

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87589 of 2013

(Arising out of Order-in-Original No. 31-32/P-III/ST/COMMR/2012-13 dated 25.03.2013 passed by the Commissioner of Central Excise & Service Tax, Pune-III Commissionerate.)

M/s Suzlon Energy Ltd

One Earth Opposite Margarpatta City,
Hadapsar, Pune-411 028.

....Appellant

Versus

**Commissioner of Custom, Excise and
Service Tax, Pune-III**

ICE House, 41-A, Sasson Road,
Opposite Wadia College,
Pune-411 001.

.... Respondent

And

Service Tax Appeal No. 87590 of 2013

(Arising out of Order-in-Original No. 31-32/P-III/ST/COMMR/2012-13 dated 25.03.2013 passed by the Commissioner of Central Excise & Service Tax, Pune-III Commissionerate)

M/s Suzlon Energy Ltd

One Earth Opposite Margarpatta City,
Hadapsar, Pune-411 028.

....Appellant

Versus

**Commissioner of Custom, Excise and
Service Tax, Pune-III**

ICE House, 41-A, Sasson Road,
Opposite Wadia College,
Pune-411 001.

.... Respondent

APPEARANCE:

Shri V. Sridharan, Sr. Advocate a/w Shri Vinay Jain and Shri Aniket Barve,
Advocates for the Appellant

Shri Manish Mohan (Commissioner), Authorized Representative for the
Respondent.

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86907-86908/2025

Date of Hearing: 27.06.2025

Date of Decision: 10.12.2025

Per: S.K. MOHANTY

Brief facts of the case, leading to these appeals, are summarized herein below:

1.2 The appellants herein are engaged *inter alia*, in the manufacture of Wind Turbine Generators (WTGs). For facilitating manufacture of WTGs and components thereof in India, the appellants had entered into 'Product Development and Purchase Agreements' with three of their sister concerns viz., M/s. Suzlon Energy GmbH, Germany, M/s. AE Rotor Holdings BV, Netherlands and M/s. Suzlon Blade Technology BV, Netherlands (herein after, collectively referred to as 'Group Companies'). The agreements were entered into by the appellants for purchase of technical know-how from the group companies, which were to be used for the manufacture of WTGs by the appellants in India. The details of the agreements are placed in the form of a table, as below:

Name of party	Date of Agreement	Scope under the agreement
Suzlon Energy GmbH, Germany	01.04.2007	Import of Intellectual Property Rights / technical know-how in respect of all models of WTGs to be manufactured in India consisting of designs and development of all models.
AE Rotor Holding BV, Netherlands	01.08.2008	Import of Intellectual Property Rights / technical know-how in respect of moulds and plugs for rotor blades, nacelle cover and nose cone of WTG to be manufactured in India consisting of designs and development of all models.
Suzlon Blade Technology BV, Netherlands	01.10.2009	Import of Intellectual Property Rights / technical know-how in respect of moulds and plugs for rotor blades, nacelle cover and nose cone of WTG to be manufactured in India consisting of designs and development of all models.

1.3 The appellants had imported the technical know-how in the form of designs & drawings and filed the Bills of Entry (B/Es) with the customs authorities, claiming the classification under CTI 49119920. The said imported goods were assessed at 'Nil' rate of customs duty in terms of Notification Nos. 21/2002-Cus., dated 01.03.2002 (for BCD) and 20/2006-Cus., dated 01.03.2006 (for CVD). The appellants had paid Research & Development Cess (R & D Cess) @ 5% of the

value of the imported products. The B/Es were assessed by the Customs department, and the imported goods were permitted clearance for home consumption. After clearance of goods from the customs' custody, an excise audit was conducted by the department in the business premises of the appellants for verification of the records for the period from 01.04.2007 to 30.09.2010. On scrutinization of the records maintained by the appellants, the audit wing of the department had opined that the products imported by the appellants are in the nature of Engineering Drawing & Designs and thus, are classifiable under the taxable category of 'Design Services'. The audit wing had asserted that the appellants were liable to pay service tax, net of R & D Cess, on the basis of reverse charge mechanism.

