

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 3**

SERVICE TAX APPEAL NO. 50318 OF 2019

[Arising out of Order-in-Original No. 94/2018-ST dated 30.08.2018
passed by the Additional Director General (Adjudication), New Delhi]

PRINCIPAL COMMISSIONER

.....APPELLANT

CGST South Commissionerate,
2nd & 3rd Floor, EIL Annexe Building
Bhikaji Cam Place, New Delhi-110066

Vs.

M/S MICROMAX INFORMATICS LIMITEDRESPONDENT

Plot No. 21/14, Block A,
Naraina Industrial Area, Phase II
New Delhi-110028

Appearance:

Shri Anand Narayan, Authorised Representative for the Appellant
Ms. Anu Sura and Shri Ayushraj, Advocates for the Respondent

CORAM:

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 51197 /2025

**DATE OF HEARING : 04/08/2025
DATE OF DECISION : 19/08/2025**

P.V. SUBBA RAO

Revenue has filed this appeal to assail the Order in Original
dated 30.08.2018¹ passed by the Additional Director
General(Adjudication)² Directorate General of GST Intelligence³,
New Delhi whereby he dropped the proceedings initiated by
show cause notice dated 27.03.2017⁴ against the respondent M/s

**1 Impugned order
2 ADG
3 DGCEI
4 SCN**

Micromax Informatics Limited⁵ and its Managing Director Shri Rahul Sharma.

2. We have heard Ms. Anu Sura and Shri Ayushraj, learned counsels for Micromax and Shri Anand Narayan, learned authorized representative appearing for the department and perused the records.

3. The facts of the case are that Micromax was registered with the service tax department. M/s Telefonaktiebolaget LM Ericsson of Switzerland⁶ sued Micromax for royalty for use of patents and technologies belonging to Ericsson. The matter was before the Hon'ble Delhi High Court and through Interim Orders, Delhi High Court had directed Micromax to pay certain amounts to Ericsson totaling Rs. 37,17,36,177/-. Further an amount of Rs. 117,62,06,873/- was deposited on directions of the Delhi High Court. These two amount totaled Rs.154,79,43,050/-. The matter was investigated by DGCEI from the point of view of service tax as it was felt that Micromax, as a recipient of service of intellectual property rights, was required to pay service tax on the amounts paid to Ericsson which was located outside India. Accordingly, service tax and taxes and cesses amounting to Rs. 17,50,38,755/- was demanded from Micromax with interest in the SCN. It was proposed to impose penalties on Micromax and its managing director Shri Rahul Sharma.

5 Micromax

6 Ericsson

4. The matter was finally settled between the Ericsson and Micromax as per which Micromax paid an amount of Rs. 96 crores as royalty to Ericsson. Accordingly, the Delhi High Court dismissed the case as the matter was settled between the parties.

5. By the time this settlement took place on 31.12.2017 the provisions of service tax were no longer in place as service tax was subsumed into goods and service tax(GST). Accordingly, Micromax paid IGST on this amount of Rs. 96 crores paid to Ericsson. The Directorate General of Central Excise Intelligence was also re-named Director General of GST Intelligence.

6. Considering the submissions, the SCN was adjudicated in the impugned order as follows:

“ E. In view of above the following questions arise for my consideration in the matter:

(i) Whether the instant proceedings can be continued in the light of the withdrawal of the suit by the parties before the High Court?

(ii) If yes, whether the duty demanded in the Show Cause Notice to the tune of Rs. 17,50,38,755/- (Rupees Seventeen Crore Fifty Lakhs Thirty Eight Thousand Seven Hundred and Fifty Five only) can be confirmed against the Noticee no. 1?

(iii) Whether interest is payable in the matter as alleged in the Show Cause Notice?

(iv) Whether penalty can be levied on Noticee no. 1 & 2 in the matter?

31. Now I proceed to examine above issues.

A. Whether the instant proceedings can be continued in the light of the withdrawal of the suit by the parties before the High Court?

(i) I observe that the amount on which Service Tax has been demanded was deposited by the parties concerned in the High Court as per order of the High Court. I agree

with the contention of the Noticees that it was simply a deposit made by them in compliance of the orders of the High Court pending final orders of the High Court. As such, it cannot be said that this amount reflected the royalty payable by Noticees in the matter. The nature of this amount was a subject matter of decision by the Hon'ble Delhi High Court. The question of its taxability or otherwise could arise only after its nature was decided by the Hon'ble Court

(ii) Pursuant to the global patent license agreement dated 01.01.2018 entered into between M/s TLM Ericsson and M/s Micromax the suit before the High Court stands withdrawn. The High Court has dismissed the application as withdrawn vide orders dated 06.04.2018. The relevant extracts from the order of the High court are produced below:

Consequently, it is clarified that as CS (COMM) 155/2017 has been dismissed as withdrawn, all the interim orders including the orders dated 06.03.2013 and 12.11.2014 passed by this court stand vacated and the Custom Authorities shall not insist on a no objection certificate from the plaintiff, as and when any consignment is imported by the defendant no. 2.

(Emphasis supplied)

(iii) The deposits made earlier have also been ordered to be released to the respective parties vide order dated 05.02.2018 passed by the Hon'ble Delhi High Court Relevant extracts from the order are produced below:

Registry is directed to release the amounts lying with the Registry to the respective parties as stipulated in paragraphs 4, 5 and 8 of I.A.No. 1698/2018 (as reproduced hereinabove) as well as to release all bank guarantees furnished by the parties within a period of one week.

(Emphasis supplied)

(iv) As such, no amount stands paid with reference to the amount deposited under orders of the High Court and for which the instant Show Cause Notice has been issued demanding the Service Tax.

(v) I also observe that M/s Micromax have paid integrated GST to the tune of Rs. 17,45.68.359/- (Rupees Seventeen Crore Forty Five Lakhs Sixty Eight Thousand Three Huncired and Fifty Nine only) with reference to the royalty expenses under the reverse charge mechanism. The payment of this amount stands verified vide Directorate General of GST Intelligence letter no. 574/Central Excise/159/2014/Inv dated 24.08.2018. The correctness of payment of this amount is open to verification by the departmental authorities.

(vi) Thus I find that nothing survives from the amount deposited under orders of the High Court. The instant Show Cause Notice has been issued with reference to these deposits. The Noticee have deposited GST on the amount paid by them under royalty. As such, I find that there is no warrant for continuing these proceedings further.

32. In the light of paragraph 31 above I find that issues (ii), (iii) & (iv) framed under clause E under para 30 above have become infructuous. Thus, there is no need to discuss these issues or to continue these proceedings.

33. In view of above I pass the following order

ORDER

In light of dismissal of the suit as withdrawn, release of the amounts to the respective parties and payment of Rs. 17,45,68,359/0 (Rupees Seventeen Crore Forty Five Lakhs Sixty Eight Thousand Three Hundred and Fifty Nine only) by M/s Micromax Informatics Ltd, New Delhi. I drop the proceedings initiated by Show Cause Notice No. 574/Central Excise/ 159/2014/Inv dated 27.03.2017 against M/s Micromax Informatics Ltd, and Sh. Rahul Sharma."

7. The case of the Revenue before us is that the impugned order is not correct and proper and that service tax should have been confirmed on the amount of Rs.154,79,43,050/- paid by Micromax during the pendency of the suit as per the interim orders of the High Court. It is asserted that the amounts paid were not mere deposits and they were indeed royalty paid to Ericsson and, therefore, service tax should have been paid.

8. Learned counsel for Micromax vehemently supported the impugned order and asserted that it calls for no interference.

9. We have considered the submissions advanced by both sides.

10. Ericsson sued Micromax before the High Court. It was the

position of the Ericsson that Micromax had to pay royalty for using of its patent and IPR. The issue was not decided by the High Court. Only as an interim measure, the High Court directed certain payments to be made to Ericsson and certain amounts to be deposited with the High Court. The dispute was mutually settled and it was agreed and royalty of Rs.96 crores was paid by Micromax to Ericsson and any amounts paid before the Ericsson were agreed to be adjusted. Undoubtedly, the amount of Rs.96 crores which was paid by Micromax to Ericsson is an amount for using its patents and IPR. The Micromax paid IGST on this entire amount.

11. All the amounts which were paid during the pendency of the proceedings before the Delhi High Court either to Ericsson or deposited with the Delhi High Court by Micromax were merely deposits. The amounts paid to Ericsson or deposited in the High Court as per the interim orders cannot be called as royalty paid for the use of IPR. The entire royalty paid by Micromax to Ericsson for use of IPR was as per the settlement between the two parties Rs. 96 crores and nothing else. IGST was already paid on that amount.

11. Such being the case, there is no infirmity in the impugned order dropping the proceedings in pursuance of the SCN which was based on the interim payments made and not based on the royalty which was finally decided between the parties and paid.

12. In view of the above, we find no infirmity in the impugned order. We uphold the impugned order and dismiss the appeal filed by the Revenue.

[Order pronounced on **19/08/2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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