CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos. 40635 and 40636 of 2017

(Arising out of Orders-in-Original Nos. R19 & R20/2016-2017 dated 28.12.2016 passed by Commissioner of Service Tax, Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. T.T.Krishnamachari & Co. **...Appellant**
Post Box No. 4918,
6, Cathedral Road,
Chennai – 600 086.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, 3rd Floor,
Plot No. 2054, I Block, II Avenue,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Ms. G. Vardini Karthik, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 41430-41431/2025

DATE OF HEARING : 02.12.2025
DATE OF DECISION : 05.12.2025

Per Mr. AJAYAN T.V.

T.T.Krishnamachari & Co., the appellant herein has taken exception to the impugned Orders-in-Original Nos. R19&R20/2016-2017 dated 28.12.2016 whereby the Adjudicating Authority has adjudicated two Statements of Demand (SODs) No. 30/2015 dated 15.04.2015 involving the period from April 2013 to

March 2014 and No. 06/2016 dated 01.04.2016 April 2014 to March 2015. The Adjudicating Authority has confirmed the demands along with applicable interest and also imposed penalties under Section 76(1) and 77 of the Finance Act, 1994.

2. The relevant facts are that the appellant is a partnership firm registered with the Service Tax Department dealing in Consumer Durables, Health care Products, *etc.,* and is also engaged in trading, distributing, warehousing, and clearing and forwarding these products. The appellant had developed a logo 'TTK' which was registered as an 'Artistic Work' under the Copyright Act, 1957 and was permitted to be used by the group concerns on the packaging, cartons, containers, labels, brochures, literature and advertising materials in connection with products which it manufactures, sells or distributes.

3. The Department was of the opinion that the Appellant is required to pay service tax on the royalty income that it has received for permitting their group companies to use the logo 'TTK' as trademark under Intellectual Property Right service.

4. The Statements of Demand indicate that the appellants were earlier issued with SCN/SODs for period from July 2007 to March 2013, and the proceedings therein culminated in the adjudication order *vide* Order-in-Original No. 02-08/2014-15 dated 27.02.2015. As stated *supra*, the appellant has preferred this appeal being aggrieved by the impugned Orders-in-Original Nos. R19&R20/2016-2017 dated 28.12.2016.

5.1 Ms. G. Vardini Karthik, the Ld. Counsel appearing for the appellant submitted that the issued stands settled in the appellant's favor *vide* two Final Orders of this Tribunal, Chennai Bench of the appellant's own case in Final Order No. 43276/2017 dated 13.12.2017 in ST/440/2009 setting aside the Order-in-Original No. 16/2009 dated 15.05.2009 for the period September 2004 to June 2007. Again, this Tribunal *vide* Final Order Nos. 40366-40372/2025 dated 19.03.2025 in ST/41045-41051/2015 covering the period from July 2007 to March 2013 has set aside the demand on service tax levied on the payment made towards the copy rights charges received by the Appellant.

5.2 The Ld. Counsel points out that the Final Order No. 43276/2017 *ibid* also covers the period subsequent to negative list and the ratio therein will apply for the present period of dispute also. The Ld. Counsel further submits that Sl.No. 15 of Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 3/2013 dated 01.03.2013 clearly grants an exemption on temporary transfer of permitting use or enjoyment of a copyright. Therefore, as the registration of 'TTK' logo is under the Copyright Act, 1957 *via* Registration No. A.39006/1983 received from the Registrar of Copyrights dated 05.04.1983 and the title of the word 'TTK' is registered as a logo under the Copyright Act as an artistic work, the same is exempted from the service tax liability.

6. Ms. Anandalakshmi Ganeshram, the Ld. Authorized Representative appearing on behalf of the Respondent reiterated the finding in the impugned order.

7. Heard both sides, perused the appeal records and decisions submitted.

8. The issue arises for determination is whether the demand of service for 'TTK' logo of the appellant used by its group companies under Intellectual Property Right service is tenable?