1.4 On the above backdrop of the issue, the department had initiated show cause proceedings against the appellants, seeking for recovery of the service tax demand under the category of 'Design Services', defined under Section 65(36b) read with Section 65(105)(zzzzd) of the Finance Act, 1994 (for short, referred to as 'the Act of 1994'). The Show Cause Notice (SCN) dated 15.12.2011 for the disputed period from 01.06.2007 to 30.09.2010, was issued by invoking the extended period of limitation, in terms of the *proviso* clause contained in sub-section (1) of Section 73 of the Act of 1944. Further, another SCN dated 20.04.2012 was also issued by the department under Section 73(1) *ibid*, seeking recovery of the service tax demand for the period from 01.10.2010 to 30.09.2011. The said SCNs were issued by the department, alleging that the products imported by the appellants were in the nature of engineering drawings and designs and therefore, should appropriately be classifiable under the taxable service category of 'design services', defined under the Act of 1994 for the period w.e.f. 01.06.2007. The break-up of the proposed demand of service tax in the SCNs are as under:

Party	Invoiced Amount (Rs.)	Service Tax (Rs.)
Suzlon Energy GmbH, Germany	146,71,23,396/-	16,10,28,945/-
AE Rotor Holding BV, Netherlands	7,07,13,508/-	87,40,190/-
Suzlon Blade Technology BV, Netherlands	46,75,63,413/-	4,81,59,032/-
Total	200,54,00,317/-	21,79,28,167/-

1.5 The matter arising out of the above SCNs dated 15.12.2011 and 20.04.2012 were adjudicated by the learned Commissioner, Central Excise & Service Tax, Pune-III Commissionerate, vide the Order-in-Original No. 31-32/P-III/ST/COMMR/2012-13 dated 25.03.2013 (for short, referred to as 'the impugned order'), wherein the proposals made therein for recovery of the service tax demand along with interest were confirmed in entirety. Besides, the impugned order has also imposed penalties under Section 77 and 78 of the Act of 1994 on the appellants. In support of confirmation of the adjudged demands on the appellants, the learned adjudicating authority has recorded the following findings in the impugned order:

- (i) The noticee's argument that as per the mandates under the Design Act, 2000, the concept of 'design' should be confined only to the aspects of shapes, conception, pattern etc., which is appealing to human eye; cannot be accepted, inasmuch as the phrase 'design' defined in the said statute has not been identified or borrowed in the definition provided in the service tax statute for the purpose of consideration as 'taxable service', and therefore, the definition of 'design services' provided in the Act of 1994 is an inclusive one and cannot be used in the restrictive sense, to confine itself to merely supply of design and thus, it covers all services relating to the designing of specific items, including consumer and industrial products.
- (ii) The activities of the noticee cannot be classified as 'IPR service', defined under Section 65(55a) of the Act of 1994, inasmuch as right to intangible property of designs are outside the purview of any Indian laws and that the technical know-how, in the case in hand, was patented under the German laws. In this context, the impugned order has referred to the Circular No. 96/7/2007-ST dated 23.08.2007 issued by the CBEC, clarifying the meaning of the phrase '*under any other law for the time being in force*'.
- (iii) No documentary evidences were submitted by the noticee to demonstrate that the transaction in question, involves one time transfer of technical know-how on permanent basis and

therefore, the claim that the activities should fall under the 'IPR services', cannot be acceded to.

- (iv) The benefit of exemption from payment of R&D Cess, as per the Notification No.17/2004-S.T., dated 10.09.2004 should not be available to the noticee, owing to the reason that such benefit has not been extended to the 'Design Service', as per the service tax statute.

1.6 Being dis-satisfied with the impugned order dated 25.03.2013, the appellants had preferred appeals before the Tribunal, which were disposed of by the Tribunal vide Final Order No. A/86250-86251/2018 dated 02.05.2018, in setting-aside the impugned order and allowing the appeals in favour of the appellants. In support of allowing the appeals, the Tribunal had held that import of 'Engineering Drawings & Designs' tantamount to 'import of goods' and therefore, the same cannot be treated as 'service' for the purpose of levy of service tax thereon under the reverse charge mechanism.

