CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

SERVICE TAX Appeal No. 11516 of 2015
(Arising out of AHM-SVTAX-000-APP-035-15-16 dated 11.06.2015 passed by Commissioner of Service Tax-AHMEDABAD)

INTAS PHARMACEUTICALS LTD ...Appellant
2ND FLOOR, CHINUBHAI CENTRE, OFF NEHRU BRIDGE,
ASHRAM ROAD, AHMEDABAD-GUJARAT

VERSUS

C.S.T.-SERVICE TAX, AHMEDABAD ...Respondent
7TH FLOOR, CENTRAL EXCISE BHAWAN, NR. POLYTECHNIC
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE:
Shri Willingdon Christian, Advocate appeared for the Appellant
Shri R.R. Kurup, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12187 /2023

DATE OF HEARING: 25.09.2023
DATE OF DECISION: 04.10.2023

RAJU

This appeal has been filed by Intas Pharmaceuticals Limited against demand of service tax for technical knowhow transferred by them to a recipient in Singapore wherein consideration was received in US Dollar.

2. Learned Counsel for the appellant pointed out that the appellant had agreed to transfer technical know-how to manufacture and market two formulations to M/s Scigen, Singapore vide agreement dated 17.06.2006 as amended on 20.08.2007. The appellants had transferred technology related documents and two vials of Cell Banks to M/s Scigen, Singapore at its facility located in Israel. The appellant received payment from M/s Scigen, Singapore in US Dollars. Under the agreement Scigen could use the technology to manufacture the products

at any place in the world including its existing Pune (India) facility. During audit an objection was raised that since the said technology is used in Pune it does not become 'Export of Service'. The appellant had paid service tax of Rs. 74,99,857/- and interest of Rs. 51,34,290/-. The appellant claimed the refund of the said service tax and interest. The said refund claim was rejected on the ground that the said transfer of technology did not amount to 'Export of Service' as the said service though sold to M/s Scigen, Singapore was used in the plant located at Pune (India) also. Learned counsel pointed out that they had transferred the agreed upon technology in soft copy to the registered office of M/s Scigen, Singapore and the agreement authorized M/s Scigen, Singapore to use the said technology anywhere including in India.

3. During the audit of the appellant premises in the month of September 2012, an objection was raised that the service provided by the appellant to M/s Scigen, Singapore was not 'Export of Service'. The audit was of the view that the said service is chargeable to service tax under the head of 'Intellectual Property Service' w.e.f. 10.09.2004. Learned counsel pointed out that the technical know-how is not a taxable service under the head of 'Intellectual Property Service'. He pointed out that the relevant provisions for giving definition for the said service read as follows:

"a) Section 65(55a):

(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):

(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 provided or to be provided-

……

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

The appellant had paid the service tax along with interest consequent to the said audit objection. A show cause notice was issued to the appellant for rejection of the refund claim holding that the services claimed to have been exported to M/s Scigen, Singapore cannot be considered 'Export of Service' as the same were not used 'outside India'. It was argued that the said services were in turn used by M/s Scigen, Singapore in the Bio-Technical Park, Pune Maharashtra (India). He further argued that the recipient of service M/s Scigen, Singapore is located outside India. The service has been provided to M/s Scigen, Singapore with liberty to use said technical know-how anywhere in India and the payment of service is received in convertible foreign exchange. In these circumstances, under rule 3(2) of Export of Service Rules, 2005, it qualifies as 'Export of Service'.

4. Learned counsel argued that the technology supplied by them does not fall under the category of Intellectual Property Right for the reason that the said technology is not protected by any law in India. He relied on the Circular No. 80/10/2004-ST dated 17.09.2004. The aforesaid Circular prescribed as follows:

"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."

He argued that 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. He pointed out that the transfer of technical know-how is not protected or recognized by 'Indian law' and therefore does not qualify to be an Intellectual Property Right. He argues that from the definition of IPR, it should be in the nature of a specific right like Patent or Trademark or Design under the Patent Act, Trademark Act or Design Act. He relied on the following decisions for this argument.

- 2016 (41) STR 121 (T) Tata Consultancy Services Ltd
- 2017 (48) STR 94 (T) Catapro technologies
- 2016 (44) STR 82 (T) Reliance Industries Ltd
- 2019 (24) GSTL 55 (T) ABB Ltd.
- 2023 (6) TMI 1198 – CESTAT Schneider Electric India (P) Ltd.

He argued that the appellant had supplied the technical know-how to M/s Scigen, Singapore. He argued that if M/s Scigen, Singapore chooses to bring in the said technical know-how into India then it has nothing to do with the original transaction of supply of technical know-how to M/s Scigen, Singapore for which the appellant has received the entire consideration in convertible foreign exchange.