9. We find that the exemption Notification No. 25/2012-ST dated 20.06.2012 has been amended by Notification No. 03/2013-ST dated 01.03.2013, whereby for entry 15, the following entry has been substituted, *viz.,*

> *"15. Services provided by way of temporary transfer or permitting the use of enjoyment of a copyright, -*
> a. *covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or*
> b. *of cinematograph films for exhibition in a cinema hall or cinema theatre;"*

Thus, the benefit of the said entry would be available to the appellant. That apart, we find the issue is no more *res integra* and as rightly submitted by the appellant stands covered in their favor *vide* Final Order Nos. 40366-40372/2015 dated 19.03.2025. The relevant portion is reproduced as under: -

> ***"8****. The Ld. Counsel for the Appellant has stressed that the logo is not a trademark but a copyrighted artistic work and that the appellant is not liable to pay service tax under IPR services on the royalty income. Against this, the Department contends that the appellant was using the logo as a trademark recognized under the Trademark Act and that the appellants merely having registered the same under the Copyright Act would not make*

the logo not recognized as a trademark. It is also submitted by him that the logo does not have any artistic value and hence demand of service tax is sustainable.

***9**. We find that the logo `ttk' were only used to project the image of the manufacturer generally and did not establish any relationship between the mark and the products manufactured/ distributed by the group companies of the Appellant. It only is a house mark which is usually devised in the form of an emblem, word or both and it is for identification of the manufacturer/distributor. Therefore, this monograph which only identifies the manufacturer/distributor would not make the product patent or proprietary. The "House mark" is used generally as an emblem of the manufacturer/distributor projecting the image of the manufacturer, whereas "Brand name" is a name or trademark either unregistered or registered under the Act. Therefore, it is not necessary that "Brand name" should be compulsorily registered. A person can carry on his trade by using a "Brand name" which is not even registered. But in violation/infringement of trademark, remedy available would be distinctly different to an unregistered brand name from that of remedy available to a registered brand name. We find that the definition of service under 'IPR' excludes copyrights and as the 'ttk' logo is registered under the copyrights act, service tax demand is questionable. The impugned order has heavily relied on the decision of the Hon'ble Supreme Court in the case of M/s Grasim Industries cited supra but we find that the issue to be decided in the present appeal is not covered by the decision and hence will not find any support to the cause of the department.*

***10**. We find that the issue is settled in favor of the Appellant by this Tribunal's earlier decision involving the same Appellant for an earlier period following the decision of the Hon'ble Supreme Court in M/s. Astra Pharmaceuticals cited supra and the relevant extracts of this Tribunal's earlier Final Order No. 43276/2017 dated 13.12.2017 has been reproduced below: -*

> *" 5.1 For better appreciation the relevant provisions are noticed as under:-*
>
> > *"**Section 65(55a)** "Intellectual property right" means any right to intangible property, namely, trademarks, designs,*

patents or any other similar intangible property, under any law for the time being in force, but does not include copyright:

Section 65(55b) *"Intellectual property service" means, -*

(a) Transferring (temporarily), or

(b) Permitting the use or enjoyment of, any intellectual property right.

Section 65(105)(zzr) *"taxable service" means any service provided or to be provided to any person, by the holder of intellectual property right, in relation to intellectual property service."*

The term Trade Mark has been defined under clause (2b) of Section 2 of Trade Mark Act, 1999

"Section 2(b) trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and

(i) in relation to Chapter XII (other than Section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark."

Section 2(m)-"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof."

"Definition of Copyright"

*"**Section 14. Meaning of copyright** -For the purposes of this Act,*

"copyright" means the exclusive right subject to do or authorise the doing of the provisions of this Act, to any of the following acts in respect of a work or any substantial part thereof, namely: -

(a) in the case of a literary, dramatic or musical work, not being a computer programme,-

> *(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;*
>
> *(ii) to issue copies of the work to the public not being copies already in circulation;*
>
> *(iii) to perform the work in public, or communicate it to the public;*
>
> *(iv) to make any cinematograph film or sound recording in respect of the work;*
>
> *(v) to make any translation of the work;*
>
> *(vi) to make any adaptation of the work;*
>
> *(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (1) to (vi);*

(b) in the case of a computer programme,-

> *(i) to do any of the acts specified in clause (a);*
>
> *(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme;*

Provided that such commercial rental does not apply in respect of computer programme where the programme itself is not the essential object of the rental.

(c) In the case of an artistic work,

> *(i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;*

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already incirculation;

(iv) to include the work in any cinematograph film:

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (1) to (iv);

(d) in the case of a cinematograph film, -

(i) to make a copy of the film including a photograph of any image forming part thereof;

(ii) to sell or give on hire or offer for sale or hire, any copy of the film. regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,-

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.

Explanation-For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation."

Section 2(c) "Artistic work" means-

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), and engraving or a photograph, whether or not any such work possesses artistic quality;
(ii) work of architecture; and
(iii) any other work of artistic craftsmanship"

5.2 As seen above, the definition of IPR service excludes copyright. Undisputedly, the appellants have registered the logo 'ttk' under the Copyright Act. The department alleges that since they have referred the logo in their license agreement as a "trade

name and also because the logo is used in relation to marketing and sale of goods, the same would be a trademark. The Ld. Consultant for the appellants has produced a copy of the registration of the logo under the Copyright Act. The appellants have obtained the registration of the logo in 1983. The clause and description of the work is noted in the Certificate as 'artistic work. The various products marketed and sold by the appellant as well as it's group companies/licensees would show that such products have distinct registered trademark and also uses the logo on the packets. For example: Levokast, Apiverin-M, Prestige etc., are the registered trademark. The packets also contained the logo. Such logo is used not only on the packets but also in the letterheads of the Company. Some of the samples are as under: -

…..

5.3 From the above documents it is seen that the goods do have a separate trademark such as Levokast, Apiverin-M, Prestige etc. Apart from this, the packings also contain the 'ttk' logo. Thus, though the goods use the logo, it cannot be said that it is a trademark for these goods, as these goods have separate registered trademark. Again, the appellants have registered the logo under the Copyright Act. Any infringement of right pertaining to the logo would fall under Copyright Act and not under Trademark Act. The provisions of Copyright Act describe the situations of protection afforded to the copyright. This is different from the rights attached to a trademark. The logo being registered as a copyright, in case of infringement of the same, the right falls within the Copyright Act and would be enforceable by the appellants under the said Act only and not under the Trademark Act. The arguments put forward by the Ld. AR that the depiction of logo does not have any artistic value and therefore not a copyright doesn't find favour with us. The Certificate of Registration issued by the Copyright Office after complying with necessary procedure cannot be totally disregarded. It is not proper for this Tribunal to enter into a discussion, what is registered does not have any 'artistic value' and is merely letters calligraphed in a particular manner etc. The Certificate is issued by a Competent Authority to issue the same.

5.4 In the case of ESPN Software India Pvt. Ltd. (supra), the Tribunal had occasion to analyse the dispute relating to cartoon characters. The assesse therein contended that these cartoon characters are artistic work and covered under copyright.

Whereas, the Revenue alleged the same to be Trademark and raised the demand under IPR services. The main contention made by the Revenue in the said case was that in the sub-licensing agreement as well as in the product licensing agreement, promotional licensing agreement and other agreements, the property shown in the schedule "powerful girls" had been referred as trademark. After analysing the definition of copyright and trademark, the Tribunal held that such cartoon characters fall under copyright only. The facts being similar in our view, the said decision is applicable to this case. Further, in the present case, the logo is registered under the Copyright Act. Relevant portion of the decision in the case of ESPN Software India Pvt. Ltd. is reproduced as under: -

> *"38. Product Licensing Agreement and Promotional Licensing Agreements were executed between TENA and TIPL TIIPL i.e. Appellant No. 2 executed sub-licensing agreements between TIIPL. and Bombay Dyeing and Manufacturing Co. Ltd., TIIPL and M/s. Brittania Industries and TIIPL and M/s. Bata India Ltd. In case of Bombay Dyeing agreement was made for sub-licensing the property "Powerful Girls" for use in home furnishing. In Schedule A sub-licensed properties were listed as PPG, Dexter Laboratory, Johny Bravo, Courage, Cow & Chicken, Codername Kids Next Door, CN Logo and all related Characters and Elements had been shown as Trademark of Cartoon Network. Similarly in case Brittania Industries sub-licensed property is Tom and Jerry for use on erasers, pencils and magnetic slap on a wrist bands for promotion of product of Brittania Industries. In Schedule A of Licensed Property and Trademark Notices of sub-licensing agreements PPG. Dexter's Laboratory, Johney Bravo, etc and all the related Characters and Elements are shown as Trademark of Cartoon Network. Similarly in case of Bata India sub-licences property is 'Ben 10' to be used for promotion of Bata School Shoes, shoe accessories and school bags From Schedule A of the agreement it is clear that Character and Elements are shown as Trademark of Cartoon Network.*
>
> *39. On-going through the definition of artistic work as defined under Section 2(c) of the Copyright Act, 1957, we find these Characters and Elements are covered under clause (i) as these come within drawing, engraving or a photograph.*
>
> *40. In view of the above, we are of the view as these characters fall within the definition of artistic work in Section*

2(c) of the Copyright Act are hence excluded from the definition of Intellectual Property. The demand confirmed is therefore unsustainable,"

5.5 The appellants have also argued that they have discharged VAT on the entire royalty income. VAT and service tax being merely exclusive a further demand on the royalty income is not sustainable. The Hon'ble Apex Court in the case of IMAGIC Creative Pvt. Ltd. (supra), had categorically held that payment of service tax and VAT are mutually exclusive. In the case of Astra Pharmaceuticals Pvt. Ltd. Vs. CCE, Chandigarh 1995 (75) ELT 214 (S.C.), the Hon'ble Apex court analyzed the meaning, scope and distinction between the house mark and product mark. The Hon'ble Apex Court has held that house mark/ product mark cannot be equated to that of a trademark. In para-6 of the judgment, the Hon'ble Apex Court observed as under:-

"6. As has been explained earlier the first part of the Explanation widens the ambit of the entry by extending it to any drug or medicinal preparation for use in internal or external administration for prevention of ailments in human beings or animals. But then it narrows it by restricting the applicability of the tariff item to only such medicines which bear either on itself or on its container or both a name which is not specified in a monograph in a Pharmacopoeia. This obviously is not applicable to the appellant as the injections manufactured by the appellant are specified in a Pharmacopoeia. The other class of medicines to which this Explanation applies are those which have a brand name that is a name or a registered trademark under a Trade & Merchandise Marks Act. The medicine manufactured by the appellants is not registered under the Trade and Merchandise Marks Act. Therefore, it would attract levy only if its container or packing carried any distinctive marks so as to establish the relation between the medicine and the manufacturer. But the identification of a medicine should not be equated with the produce mark. Identification is compulsory under the Drug Rules. Technically, it is known as 'house mark'. In Narayan's Book on Trade Marks and Passing Off, the distinction between 'house mark' 'and product mark (brand name) is brought out thus, 677A. House mark and product mark (or brand name).

In the pharmaceutical business a distinction is made between a house mark and a product mark. The former is used on all the products of the manufacturer. It is usually a device in the

form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a combination of a word and letter or numeral by which the product is identified and asked for. In respect of all products both the product mark and house mark will appear side by side on all the labels, cartons etc. Goods are ordered only by the product mark or brand name. The house mark serves as an emblem of the manufacturer projecting the image of the manufacturer generally."

The 'AP' or 'Astra' on the container or packing was used to project the image of manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant instead of using Dextrose injections would have described it as Astra injections or Astra Dextrose injections then it could be said that a relationship between the monograph and the medicine was established. In the case of appellant it was only a monograph to identify the manufacturer."

The Hon'ble Apex Court thus held that such mark does not establish any relationship to the product and the monogram was used to identify the manufacturer only.

6. From the above discussions, and following the position of law laid in the case of ESPN Software India Pvt. Ltd. (supra) as well as Imaic Creative Pvt. Ltd. (supra), we are of the view, that the Impugned order cannot sustain and requires to be set aside, which we hereby do. The appeal is allowed with consequential relief, if any, to the appellants"

***11**. Hence, in view of the above discussions and following judicial precedents, we are inclined to decide the issue in favor of the Appellant and consequently the impugned Order-in-Original Nos. 02-08/2014-2015 dated 27.02.2015 lacking in merits are set aside. The appeals filed by the Appellant are allowed with consequential benefits, if any, as per the law."*

10. It is stated that the aforesaid decision of the coordinate Bench of this Tribunal in the Appellant's own case for the earlier period has attained finality. The Revenue has not produced any evidence otherwise. Therefore, respectfully

following the same, we hold that the impugned Orders-in-Original Nos. R19&R20/2016-2017 dated 28.12.2016 are liable to be set aside. Ordered accordingly.

11. The appeals are allowed with consequential relief(s), if any, in law.

(Order pronounced in open court on 05.12.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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