considered view that the impugned order is not sustainable and the same is set aside. The appeal is, accordingly, allowed.

(Order pronounced in the open court on **07.04.2025**)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana