Real Image Media Technologies Private ... vs Cst Ch - Ii on 29 October, 2025

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 42106 of 2015
(Arising out of Order-in-Original No.CHN-SVTAX-002-COM-01 to 05-2015-16 date 30.04.2015 passed by Commissioner of Service Tax-II, Newry Towers, No.2054,-1, II Avenue, Anna Nagar, Chennai 600 040.)

M/s.Real Image Media Technologies
Private Limited .... Appellant
No.7B, III Street, Balaji Nagar,
Royapettah,
Chennai 600 014.

VERSUS

The Commissioner of GST &
Central Excise, ... Respondent

Chennai North Commissionerate, No.26/1, Mahathma Gandhi Road, Nungambakkam, Chennai 600 034.

APPEARANCE :

Shri R. Anish Kumar, Advocate for the Appellant Smt. O.M. Reena, Authorized Representative for the Respondent CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL) HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL) FINAL ORDER No.41182/2025 DATE OF HEARING : 05.08.2025 DATE OF DECISION :29.10.2025 Per: Shri P. Dinesha The Appellant-Assessee rendered sound recording and production services for which it collected fees from its customers. In the course of this business, under agreements with DTS Inc., a Corporation incorporated in the United States of America, the Appellant was appointed a non-exclusive provider of production services for films produced and released in India. For the periods under consideration, there was a Production Services Agreement. The Appellant was under, this Agreement, permitted to use the imported equipment of DTS to create DTS sound tracks and provide

> production services in accordance with DTS guidelines. As consideration under the Agreement, the Appellant paid a licence fee to DTS for every sound track so produced. The Agreement also permitted the use of some technology and some trade marks of DTS by the Appellant.

2.1 In these facts, the Adjudicating Authority formulated the issue for consideration to be whether the use of such trade marks and technology by the Appellant amounted to the import of intellectual property service and whether, consequently, these imports of services were liable to service tax on reverse charge basis.

2.2. The Adjudicating Authority held, in the affirmative. Taking note of the provisions of the Production Services Agreement, he found that the Appellant was required to pay an amount fixed by DTS for each licensed digital title or analogue title in relation to the use of the technology belonging to DTS. He noted that the Appellant was permitted to use DTA technology and equipment (described in the Agreement as loan equipment) for providing production services besides being permitted to use DTA trade marks on a non-exclusive non-transferrable basis. 2.3 In view of these findings, the Adjudicating Authority concluded that the primary purpose of the Agreement was the transfer or use of DTS technology, equipment and trade marks. He therefore rejected the contention of the Appellant that no technology was provided separately to it and that the same was incorporated in the DTS equipment. He found that the outward remittances to DTS were not in the nature of rental charges for the equipment imported, but were for the use of the technology and trade marks of DTS.

2.4 The Adjudicating Authority then considered the provisions of subsections (55a) and (55b) of Section 65 of the Finance Act, 1994 as well as the provisions of Section 65 (105) (zzr) thereof to conclude that intellectual property services were rendered by DTS to the Appellant. He concluded that this was an import of services which were liable to tax on reverse charge basis under Section 66A of the Finance Act, 1994 read with rule 2(1) (d) (iv) of the Service Tax Rules, 1994.

2.5 He thus confirmed the demands as follows :

> (a) The demand of service tax together with interest under Section 75 and penalty under Section 78 arising from a show cause notice dated 21.10.2008 in respect of the tax period from April 2006 to March 2008 by invoking the proviso to Section 73 (1) and 73 (2) of the Act.
>
> (b) The demand of service tax together with interest under Section 75 and penalty under Section 76 arising from show cause notices dated 19.10.2009 (for the period from April 2008 to March 2009), 03.09.2010 (April 2009 to March 2010), 01.08.2011 (April 2010 to March 2011) and 03.08.2012 (April 2011 to March 2012) by invoking Section 73 (1) and 73 (2) of the Act. Aggrieved by this order of the Adjudicating Authority, the present appeal has been filed by Appellant before this forum.

3. Heard Shri R. Anish Kumar, ld. Advocate for the Appellant and Smt. O.M. Reena, ld. Additional Commissioner for the Respondent.

4. While various contentions were advanced at the bar, we deem it sufficient to notice just one of these, advanced by learned counsel for the Appellant as this would, to our minds, be sufficient to answer the question before us. That contention is that only intellectual property registered in India or governed by Indian law will be liable to service tax. Ld. Counsel placed reliance on Asea Brown Boveri Ltd. Vs CCE & ST, LTU, Bangalore - 2017 (49) STR 209 (Tri.-Bang.) and Intas Pharmaceuticals Ltd. Vs CST Ahemedabad - 2024 (388) ELT 251 (Tri.-Ahmd.) in this context.