1.7 Feeling aggrieved with the order dated 02.05.2018 of the Tribunal, Revenue had filed Civil Appeal before the Hon'ble Supreme Court, which was disposed of vide judgment dated 10.04.2023 by way of remanding the matter to the Tribunal, for consideration of the issues framed therein. The matter was remanded back to the Tribunal for examination of the appeals on the following issues:

- (i) *Whether the services, (if any), in context with importation of various models of "Engineering Design & Drawings" rendered by a foreign entity, would fall within the purview of "design services", defined under Section 65(35b) read with Section 65(105)(zzzd) of the Act of 1994, for the purpose of manufacturing of Wind Turbine Generator by the appellants?*
- (ii) *Whether the department was justified in invoking the extended period of limitation?*

2. Pursuant to the remand directions contained in the above judgement dated 10.04.2023 of the Hon'ble Supreme Court, these appeals are being taken up for hearing, for addressing the above two issues, based on the factual matrix of the case vis-à-vis the statutory provisions, dealing with such factual background.

2.1 Shri V. Sridharan, learned Senior Advocate appearing for the appellants submitted that the transaction made as per the agreements entered into between the appellants and their group companies involve outright sale/purchase for transfer of technical know-how and does not involve provision of any design service and therefore, the adjudged demands confirmed under the 'design services' cannot be sustained. He further submitted that 'Design & Drawings' imported by the appellants were used for manufacturing of Wind Turbines, which possesses only functional utility and that since such products do not have the aesthetic value, the same should not fall under the scope and ambit of 'Design Services', as per clause (zzzzd) of Section 65 (105) of the Act of 1994. In support of such contentions, learned Senior Counsel has referred to and relied upon the relevant statutory provisions contained in the Design Act, 2000; Copyright Act, 1957; Patent Act, 1970; IPR laws and various notifications/ circulars issued by the Central Government.

2.2 With regard to the limitation aspect, learned Senior Advocate submitted that the extended period of limitation cannot be invoked for issuance of the show cause notices. In this context, he has pleaded that the issue involved in the present dispute pertains to interpretation of complex legal provisions; that there was no suppression or mis-statement of facts, inasmuch as the entire importation activities were within the knowledge of the department, when the B/Es were filed for assessment and clearance of the same; and that based on the records maintained by the appellants, the excise department had conducted the audit for the alleged findings that the appellants should be liable for payment of service tax on the design services provided by them.

2.3 To strengthen his argument that the activities undertaken by the appellants, pursuant to the agreements entered with the group

companies cannot be categorized as a taxable service under the taxable head of 'design services' and that the extended period of limitation cannot be invoked, in the facts and in the circumstances of the case, learned Senior Advocate has relied upon the following judgements delivered by the Judicial forum:

- (i) *M/s. Mitsui & Co. Ltd. Vs. Commissioner of Central Excise & Service Tax, Jamshedpur* - 2010 (18) S.T.R. 632 (Tri. – Kolkata)
- (ii) *Mitsui & Co. Ltd. Versus Commissioner of Central Excise & Service Tax, Jamshedpur* - 2012 (28) S.T.R. 491 (Tri. – Kolkata)
- (iii) *M/s. Solitz Corporation Versus CST., New Delhi* - 2009 (14) S.T.R. 642 (Tri. – Del.)
- (iv) *Associated Cement Companies Ltd. Versus CC* - 2001 (128) E.L.T. 21 (SC)
- (v) *M/s. Bharat Aluminum Company Ltd Vs. Commissioner of Central Excise, Raipur* - 2017-TIOL-1983-CESTAT-DEL
- (vi) *Commissioner of Central Excise, Pune-II Vs. Kirloskar Brothers LD* - 2013-TIOL-1456-CESTAT-MUM
- (vii) *V.D. M. Rm. M. Rm. Muthiah Chettiar V. Commissioner of Income Tax* - [1969] 74 ITR 183 (SC)
- (viii) *The Commissioner, Central Excise and Customs and another versus M/s Reliance Industries Ltd* - 2023 (7) TMI 196 – Supreme Court
- (ix) *AAK India Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Raigad* - Final Order No. A/85716/2025 dated 01.04.2025.
- (x) *Commissioner of Central Excise, Delhi-III versus Microtek Forgings* - 2016 (341) E.L.T. 218 (P & H)
- (xi) *M/s. HPL Electric and Power Pvt. Ltd. versus CCE, Delhi-I* - 2018 (10) TMI 961 – CESTAT Chandigarh
- (xii) *M/s. Star Battery Limited versus Commissioner of Central Excise, Kolkata-IV Commissionerate* - 2024 (9) TMI 835 – CESTAT Kolkata
- (xiii) *Commissioner of C. Ex., Thane-II versus Bright Brothers Ltd.* - 2015 (322) E.L.T. 110 (Bom.)
- (xiv) *C.C., C.E. & S.T., Bangalore (Adjudication) versus Northern Operating Systems Pvt. Ltd.* - 2022 (61) G.S.T.L. 129 (S.C.)
- (xv) *Commissioner, Central Excise & Customs versus M/s. Larsen & Toubro Ltd. and Others* - 2015 (8) TMI 749 – Supreme Court

