2026:DHC:8129-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision:21.09.2026

\# **CNR No. DLHC010006232026**

\+ SERTA 2/2026

PRINCIPAL COMMISSIONER CGST DELHI SOUTH COMMISSIONERATE .....Appellant

Through: Mr. Atul Tripathi, SSC, CBIC, Mr. Akshay Sagar, Mr. Shubham Mishra & Mr. Gaurav Mani Tripathi, Advs.

versus

M S MICROMAX INFORMATICS LTD .....Respondent

Through: Ms. Anu Sura, Mr. Sameer Jain, Ms. Prerna Singh & Mr. Anam Khan, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed under Section 35G of the Central Excise Act, 1944 (for short 'the Act') against the order dated 19.08.2025 in Excise Appeal No.50318/2019 passed by the Customs Excise & Service Tax Appellate Tribunal (for short 'the tribunal').

2. The brief facts are that the respondent/Micromax Informatics Ltd. had a dispute with Telefonaktiebolaget LM Ericsson, Switzerland (for brevity 'Ericsson') concerning the use of patents and technologies belonging to

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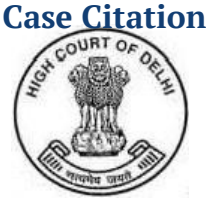
Ericsson.

2.1 In a suit filed by Ericsson, this Court by interim orders directed the respondent to deposit a total sum of Rs.154,79,43,050/-. The respondent was registered with the service tax department (hereinafter 'the department'). The Directorate General of Central Excise Intelligence (for short 'DGCEI') investigated the matter and was of the view that the respondent was the recipient of service of intellectual property rights and service tax was to be paid on the amount paid to Ericsson, a foreign entity located outside India. The demand of Rs.17,50,38,755/- along with interest and penalties was proposed by issuing a show cause notice dated 27.03.2017 (hereinafter 'the SCN'). The case of the department was that the payments made in pursuance to the interim orders of this Court represented payment towards royalty by the respondent to Ericsson.

2.2 During the pendency of the proceedings the parties to the suit arrived at an out-of-court settlement dated 31.12.2017 and a sum of Rs.96 crores was paid by the respondent to Ericsson towards royalty. The suit was withdrawn in view of the settlement. By the time of the settlement, the service tax regime had ceased to operate and the Goods and Service Tax had come into force. The respondent paid integrated goods and service tax (for short 'IGST') on the amount of Rs.96 crores.

2.3 The SCN was adjudicated and the proceedings were dropped *vide* order dated 30.08.2018. Aggrieved of the order, the department filed an appeal before the tribunal. On being unsuccessful before the tribunal, the present appeal has been filed.

3. The following proposed substantial questions of law by the appellant





in the appeal reads as under:

> "SUBSTANTIAL QUESTIONS OF LAW
>
> 1) Whether the Tribunal erred in law in holding that the interim payments made by the Respondent pursuant to orders of the Hon'ble Delhi High Court were "mere deposits" and not "consideration" for the use of Ericsson's patented technology, thereby incorrectly negating Service Tax liability under Section 66A I Section 68(2) read with Rule 2(1)(d)(iv)?
>
> 2) Whether the Tribunal failed to apply the settled principle that the nature and character of a payment is determined by its substance and not by its nomenclature, as laid down in binding Supreme Court decisions, thereby leading to a perverse finding on taxability of IPR services?
>
> 3) Whether the Tribunal erred in ignoring the applicability of the reverse charge mechanism to the import of IPR services from a foreign entity and in treating judicially-directed interim payments as non-taxable, despite the taxable event having occurred?
>
> 4) Whether the Tribunal erred in holding that payment of IGST in 2018 on a subsequently settled amount extinguished the Respondent's Service Tax liability for the period 2013-2016, in disregard of Section 174(2)(e) of the COST Act, 2017 and the settled distinction between the two levies?
>
> 5) Whether the Tribunal. erred in dropping interest under Section 75 and penalty under Section 78 of the Finance Act, 1994, despite invocation of the extended limitation and despite the Supreme Court's binding interpretation in Dharmendra Textile Processors that penalty is a mandatory civil consequence once the statutory conditions are satisfied?"

4. Learned counsel for the appellant contends that the tribunal erred in dismissing the appeal. It is submitted that the amount deposited in the Court was towards royalty and was exigible to service tax.

4.1 Learned counsel for the appellant relies upon the decision in

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Commissioner of Central Excise and Customs v. Idea Mobile Communication Ltd. (2011) 23 STR 433 to contend that taxability depends on the true nature of the payment and not its description.

5. *Per contra* the nature of the deposit was not determined and the amount was deposited in compliance with the interim orders of this Court. The contention is that upon settlement between the parties the service tax regime was no longer in existence and the respondent paid IGST @18% whereas the service tax was leviable @12%. The contention is that the date of payment of the consideration in pursuance to the settlement was the relevant date for taxation purposes. It is emphasised that after the withdrawal of the suit the amount deposited was directed to be released to the respective parties.

6. The dispute between Ericsson and the respondent related to the use of patents and technologies by the respondent belonging to Ericsson. During the pendency of the suit, to balance the equities and secure the interest of the appellant *vide* two interim orders the respondent was directed to deposit Rs.154,79,43,050/-. The department treated the amount so deposited to be payment towards royalty. The proposal of the DGCEI after investigation was not accepted by the adjudicating authority. It was held that the amount deposited was subject matter of the decision by the Court in the suit, the question of taxability would have arisen only after the issue was decided by the Court. It was also considered that upon withdrawal of the suits the interim orders including the order directing the deposit stood vacated. The deposits made in pursuant to the directions of the Court *vide* order dated 05.02.2018 were directed to be released to the respective parties and the

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registry was to do the needful. These findings recorded by the adjudicating authority were affirmed by the tribunal.

7. The contention of the learned counsel for the appellant that the amount deposited pursuant to the interim orders of the Court were payment towards royalties is misconceived. There was no vested right created in favour of Ericsson to receive the amount deposited and the amount deposited remained subject to the outcome of the suit. In other words, at the stage of directing the deposit the Court had not determined that the respondent had used the patents belonging to Ericsson and this occasion never arose consequent to the settlement between the parties. It was rightly held that the amount of Rs.154 crores was not payment towards royalty. The amount of Rs.96 crores paid by the respondent towards royalty in pursuance to the settlement was subjected to IGST in accordance with the taxation regime applicable at the relevant time.

8. The reliance of learned counsel for the appellant on ***Idea Mobile Communication Ltd***. (supra) to contend that the payment collected in compliance with the interim order retain the underline taxable character when relating to taxable services and possibility of future adjustment or refund does not alter the nature, is not applicable to the facts of this case. The Supreme Court held that wrongly remitted sales tax would not absolve the liability to pay service tax, if otherwise payable. The nature of the payment made was yet to be determined in the case in hand and it was not adjudicated that the payment related to the taxable services between Ericsson and the respondent. No sooner the royalty was paid after the settlement, the tax due was deposited by the respondent.

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9. The findings recorded by the adjudicating authority and affirmed by the tribunal suffers from no factual or legal error much less perversity. No substantial question of law arises. The appeal is dismissed.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 21, 2026
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Reportable: **Yes**

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