

Services in the Form of Receipt of Patent Registered Outside India are not liable to Service Tax

The CESTAT, Ahmedabad in *Intas Pharmaceuticals Ltd. v. C.S.T.-Service Tax, Ahmedabad And Another [Service Tax Appeal No. 12716 of 2014 dated November 02, 2023]* held that the services in the form of receipt of patents registered outside India are not liable to pay service tax.

Facts:

Intas Pharmaceuticals Ltd. (**“the Appellant”**) entered into a “Technology Transfer and Licensing Agreement” with M/s Eugenex Biotechnologies GmbH, Switzerland for the purpose of development and commercialization of recombinant human erythropoietin (EPO). He pointed out that the agreement envisages the transfer of a cell clone that produces recombinant EPO and the provision of the technology, know-how, Trade secrets, etc.

The Appellant entered into a “Technology Know-how Transfer Agreement” with M/s Biocam Ltd., UK. The said agreement envisaged the transfer of technology, and technical know-how relating to protocols for fermentation and purification to obtain pure G-CSF.

The Revenue Department contended that the transaction was under the category of import of ‘Intellectual Property Service’ and sought to charge service tax on a reverse charge basis in terms of Section 66A of the Service Tax Act, 1944.

The Appellant contended that the patent/ technologies transferred to the assessee were not registered in India and the introduction of a negative list of Services with effect from July 01, 2012, only the Intellectual Property Rights covered under the Indian Law were chargeable to Service Tax.

Issue:

Whether Services in Forms of Receipt of Patent Registered Outside India is liable to Service Tax?

Held:

The CESTAT, Ahmedabad in ***Service Tax Appeal No. 12716 of 2014*** held as under:

- Observed that, in the case of ***Reliance Industries Ltd. 2016 (44) STR 82 (Tri. Mum.)***, it was held that there was no evidence to suggest that the patents of the foreign companies were registered under the Patent Act of India and any services in the forms of receipt of patent registered outside India was not liable to Service Tax.
- Directed that, the technology has been imported from abroad and no evidence of any protection under any law for the time being in force in India has been produced by Revenue. In these circumstances, no demand can be made under the head of “Intellectual Property Service”.
- Held that, Services in the Form of Receipt of Patent Registered outside India are not liable to Service Tax.

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