(xvi) Nizam Sugar Factory versus Collector of Central Excise, AP - 2008 (9) S.T.R 314 (SC)

(xvii) *Commissioner of Service Tax, Delhi Vs. Quick heal technologies Limited* – 2022 (63) G.S.T.L. 385 (S.C.)

(xviii) *Narinder S. Chadda and Others Vs. Municipal Corporation of Greater Mumbai & Others* – (2014) 15 Supreme Court Cases 689.

3. On the other hand, Shri Manish Mohan, learned Commissioner (AR) appearing for the Revenue has reiterated the findings recorded in the impugned order and further submitted that there is no ambiguity in reading of the definition of 'Design Services', defined in the Act of 1994, and that since the appellant's activities were squarely falling under the scope and ambit of such definition clause, they were liable to pay service tax under the reverse charge mechanism, as the recipient of such taxable service in India. Therefore, he pleaded that confirmation of the adjudged demands on the appellants is proper/justified and is in conformity with the statutory provisions.

4. Heard Shri V. Sridharan, learned Senior Advocate for the appellants, Shri Manish Mohan, learned AR for Revenue and examined the case records, including the written note of submissions filed by both sides.

5.1 The agreements entered between the appellants and their group companies, as in paragraph 1.2 above, are on similar lines. Since the impugned order has referred to the agreement dated 01.04.2007 entered with M/s. Suzlon GmbH, Germany, certain clauses of the said agreement, relevant for consideration of the present dispute, are re-produced below:

"1. SEL (Suzlon Energy Ltd.) is a public limited Company engaged in the business of manufacturing and marketing of Wind Turbine Generators ("WTGs"). SEG (Suzlon Energy GmbH) is engaged in the business of developing Product(s) in the field of WTGs.

2. SEL wants to **purchase Product (s) for all models of WTGs to be manufactured in India** from a suitable developer having experience in this regard. **SEG has sufficient infrastructure and technological capability and adequate professionals to develop the Product(s).**

3. SEG agrees to **sell and transfer to SEL, all of SEG's rights (including Intellectual Property Rights), title and interest in and to Product(s) and any part thereof for the purpose of manufacturing WTGs restricted to the Indian Territory only.** In addition, SEG agrees to assign to SEL the right to file for own without restriction, patents, trademarks, trade names and copyrights with respect thereto for the territory of India.

.....

1.10. "Product(s)" includes;

1.10.1 **design and development of all models** of rated capacity geared WTGs **together with all related and pertinent component** (hereof and therein required);

1.10.2 design and development of "Suzlon Flexislip 'System'" together with all related and pertinent components thereof and therein required;

1.10.3 all and any Produces) that is developed by SEG conceived (whether or not actually conceived during regular business hours), discovered, or made by SEG and its agents and employees during the course of performing its obligations under the Agreement;

1.10.4 **documentation including material and documents containing studies, planning activities, manufacturing process details in respect of above;**

1.10.5 **all modifications made to the above, from time to time, and all other improvements developed and incorporated within the above;**

1.10.6 Intellectual Property-and Intellectual Property Rights relating thereto in so far it belongs to German invention Law.

.....

2. Representations and Warranties of and acknowledgement by SEG

2.1 SEG hereby represents and warrants that:

.....

2.1.4 **As between SEL and SEG, all rights (including Intellectual Property Rights), title or interest in and to any and all Produces), for the purpose of manufacturing WTGs restricted to the Indian Territory only, whether or not patentable or registrable under any statute for the time being in force, shall be transferred from SEG to SEL.**

.....

6. Pricing and Payments:

6.1 Parties shall mutually discuss the consideration for the Product(s) to be sold by SEG to SEL keeping in view the arm's length price as per transfer pricing requirements of respective countries. As per both the parties' transfer pricing policy, the consideration shall be arrived by adding 5%-10% profit to the cost price of the Product(s). Costs price will include all direct and indirect costs incurred by SEG in producing the Products, including (but not limited to) direct costs such as salaries, travel and external consultants costs as well as indirect allocated costs such as Managing Director, administration, office and Workshop

rental, costs of financing work in progress etc, such allocations to be made to each Product produced using a recognized cost accounting methodology. Such payment shall be subject to necessary approval, if any to the extent required from time to time, of Reserve Bank of India and/or Government of India.

The consideration shall be for the sale of Product(s) alongwith all rights (including Intellectual Property Rights), title or interest in and to any and all Product(s) for the purpose of manufacturing WTGs restricted to the Indian Territory only. The amount will be worked out on the basis of estimates of various cost parameters. In the event of any increase or decrease in the costs by 10%, the same shall be reviewed/revised as per the details of actual costs provided monthly by SEG, which shall be supported with proper justification.

.....

7. Rights in Respect of the Product(s)

7.1 SEG shall **irrevocably and exclusively transfer all rights (including intellectual Property Rights), title or interest in and to any and all the Product(s) developed by SEG as far as they relate to the Indian territory,** to SEL for the purpose of manufacturing WTGs restricted to the Indian Territory only, at the time of raising invoices for the price as agreed in Para 6 above.

7.2 SEL shall become the **absolute owner of the Product(s) along with all rights (including Intellectual Property Rights), title or interest therein, at the time of transfer by SEG.** SEL shall further have the right to license, sell and assign the rights (including Intellectual Property Rights), title or interest in the Product(s) to its SEG in India."

7.3 **SEG retains all rights** (including Intellectual Property Rights thereto), title or interest in and to any and all the Produces) developed by it for the purpose of manufacturing WTGs **outside the Indian Territory.**"

...Emphasis Supplied

5.2 On careful reading of the contents in the above agreement dated 01.04.2007, it transpires that there was a consensus between the parties to the agreement that the products(s) in question would be sold and the rights, title and interest thereon would be transferred from the overseas seller (group entity) to the appellants (clauses 2 and 3); that the transaction is of one time transfer of technical know-how/patent for the Indian Territory (clause 7.1); that the appellants becomes absolute owner of the products for the Indian Territory and that they can license, sell and assign these rights (clause 7.2); and that the appellants get an absolute title over the designs for Indian Territory (clause 7.3). Keeping the said substances of the agreement in mind, now the question arises for consideration is whether, the

activities would fall under the scope and ambit of the definition of 'Design Services' as defined under Section 65(36b) read with 65(105)(zzzzd) of the Act of 1994 or otherwise. The said statutory provisions are quoted herein below:

"Section 65. Definitions. — In this Chapter, unless the context otherwise requires, -

(36b) "design services" includes services provided in relation to designing of furniture, consumer products, industrial products, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models;

(105) "taxable service" means any service provided or to be provided,-

.....

(zzzzd) to any person, by any other person in relation to design services, but does not include service provided by —
(i) an interior decorator referred to in sub-clause (q); and
(ii) a fashion designer in relation to fashion designing referred to in sub-clause (zv),
and the term "service provider" shall be construed accordingly;"

The Finance Bill, 2007 has widened the service tax base and in context with the 'design services', the Tax Research Unit (TRU) in the Ministry of Finance, vide Budget Circular No. 334/1/2007-TRU dated 28.02.2007 has clarified as under:

"6.7 Design services [section 65(105)(zzzzd)]: *Services in relation to conceptualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings are leviable to service tax under fashion designing service [section 65(105)(zv)] and services in relation to planning, design or beautification of spaces is leviable to service tax under interior decorator's service [section 65(105)(q)]. Design services, other than the above specifically mentioned taxable services, like furniture design, aesthetic design, consumer or industrial products, logos, packaging, production of three dimensional models, etc. will be taxable under this category."*

