IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 41599/2015

(Arising out of Order in Original No. 1/2015-C dated 23.04.2015 passed by the Commissioner, LTU, Chennai)

RRB Energy Ltd. **Appellant**
No. 182/2, Bypass Road
Poonamallee, Chennai – 600 056.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Ms. Shwetha Vasudevn, Advocate and
Shri Sheerabdhinath G, Advocate for the Appellant
Shri M. Selvakkumar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40609/2026

Date of Hearing: 02.02.2026
Date of Decision: 27.05.2026

Per M. Ajit Kumar,

This appeal is filed by **RRB Energy Ltd.** (appellant), against Order in Original No. 1/2015-C dated 23.04.2015 passed by the Commissioner, LTU, Chennai (impugned order).

Factual Matrix

2. The appellant manufactures, sells, installs, erects and commissions wind electric generators (**WEG**s) to generate power using wind energy. These WEGs are exempt from Central Excise duty. The appellant is registered with the Service Tax Department for discharging

service tax on erection, commissioning, installation, maintenance and repair services, road transport of goods and consulting engineering. During an audit of the appellant's accounts by the Internal Audit Wing of the Service Tax Commissionerate in Chennai, it was discovered that between 2007-08 and 2011-12 the appellant spent foreign currency on technical assignment and consultancy fees. These payments were made to overseas service providers, M/s. Composite Technologies Centre (**CTC**) in the Netherlands and M/s. Windrad Engineering GmbH in Germany, both of which have no offices in India. The International Technology Transfer Agreement dated 31 May 2008/02 June 2008 between M/s. CTC and the appellant showed that CTC held the proprietary rights to the technical know-how for rotor blade manufacture. The appellant was granted exclusive rights to produce and sell the product and provide after-sales service in India. CTC supplied the appellant with designs, drawings and technical information for commercial exploitation retaining copyright on the documents and designs. CTC also provided skilled personnel services and technical advice at the appellant's expense enabling appellant employees to learn how to use the technology and design. CTC offered design engineer, draftsman and supervisor support at specified rates with the appellant covering travel, car costs and other expenses. The services provided by M/s. CTC to the appellant hence appeared to fall under 'Intellectual Property Services'. Windrad agreed to providing engineering consultancy for wind turbine development to the appellant. The appellant would pay the agreed amount to Windrad for these services. Given Windrad's expertise in wind turbine development, it

appeared that their technical assistance falls under the taxable category of 'Consulting Engineers Service'. It appeared that the appellant has not paid Service Tax on these services under Section 66A of the Finance Act 1994 and Rule 2(1)(d)(iv) of the Service Tax Rules 1994 on reverse charge basis. They have not registered as a service receiver and have not filed ST-3 returns for the taxable service. After following due process, the Ld. Commissioner confirmed the demand of Rs 1,35,24,297/- for Intellectual Property Service and Rs 24,15,410/- for Consulting Engineering Service for the period from 2007-08 to 2011-12, along with interest and penalty. Hence this appeal.

3. The Ld. Advocates Ms. Shewetha Vasudevan and Shri Sheerabdhinath G appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

Submissions made by the appellant

3.1 Ms. Shewetha Vasudevan, Ld. Advocate for the appellant at the outset, presented the brief facts of the issue in a tabular form which is reproduced below:

Issue	Demand of Service Tax on Intellectual Property Services received from foreign entities
Period	April 2007-08 to 2011-12
Tax Demand	INR 1,59,39,707/-
Interest	Under Section 75 of Chapter V of the Finance Act, 1994
Penalty	INR 1,59,39,707/- under Section 78 and INR 5,000/- under Section 77 of the Act
Impugned Order	Order-in-Original No. 1 /2015-C dated 23.04.2015
Show Cause Notice	Show Cause Notice No. 363/2012 bearing C.No. IV/9/269/2012-STC Adj dated 20.10.2012

The Ld. Counsel further submitted that:

A. Transfer of technical know-how from outside India is not amenable to service tax, for it is not an IPR in India. Thus, the same is not Intellectual Property service under the Act. Hence, the demand merits to be set aside.

She submitted that the grant of right to use and commercially exploit the know-how, designs, drawings and specifications do not fall under the purview of Intellectual Property Rights ("**IPR**") under **Section 65(55a)** of the Finance Act 1994 (**FA 1994**), inasmuch as the foreign entity which owns the designs and the know-how has no registration either under any laws governing IPRs in India, for it to be recognised under the Indian Laws. She referred to Circular No. 80/10/2004- ST dated 17.09.2004 and Letter vide F. No. B2/8/2004- TRU, dated 10-9-2004 to support their averment that IPRs covered under Indian law in force at present alone are chargeable to service tax. Further the Tribunal in **CHAMBAL FERTILIZERS & CHEMICALS LTD. Vs COMMR. OF C. EX., JAIPUR-I** [2016 (45) S.T.R. 118 (Tri. - Del.)], **Munjal Showa Ltd. Vs Commissioner of C.EX. & ST, Delhi** 2017 (5) G.S.T.L. 145 (Tri. - Chan.), had held that to be categorized for service tax purpose under IPR, such right should have been registered with trademark/ patent authority.