5. The basis of the levy by the Revenue is that the activities of DTS under the Agreement constitute "Intellectual Property Services" within the meaning of Section 65 (55b) of the Finance Act, 1994. That sub-section provides that to constitute "Intellectual Property Services," the actions contemplated therein must be in respect of "any intellectual property right". In turn, 'intellectual property right" is defined in Section 65 (55a) to mean "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."

6. The crucial words in sub-section (55a) are "under any law for the time being in force". In Intas Pharmaceuticals (supra), relying on the order of another co-ordinate Bench in Munjal Showa Ltd. Vs CCE & ST, Delhi (Gurgaon) - 2017 (5) G.S.T.L 145 (Tri.-Chan.), a co-ordinate Bench of this Tribunal has held 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 becomes taxable service". The principle laid down in these two orders is that to be taxed, the intellectual property rights should be registered under India law.

7. To the same effect is the order in Asea Brown Boveri Ltd. (supra). Paragraphs 6.6.2 and 6.6.3 therein read as follows :

> "6.6.2 The question now arises that what has been transferred under the respective agreements between the foreign group company and the appellant can be termed as right to intangible property which is either a trademark or design(s) or patent(s) or any other similar intangible property recognized as such under any existing Indian law (and when it is not a 'copyright' under Indian Copyright Law); and then only such a right would be covered under the definition of 'Intellectual Property Right' as defined in Section 65(55a) of the Finance Act, 1994. From the documents on record which are various licensing agreements and submissions of the letters written on behalf of General Manager of the foreign company to the appellant concerning these respective license agreements, which are on record, we find that they do not anywhere say that they are the trademarks, designs, patents or other similar intangible property which are covered by any Indian law on the subject. However it is clear that under these transfer agreements the appellants have been given the right to assemble or manufacture various contracted products and the right to use or otherwise dispose of such products which is evident from the Clause 2.1 of the

respective agreement(s). The contents of the Clause 2.1 of the License Agreement between ABB Sace S.p.A. Milano-Italy (Licensor) and the appellants (Licensee), are being reproduced below for making the scope of the subject agreement(s) more clear :-

"CLAUSE 2 - LICENCES 2.1. Scope Licensor grants Licensee under Information and Intellectual Property Rights (if any) :

(a) a non-exclusive right to assemble or manufacture the Contract Products in the Assembling or Manufacturing Territory;

(b) a non-exclusive right to use, sell or otherwise dispose of the Contract Products assembled/manufactured under this Agreement in the Sales Territory.

Export of Contract Products by Licensee to countries outside the Sales Territory is subject to the prior written approval of Licensor, always provided that Licensor's decision shall comply with applicable compulsory legislation."

6.6.3 Important point here is whatever is under transfer by the foreign companies under the respective licenses, - 'is the said subject matter a right to an intangible property and is 'the said intangible property' a trademark or design or a patent or any other similar intangible property under an Indian law? Here we do not find any evidence to categorically hold that the technical information or technical know-how or the designs or patents or the documents, etc. which are the said subject matters, have been transferred are covered under any of the Indian laws namely Indian Trade Marks Act or under Trade and Merchandise Marks Act or under Indian Patent Act, 1970 or Designs Act, 2000 or any such related law."

8. Here too, there have been assertions both before us and before the Adjudicating Authority on behalf of the Appellant that the Intellectual Property in question is not registered under the Indian law. We find nothing on the record to suggest the contrary. There is a statement in the order of the Adjudicating Authority as follows : "The said IPRs are very much covered under the Indian law in force, in as much as the use / transfer of technology is covered under 'the Patent Act, 1971' and the trademarks are covered under the 'Trade Marks Act, 1999". This statement is bald and entirely unsupported by evidence. It is also curious that the Adjudicating Authority considered the use or transfer of technology to be covered by the Patent Act without commenting on the registration on the patent itself under that Act. This also seems to be a finding merely to overcome the submission of the Appellant considering that no manner of enquiry was conducted by the Adjudicating Authority to reach this finding. Reaching a well-founded finding on this point is not difficult in as much as registration under Indian Intellectual Property statues will be evidenced by certificates or other documents issued under the appropriate statues. There was no endeavour on the part of the Revenue to produce such evidence or even to call for such evidence from the Appellant.

9. We therefore find that the intellectual property in question was not registered in India. Respectfully following the orders of the co-ordinate Benches on this point, we hold that they

therefore do not constitute 'intellectual property rights' within the meaning of Section 65 (55a) of the Finance Act, 1994. Consequently, the related services are not 'intellectual property services' within the meaning of Section 65 (55b) of the Finance Act, 1994. The levy cannot be upheld.

10. In view of our conclusions on this point, the other arguments advanced do not require particular adjudication.

11. In the result, the impugned order is set aside. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 29.10.2025) (VASA SESHAGIRI RAO) (P. DINESHA) Member (Technical) Member (Judicial) gs