5.3 The incidence of levy of service tax is on the provision of a taxable service. In order to constitute a 'service', there must be involvement of three essential ingredients, i.e., a service provider, a service receiver and there should be a consideration for provision of the service. In the case in hand, the appellants had not engaged either of their group companies to design the industrial products according to their specifications. If that be the case, then the activities of designing would fall under the category of design

services, defined under the Act of 1994. In this case, the agreement clearly provides that the products in question would be sold by the foreign entity to the appellants in India. Thus, the relationship existed between the parties were of 'seller and buyer' and not that of 'service provider and service receiver'. Further, there is no element of 'consideration' for provision of the design service alone, which would be evident from clause 6 in the agreement dated 01.04.2007. In the said clause, under title 'Pricing and Payments', it has been specifically mentioned that the selling price of the product(s) to be arrived at by adding 5%-10% profit to the cost price (i.e., direct and indirect cost). Over and above carrying out the activities of designing as per the agreement, the overseas entity had also performed the other activities, for which the cost price was determined by them, which was paid by the appellants through approved banking channels. Since, there is no specific price provided for in the agreement with regard to design services, in our considered view, artificial bifurcation of the price, in the impugned order towards the design service would not stand the test of law, inasmuch as there is no mechanism provided in the statute for bifurcation of the amount towards the know-how and the components of drawings, designs alleged to be the design services.

5.4 On careful reading of the statutory provisions, defining the term 'design services' and the budget circular issued by the TRU, it would reveal that such services, wherever provided under the instructions of the service recipient or as per his requirements, resulting into creation of a desired design of a product, then such services should fall within the ambit of design service. To illustrate such situation, we may take an example of two persons namely, 'A' (service recipient) and 'B' (service provider); 'A' assigns the job of designing a particular industrial product as per his requirement to 'B', which in turn is carried out by 'B' for completing the assigned task for an agreed upon consideration, then such transaction would fall under the taxable category of 'design services', defined in the Act of 1994. On the contrary, in case of outright transfer of a design, which has already been created by the author, in favour of another person, then it would not be covered under the scope of the 'design services' and it would be categorized as a service under different head(s). To

5.6 In the case in hand, as per the contents in the agreements, the appellants had purchased all Intellectual Property Rights (IPRs), consisting of the "Engineering and Drawing Designs" from Group Companies for the purpose of manufacturing of WTGs and their components in the Indian territory. Thus, the ownership and interest in the IPRs for manufacture of WTGs including the "Engineering and Drawing Designs", vested exclusively with the appellants for exploiting the said IPRs in Indian region. The agreement also provides that the appellants may further license, sell and assign these IPRs to others. Further, it also transpires that M/s. Suzlon Energy GmbH, Germany had also applied for about 75 patent registrations under German laws and had already been granted patent registrations in respect of some of the applications.

5.7 In view of the foregoing discussions, we are of the considered opinion that the transaction in question, arising out of the agreements made by the appellants with their group companies, should not be categorized as a taxable service under the head 'design services'. On careful analysis of the contents in the agreement vis-à-vis the statutory provisions, we express our views that such transactions should appropriately be considered as IPR related services. The Intellectual Property Right service has also been considered in the service tax statute, as a taxable service, as the definition provided under Sections 65(55a), (55b) read with Section 65(105)(zzr) of the Act of 1994. However, the transaction in question, should not be exigible to service tax, firstly for the reason that the right to intellectual property was permanently transferred to the appellants and that on such transfer, the person(s) i.e., the group companies selling these rights, no longer remain as the holder of such intellectual property rights, so as to come within the purview of such taxable service; secondly, the IPR in question was not covered under any Indian law in force. Both the above instances of not conforming to the taxable category under IPR service have also been dealt with by TRU in Circular No. B2/8/2004-TRU dated 10.09.2004. The relevant portion of the said circular is quoted herein below:

"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.

9.2 A permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a 'holder of intellectual property right' so as to come under the purview of taxable service. Thus, there would not be any service tax on permanent transfer of IPRs."

6.1 For confirmation of the adjudged demands on the appellants, the service tax department had issued the SCN dated 15.12.2011 for the period 06.06.2007 to 30.09.2011 and the SCN dated 20.04.2012 for the period from 01.10.2010 to 30.09.2011. Both the SCNs were issued under the provisions of sub-section (1) of Section 73 of the Act of 1994. The said statutory provision deals with the situation of recovery of non-levy or short-levy of service tax, which is quoted below:

"Section 73. (1) *Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*

Provided *that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—*

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,*

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words one year, the words "five years" had been substituted."