5. Learned Authorized Representative relies on the impugned order.

6. We have considered the rival submissions. We find that identical issue has been decided by Tribunal in the case of Munjal Showa Ltd. 2017 (5) GSTL 145. In the said decision following has been observed:

> "**6.** On careful consideration of the submissions of both sides, we find that the Design, Trademark, Symbol, Brand Service have not been registered in India. Therefore, whether the royalty paid by the appellant-assessee under Industrial Property Right agreement is liable to service tax under Intellectual Property Rights service or not. For better appreciation of Intellectual Property Right, the definition of the same is reproduced :-
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> > **Section 65. Definition.** - In this Chapter, unless the context otherwise requires, -

(55)(a) "intellectual property right" means any right to tangible 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.

"intellectual property (55)(b) service" means, -

(a) transferring, {temporarily} whether permanently or otherwise; or

(b) permitting the use or enjoyment of, any intellectual property right.

(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.

7. On going through the said provisions of the Act, we find that, to tax under service tax, under Intellectual Property Rights, such rights should be registered with Trademark/Patent authorities. It is a fact on record that such trade mark is not registered in India. Moreover, the C.B.E. & C. Circular dated 17-9-2004 relied upon by the ld. AR is having no help to the Revenue as it has been clarified that the taxable service include only such Intellectual Property Rights except Copyright that are prescribed under the law for the time being in force, as the term 'time being in force' implies that, as are applicable in India, and Intellectual Propertyrights covered under Indian law in force alone are chargeable to service tax and Intellectual Property Rights like Integrated Circuits or Undisclosed Information would not cover under the taxable services. Admittedly, Trade Mark rights which have been used by the appellant-assessee are not registered in India, therefore, the same are not liable to tax under IPR service, in the light of the decision in the case of *Chambal Fertilizers & Chemicals Limited* (supra), wherein 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 :
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> "Section 65(105)(zzr) of the Act defines in the taxable IPR service tax as under :
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> "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;
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> Section 65(55a) of the Act defines 'Intellectual Property Right' to mean as under :
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> "Intellectual Property Right" means 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"
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> 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-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 7. 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.

8. In that circumstance, we hold that services received by the appellant-assessee are not covered under IPR service, under Section 65(105)(zzr) of the Finance Act, 1994. Therefore, no service tax is payable by the appellant-assessee.

9. In these circumstances, we hold that extended period of limitation is not invocable and the demand is not sustainable. We also take note of the fact that the agreement is dated 11-3-2002 whereas the levy of tax under IPR service has come into force on 10-9-2004. As the agreement is executed on 11-3-2002, prior to introduction of IPR Service, the demand of service tax is not sustainable in the light of the decision of this Tribunal in the case of *Reliance Industries Limited* - 2016-TIOL-1654-CESTAT-MUMBAI = 2016 (44) S.T.R. 82 (Tri.-Mum.), wherein this Tribunal observed as under :-

"Insofar as the agreement with Investa Technologies S.A.R.L. is concerned the same was entered into 14-4-2004, prior to IPR services being brought into the net of service tax with effect from 10-9-2004. The service tax 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 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 CESTAT reported in 2008 (10) S.T.R. 243 = 2008-TIOL-283-CESTAT-AHM which was affirmed by the Hon'ble Gujarat High Court in the appellant's own case reported in 2010 (19) S.T.R. 807 as also by the Hon'ble Delhi High Court in the case of *CCE* v. *Consulting Engineering Services India (P) Limited* - 2013 (30) S.T.R. 586. As the service in the case of Investa Technologies S.A.R.L. was rendered prior to 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 tax with respect to the Rule applicable on the date on which the payment was [effected]."

In that circumstance also, we hold that appellant-assessee are not liable to pay service tax. Therefore, the impugned order is modified and the demand of service tax against the appellant-assessee is set aside."

The said decision of Tribunal has been upheld by Hon'ble Apex Court as reported in 2023 (385) ELT 645. It can be seen from the decision of Tribunal in the case of Munjal Showa Ltd. (supra) that to qualify as Intellectual Property Right, the said right should be protected by some law for the time being in force within India. It is seen that Revenue has not pointed out any law under which the said technical knowhow being transferred to Sicgen Singapore is protected. In absence of any clear evidence of the said knowhow being protected by any law, the same cannot qualify as 'Intellectual Property Right' and therefore, no tax can be levied of such transfer of technical knowhow under the head of 'Intellectual Property Service'. In this background, we find that no tax was leviable on the said transaction under the head of IPR and therefore, the appellants are entitled to relief as per law.

(Pronounced in the open court on 04.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha