

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 1637 of 2011

[Arising out of Order-in-Original No. 66-ST-CHD-II-2011 dated 20.09.2011 passed by the Commissioner of Central Excise, Chandigarh-II]

M/s Max Financial Services Ltd.

.....Appellant

[Formerly known as Max India Ltd.]
Bhai Mohan Singh Nagar, Rail Majara,
Tehsil Balachaur, Nawashahr, Punjab

VERSUS

Commissioner of C E & S T, Chandigarh I

.....Respondent

C R Building, Sector 17-C, Chandigarh-160017

APPEARANCE:

Present for the Appellant: Ms. Krati Singh, Advocate

Present for the Respondent: Shri Harish Kapoor and Shri Aniram Meena,
Authorized Representatives

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60575/2024

DATE OF HEARING: 03.10.2024

DATE OF DECISION: 08.10.2024

PER: P. ANJANI KUMAR

The appellants, M/s Max India Financial Services Pvt. Ltd. (earlier known as Max India Ltd.), are in the business of manufacture and sale of antibiotics and owned a manufacturing facility at Toshana, Punjab; M/s Max G. B Pvt. Ltd. (MGBPL) was set up as a joint venture between the appellant and M/s Gist Brocades International B. V; as per agreement dated 04.12.1993, the manufacturing facility at Toshana was made available to M/s MGBPL; as part of the MOU dated

01.07.1997, the plant, machinery, tools, registration, licenses etc. were transferred to M/s MGBPL; the transfer of technical know-how was for a consideration (royalty @ 20 Million for 06 months) during the period 01.07.1997 to 30.06.2000. Revenue seeks to treat the transfer of technical know-how as the service of a consulting engineer and to levy service tax on the same; a Show Cause Notice dated 07.04.2003 was issued; Original Authority vide order dated 30.11.2004 dropped the entire demand holding that the appellants are not a "consulting engineer"; however, Commissioner reviewed the order on 20.11.2006; on revision, Commissioner vide Order dated 29.11.2006 confirmed the demand; on an appeal filed by the appellants, Tribunal vide Order dated 20.04.2011 remanded the case back to the Original Authority for *de novo* proceedings; Order-in-Original dated 20.09.2011, in the *de novo* proceedings, is the impugned order.

2. Ms. Krati Singh, learned Counsel for the appellants, submits that in terms of the MOU, there was only a transfer of know-how and no consultation was involved; the appellant has only provided M/s MGBPL J.V only the right to use the technical know-how against the consideration received. She submits that the appellant is not a professionally qualified engineer and therefore, the transaction cannot be taxed under Section 65(13) of the Finance Act, 1994. She relies on the following cases:

- Bharat Oman Refineries Ltd. CCE & ST, Bhopal 2017 (4) G.S.T.L.. 221 (Trl.-Del.)
- TI Metal Forming vs. Commissioner of Service Tax, Chennai 2017 (4) G.S.T.L. 321 (Tri. Chennai)
- Commissioner of C. Ex. & Cus., Nashik vs. Supreme Industries Ltd. 2016 (46) S.T.R. 606 (Tri. - Mumbai)

- Hindustan Aeronautics Ltd. vs. CCE, Lucknow 2017 (7) TMI 1233- CESTAT ALLAHABAD
- Commissioner v. Suzuki Motor Corporation-2012 (25) S.T.R. 266 (Tri. Del.)
- Guala Patents B.V. vs. Commissioner of Central Excise, Goa 2016 (46) S.T.R. 657 (Tri. Mumbai)
- C.C.E. & S.T., Ahmedabad-III vs Hitachi Home & Life Solutions (1) Ltd. 2016 (46) S.T.R. 668 (Tri. - Ahmd.)
- Robert Bosch vs. Commissioner of Central Excise Coimbatore 2015 (39) S.T.R. 463 (Tri. - Chennai) (Maintained at Supreme Court 2015 (39) STR J175)
- Yamaha Motors (1) Pvt. Ltd. vs. Commr. Of C. Ex., Delhi-IV 2006 (3) S.T.R. 665(Tri. - Del.)
- Korpan Ltd. vs. Commissioner of Central Excise, Raigad 2017 (51) S.T.R. 41
- C.S.T., Bangalore vs. Turbotech Precision Engineering Pvt. Ltd. 2010 (18) S.T.R. 545 (Kar.)
- Battenfield Extrusionchnik vs. C.C.E. & S.T., Daman 2019 (5) TMI 511 - CESTAT AHMEDABAD
- Commissioner vs. Kinetic Engineering Ltd 2012 (6) TMI 786 (Bom.)
- Commissioner of Central Excise & Customs, Nashik vs. Mahindra & Mahindra Ltd 2011 (2) TMI 872 - CESTAT, MUMBAI.

3. She further submits that if at all the transaction is considered taxable, the same can only be taxed under the Head "IPR Services" w.e.f. 10.09.2004 as held in Brenco Incorporated – 2014 (36) STR 1061 (Tri. Del.) and Duraline Corporation – 2014 (34) STR 398 (Tri. Mumbai). She submits that the entire transaction was a transfer of business as a going concern and as such, no service tax can be levied. She also submits that the Order-in-Revision dated 29.11.2006 is barred by limitation as it was passed beyond the permissible period of two years. She also submits that the demand is barred by limitation as extended period cannot be invoked.

4. Shri Harish Kapoor, learned Authorized Representative for the Department, reiterates the findings of the impugned order.

5. Heard both sides and perused the records of the case. We find that the impugned order records the fact that during the course of audit, it was observed that M/s MGBPL had paid royalty fee and non-competition fee to the appellants for the use of technical know-how developed by the noticee. On going through the MOU dated 30.06.1997 between the appellants and M/s MGBPL, it is clear that the transaction that has taken place is of sale and the consideration is mentioned under two Heads one being "Purchase Consideration on a slump price basis" and the second being "royalty for use of technical know-how" for the period 01.07.1997 to 30.06.2000. We find that there is no mention of any Consultancy Service to be rendered by the appellants. That being the case, it will be incorrect to levy service tax on the same. We find that Tribunal in the case of Bharat Oman Refineries (supra) held that:

8. We have perused the details of agreements submitted by the appellant. These agreements are for supply of technical know-how, process technology, proprietary technical information and various connected services to the appellant in connection with setting up of their plant in Madhya Pradesh. The Original Authority mainly focused on the engineering services, which are a follow up of the transfer of technical know-how, to conclude that the appellants received engineering consultancy service only. We are not in agreement with such conclusion. The very fact that all these agreements talk about the foreign companies as "licensor" itself is revealing. In a typical agreement for consultancy service, there will be no licensor or licensee with transfer of licensed process technology or proprietary technical information. The essence of the agreement as could be seen from the narration above is for transfer of technology process. The Tribunal had occasioned to examine similar issues involving technical collaboration and transfer of intellectual property right from foreign companies to Indian recipient. It was held that when the

agreement is for transfer of exclusive/non-exclusive technical know-how the consideration received cannot be taxed under consultancy service. Reference can be made to the decisions in *Yamaha Motors (I) Pvt. Ltd. v. CCE, Delhi-IV (Faridabad)* reported in [2006 \(3\) S.T.R. 665](#) (Tri. - Del.) = [2005 \(186\) E.L.T. 161](#) (Tri.), *CCE & Cus. Nashik v. Larsen & Toubro Ltd.* reported in [2015 \(37\) S.T.R. 156](#) (Tri. - Mumbai), *CST, Mumbai v. Leibert Corporation* reported in [2014 \(33\) S.T.R. 161](#) (Tri. - Mumbai) and *CST, Delhi v. Suzuki Motor Corporation* reported in [2012 \(25\) S.T.R. 266](#) (Tri. - Del.).

6. We find that the facts of the above case are identical to the impugned case before us excepting the fact that the case above, service tax was demanded on Reverse Charge Mechanism, in the impugned case before us, the charge is on Forward Basis. We also find that Tribunal in the case of Supreme Industries Ltd. (supra) held that consideration received towards the transfer of technical know-how cannot be held to be consideration for the services rendered as Consulting Engineer. In view of the same, we find that the impugned order passed in revision is not sustainable and is liable to be set aside.

7. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 08/10/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)