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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH : MUMBAI  
3RD, 4TH, & 5TH FLOOR, JAI CENTRE, 34 P. D'MELLO ROAD,  
POONA STREET, MASJID BUNDER (E), MUMBAI- 400 009.

From : The Assistant Registrar, CESTAT, MUMBAI.

Dated: 14/01/2019

File No.: ST/85777/2013

In the matter of :-

**Jsw Salav (Steel) Ltd.**  
Village - Salav Post - RevdandaRaigad Pin  
Code - 402202

(Appellant)

Vs

**CCE RAIGAD**  
UTPAD SHULK BHAVAN PLOT NO.1  
SECTOR - 17 KHANDESHWARNAVI  
MUMBAI Pin Code - 410206

(Respondent)

I am directed to transmit herewith a certified copy of Order No. : A/85054/2019 dated : 11/01/2019 passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

(Manas Kumar Sinha),  
Assistant Registrar,  
Service Tax Appeal Branch  
CESTAT - MUMBAI

Copy To :-

1. Commissioner Customs & Central Excise (Appeal) :Nil
2. O/o Commissioner (AR) CESTAT, Mumbai
3. CESTAT Bar Association, Mumbai
4. CESTAT Bar Association, New Delhi
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6. M/s Centax Publications Pvt. Ltd.
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9. LawCrux Advisors Pvt. Ltd., Faridabad
10. The ICFAI Society, Hyderabad
11. MS Knowledge Processing Pvt. Ltd.
12. ~~TAXON~~GO Pvt. Ltd.
13. ~~Advocate~~<sup>(3)</sup> / ~~Consultant~~<sup>(3)</sup> / Representative:-

**V. Sridharan,**  
401-404, Kakad Chambers, 132, Dr. Annie  
Besant Road, Worli, Mumbai - 400 018

DB-D

Prepared By :-

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI**

**APPEAL NO: ST/85777/2013**

[Arising out of Order-in-Original No: 49/AT(49)COMMR/RGD/12-13 dated 12<sup>th</sup> November 2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad.]

*For approval and signature:*

**Hon'ble Shri C J Mathew, Member (Technical)  
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes



JSW Salav (Steel) Ltd

...Appellant

*versus*

Commissioner of Central Excise, Customs & Service Tax  
Raigad

...Respondent

Appearance:

Shri Vinay Jain, Advocate for appellant

Shri M Suresh, Assistant Commissioner (AR) for respondent

ds

**CORAM:**

Hon'ble Shri C J Mathew, Member (Technical)  
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:

05/09/2018

Date of decision:

11/01/2019

**ORDER NO:** A/85054/2019

Per: C J Mathew

This appeal, challenging order-in-original no.

49/AT(49)COMMR/RGD/12-13 dated 12<sup>th</sup> November 2012 of Commissioner of Central Excise, Customs & Service Tax, Raigad the held against M/s Welspun Maxsteel Ltd, is now that of M/s JSW Salav (Steel) Ltd following the acceptance of subsequent application for alteration of cause title consequent to approval for scheme of amalgamation.

2. Learned Counsel for appellant inform us that they are in dispute over tax liability of ₹76,78,126/- for the period between 2006-07 and 2008-09, sought to be fastened on them under section 66A of Finance Act, 1994, as recipient of 'intellectual property service' taxable under section 65(105)(zzr), along with interest thereon, and the penalty imposed under section 77 and 78 of Finance Act, 1994. Appellant had



entered into an agreement with M/s HYL Technologies based in Mexico for upgradation of their manufacturing facility including supply of a module. Appellant had, under protest, remitted an amount of ₹ 51,37,333/- under protest on the royalty paid by then which was appropriated in the adjudication order. We have heard Learned Counsel for appellant and the Learned Authorized Representative at length.

3. The primary contention of the appellant is that the definition of the taxable service in section 65(55a) and section 65 (55b) of Finance Act, 1994 restricts the scope of the levy to such intellectual property rights are enforceable by the laws in India which was enunciated by the Central Board of Excise & Customs in circular no. 18/10/2004-ST dated 17<sup>th</sup> September 2004 though withdrawn later *vide* circular no. 16/7/2007 dated 23<sup>rd</sup> August 2007. Furthermore, it is seen that the appellant had, before the original authority, preferred their submission that tax had been deposited on some of the payments to the overseas entity besides contending that assessable value should exclude those amounts representing the inclusion in the value of the goods. Regrettably, these are found to have been disregarded with sweeping generalization that ignores law and procedure. The perfunctory order of the adjudicating authority is thus patent in deficiency.

4. In *Catapro Technologies v. Commissioner of Central Excise*,



*Nashik [2017 (48) STR 94 (Tri. Mumbai)] the Tribunal has held*

*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(55 1). To be liable to the tax, the provider must be the holder of the intellectual property right which is one that is enforceable against all others, and not just against the recipient of the service.*

*6. The enforceability of the right vis-à-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.*

*5. It would appear that the lower authority had resolved the adjudication against the assessee by applying the provisions of section 66A of Finance Act, 1994 authorizing levy from the recipient of a*



taxable service to the admitted consideration made to the overseas entity in conjunction with the residuary grouping in Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 that devolves liability if recipient is in India without ascertaining if the consideration is for a taxable service.

6. Doubtlessly, section 66A of Finance Act, 1994 deems the recipient of a taxable service to be the provider to fasten the obligation to discharge tax. Undoubtedly, the taxable services that are not covered by the first two of the groupings in rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 deems service to have been brought within India when the recipient is located in India. It is, thus, amply clear that this is a residuary clubbing that does not specify the specific services. At the same time, it cannot be ignored that the said Rules are notified, *inter alia*, in exercise of powers under section 93 of Finance Act, 1994 which enables the Central Government to exempt taxable services from the levy. Consequently, such of those transactions that are not amenable to inclusion as provision of services from outside to India are to be considered as exempt.

7. In the decision, in *re Catapro Technologies Ltd*, the essentiality of coverage under the Indian laws for 'intellectual property' to be acknowledged has been articulated. The nature of the 'intellectual





property' and its enforceability in the present dispute does not find a place in the records commencing with the show cause notice. Though the statute can, and does, deem the recipient to be the provider, there is no provision that deems the recipient to be the possessor of the intellectual property which, unlike the other services in the omnibus provision, is determined by the laws governing intellectual property – a strictly legal acknowledgement that cannot be disaggregated from the definition of a taxable service. Furthermore, to deem the deemed possessor of the 'intellectual property' to be in temporary possession even though the deeming as 'provider' would go hand-in-hand with permanent possession appears to be too incongruent for acceptance and depicts selective culling of the circumstances merely to fasten tax liability. That is clearly unacceptable.

8. From the above it would appear that the crystallisation of the tax liability on the appellant does not have the authority of law. Consequently the appeal is allowed and the impugned order set aside.

*Pronounced in Court on 11/01/2019*

(Ajay Sharma)  
Member (Judicial)

(C J Mathew)  
Member (Technical)

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Custom Excise & Service Tax  
Appellate Tribunal

16 JAN 2019