6.2 On reading of the above quoted statutory provision, it reveals that the Central Excise Officer is empowered to issue the show cause notice on the person, chargeable with the service tax, calling upon him to show cause, as to why he should not pay the amount specified in the notice. The time frame for issuance of the SCN under normal circumstances has been prescribed as 'one year' from the relevant date. However, the period of one year is extendable for a period upto 'five years', in exceptional circumstances, where the ingredients itemized in the proviso clause thereto are present. In other words, issuance of SCN within the normal period of one year is the 'rule' and invocation of the extended period upto five years is the 'exception'. In such circumstances, the onus entirely lies with the maker of the SCN to prove that the assessee was in fact, indulged into the activities mentioned in the *proviso* clause.

6.3 Insofar as the first SCN is concerned, the same was issued by the department on 15.12.2011, seeking recovery of alleged non-paid service tax amount for the period from 01.06.2007 to 30.09.2011. Since the SCN was issued beyond the normal period of one year from the relevant date, the department had issued the same by invoking the extended period of limitation, provided in the proviso appended to Section 73(1) of the Act of 1994. Now the question arises before the Tribunal for consideration is as to whether, the extended period of limitation can be invoked for issuance of the SCN, in the facts and in the circumstances involved in the case.

6.4 The terminology itemized in the proviso clause to Section 73(1) of the Act of 1994 have not been defined in the service tax statute and as such, to understand the true meaning and purport, we may refer to the meaning assigned in the dictionaries. The phrase '*fraud*', according to Oxford Reference, is '*deliberate dishonesty to gain an unfair advantage, usually financial, through wrongful means, upon involving misrepresentation or deceit.*' The Cambridge Dictionary has assigned the meaning of '*collusion*' as '*agreement between people to act together secretly or illegally in order to deceive or cheat some one.*' The phrase '*wilful mis-statement*' under the CGST Act, 2017 refers to a '*deliberate and intentional act of providing false or misleading information, with a specific intent of evading taxes etc.*

Similarly, the CGST Act also refers to the term 'suppression of facts', to mean '*the deliberate non-declaration of information, that a tax payer is legally required to provide, with the intention to evade tax.*'

7. The wordings used in the proviso clause to sub-section (1) of Section 73 of the Act of 1994 viz., fraud, collusion, wilful mis-statement, suppression of facts etc., have been adequately dealt by the Hon'ble Supreme Court in context with the Central Excise and Customs statutes, which are *pari materia* to the Service Tax matters under the Act of 1994. Few of the judgements, dealing with the factual matrix vis-à-vis the applicability of the said phrases, are referred to in the following sub-paragraphs:

7.1. *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay - 1995 (78) E.L.T. 401 (S.C.)*

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

7.2 *Cosmic Dye Chemical v. Collector of Central Excise, Bombay 1995 (75) E.L.T. 721 (S.C.)*

"5. The main limb of Section 11A provides limitation of six months. In cases, where the duty is not levied or paid or short-levied or short-paid or erroneously refunded, it can be recovered by the appropriate officer within six months from the relevant date. (The expression 'relevant date' is defined in the Section itself). But the said period of six months gets extended to five years where such non-levy, short levy, etc., is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules with intent to evade payment of duty....."

6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding

the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful."

7.3 Aban Loyd Chiles Offshore Ltd. Vs. Commissioner of Customs, Maharashtra – 2006 (200) E.L.T. 370 (S.C.)

"20. The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful mis-statement or suppression of facts. So far as 'mis-statement or suppression of facts' are concerned, they are qualified by the word "willful". The word "willful" preceding the words "mis-statement or suppression of facts" clearly spells out that there has to be an intention on the part of the assessee to evade the duty."

8.1 In the case of the appellants, with regard to importation of drawings and designs, the Tribunal in the order dated 02.05.2018 has held that the same are in the nature of goods and no service tax is leviable, to consider the transaction as a taxable service. However, the said order was set aside by the Hon'ble Supreme Court vide judgement dated 10.04.2023 and the views expressed by the Tribunal were overturned. Further, with regard to import of designs declaring the same as goods, this Tribunal in the case of Solitz Corporation (supra) had also held that the same should not be subjected to the levy of service tax. Since the views of the Tribunal in the case of the appellants were reversed by the Hon'ble Apex Court, we are of the considered opinion, that on the part of the appellants there seems to be a reasonable doubt for consideration of the transactions as either goods or services. Thus, under such circumstances, the charges of fraud, collusion, wilful mis-statement, suppression of facts etc., cannot be levelled against the appellants, justifying invocation of extended period of limitation.

8.2 Further, it is not the case of Revenue that they gathered the information regarding provision of the taxable service by the appellants from any outside sources. Rather, it transpires from the case records that as a registered assessee under the Central Excise statute, the appellants had duly complied with the statutory requirements, which could be evident from the fact that no separate

proceedings were initiated by the department, with the allegation of contravention of the provisions of law. Since, based on the books of accounts/documents maintained by the appellants, the audit was conducted by the department and the impugned proceedings were initiated, seeking recovery of the service tax demands, the same, if at all tenable, should be confined to the normal period and the extended period of limitation cannot be invoked, with the allegation that the appellants had suppressed the material facts from the department.

8.3 On importation of the technical know-how in the form of drawings & designs, the appellants had complied with the requirements under the customs statute and based on the import documents, which are the part of the present proceedings, the customs authorities had cleared the consignments for home consumption. Thus, it cannot be said that the jurisdictional Central Excise authorities were unaware about the modus operandi adopted by the appellants in importation of the technical know-how for use in the intended purpose. In view of the fact that both the appellants and the officers in the customs department had entertained the belief that the subject imports should be considered as goods, which was also endorsed by the Tribunal in the order dated 02.05.2018, it cannot be said that the appellants had contravened the statutory provisions, with the intention to evade payment of service tax. The appellants in this case were of the belief that the technical know-how imported by them would be classified as IPR service, and accordingly had paid the R&D Cess on such import. This particular aspect has been discussed in the impugned order at paragraph 27. The learned adjudicating authority has recorded that the technical know-how, on which R&D Cess was paid by the appellants, cannot be considered for the benefit of exemption under Notification No.17/2004-S.T. dated 10.09.2004, because the exemption thereunder has not been extended to the design service. It would be evident from the fact of payment of R&D Cess that the appellants had reasonably believed that the know-how should fall under the IPR service. Thus, non-payment of service tax on alleged design service cannot give rise to the conclusion that such non-payment was owing to the reason of fraud, collusion, suppression, etc., Thus, we are of the considered

view that the ingredients mentioned in the proviso clause to Section 73(1) of the Act of 1994 are absent and as such, the adjudged demands cannot be fastened on the appellants, by invoking the extended period of limitation.

8.4 The learned adjudicating authority at paragraph 29 in the impugned order has discussed the issue regarding invocation of extended period of limitation. In support of issuance of the SCN beyond the normal period, she has held that the appellants, being well versed with the law and procedures relating to service tax, were required to discharge the service tax liability, as and when the design service was brought into the service tax net. With the said observations, she has concluded that non-payment of service tax by the appellants was owing to the reason that they had intended to defraud the government revenue, by adopting to fraudulent tactics. However, on careful reading of the relevant paragraphs in the impugned order, we find that no iota of evidence was brought on record to prove that the appellants were really indulged into the activities of fraud, suppression etc., with the intention of non-payment of service tax on the alleged taxable service. On the contrary, the learned adjudicating authority in the other paragraphs of the impugned order has specifically recorded the defense submissions made by the appellants, in support of their stand that importation of technical know-how from their group companies cannot be considered as a service, for payment of service tax under reverse charge mechanism. Therefore, we are of the considered view that the onus to prove the indulgence of the appellants into the fraudulent activities, having the intention to evade the government revenue, which lies with the department, has not at all been substantiated. Accordingly, the extended period of limitation cannot be invoked for confirmation of the adjudged demands on the appellants. Similarly, penalties imposed on the appellants under Section 78 of the Act of 1994 cannot also be sustained, in the absence of any evidence, being adduced by the adjudicator that the appellants had really indulged into the activities of fraud, collusion etc., or had contravened the statutory provisions, with the intent to evade payment of service tax.

9. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants, both on the grounds of merits as well as limitation.

(Order pronounced in the open court on 10.12.2025)

**(S.K. MOHANTY)
MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)
MEMBER (TECHNICAL)**

Sm