The Ld. Counsel relied upon the following judgments in support of her submissions:

(i) ***Tata Consultancy Services Ltd. vs. Commissioner of S.T., Mumbai*** 2016 (41) STR 121 (Tri.-Bom)

(ii) ***Hindustan Aeronautics Ltd. vs Commissioner of Central Excise, Customs and Service Tax, Bhubaneswar-I*** (2024) 19 Centax 418 (Tri.-Cal)

(iii) ***Catapro Technologies vs Commissioner of C.EX., Nashik*** 2017 (48) S.T.R. 94 (Tri. - Mumbai)

(iv) ***Schneider Electric India Pvt. Ltd. vs Commissioner of Service Tax, Delhi*** (2023) 9 Centax 362 (Tri.-Chan)

(v) ***Modi Mundi Pharma Beauty Products v. CST*** (2020-VIL-256- CESTAT-DEL-ST) (**page 68, compilation**).

B. The transaction entered into with Windrad is not a consulting engineering service

The mere fact that Windrad would deploy a team of qualified personnel would not render this activity one of consulting engineer service. The entirety of the contract clearly reflects that it is not consulting engineering service. The personnel deployed by Windrad were required to carry out the actual tasks of designing and commissioning the prototype, in concerted efforts with the Appellant's team. Hence, by this very logic, the said activity cannot be classified as a consulting engineering service. In **Jyoti Ltd. Vs CCE, Vadodhara 2008 (9) S.T.R. 373 (Tri. - Ahmd.)**, the Tribunal, while analysing the meaning of the term "technical assistance" in an identical matter, held that the words 'technical assistance' is required to be judged from the words 'advice' and 'consultancy'.

C. The demand for the period from April 2007 to 01.04.2011 is barred by limitation. Extended period of limitation is not applicable in the instant case. Interest and penalty is not imposable.

The period-in-dispute in the present matter is from April 2007-08 to 2011-12. Therefore, as per Section 73(1) of the Act, the time limit to issue the SCN is within a period of eighteen months from the relevant date. However, in the instant case, the SCN was issued only on 20.10.2012 alleging that the said transactions were discovered only pursuant to audit conducted against the Appellant. The very

interpretation of consulting engineer services has been the subject matter of litigation and contentious. Moreover it is a settled that there must be a positive act with an intention to evade tax. No such positive act is established in the present case, rather the Appellant had been bonafide in their belief. In such situations, it is submitted that larger period of limitation ought not to be invoked.

D. The entire exercise is revenue neutral and thus invocation of extended period is not warranted

Assuming the activity rendered by Windrad is susceptible to service tax, the tax so paid would be available as Cenvat credit in the hands of the Appellant, in terms of Rule 3 of the Cenvat Credit Rules, 2004. Therefore, the transaction would be revenue neutral. It is for this reason alone the Impugned demands ought not to be entertained. She submitted that even assuming any amounts are payable by the Appellant, the benefit of the principle of cum-tax is to be afforded to the Appellant.

E. No interest or penalty is payable when there is no suppression of fact.

In any event, it is a settled legal position that as held in the case of **Raval Trading Co. Vs Commissioner of Service Tax** - 2016 (42) S.T.R. 210 (Guj.), there cannot be imposition of penalty under Section 76 and 78 simultaneously.

F. Section 80 of the Act is applicable to the present case.

In this instant matter, the Appellant was under the bonafide belief that the agreements entered into between CTC and Windrad does not

attract service tax on the above enunciated grounds. Hence, the benefit of Section 80 ought to be extended.

She submitted many judgments in support of their averments which shall be referred to later in the order, where necessary. The Ld. Counsel prayed that the Impugned Order be set aside, and the Appeal be allowed along with consequential relief.

Submissions made by the Respondent-Revenue

3.2 Shri M. Selvakumar Ld. Authorized Representative who appeared for the respondent-revenue, took us through the findings in the OIO. He submitted that:

A. In the present case, the assessee paid fees for the right to use the foreign company's technology, designs, and moulds for manufacturing windmill components such as rotor blades. The agreement contemplated continuing contractual use rather than an outright transfer. Such transfer of technical know-how and permission to use protected designs and technology falls within intellectual property service.

B. On a combined reading of the agreement and relevant Sections of the FA 1994, the activity amounts to a temporary transfer or permitted use of intangible property and is therefore covered under "intellectual property service" and falls within Section 65(105)(zzr) of the FA 1994.

C. The assessee's contention that the technology transferred by M/s CTC was neither patented nor pending patent approval in India and therefore could not be treated as intellectual property recognized by Indian law, is not acceptable.

D. Neither the statutory definition nor the Board's Circular requires that the right must be registered in India; the requirement is only that the category of IPR be one recognized by Indian law.

E. Para 9.1 of the Board's Circular dated 10-9-2004 states that, since the phrase "law for the time being in force" refers to laws applicable in India, service tax is attracted in respect of IPRs recognized under Indian law, such as patents, trademarks, and designs.

F. The services are also taxable as consulting engineering services. The scope of consulting engineering service has been considered by the Calcutta High Court in **M.N. Dastur & Co. Ltd. Vs Union of India**, 2002 (140) E.L.T. 341, where the Court held that the expression covers services rendered by an individual, firm, or company, so long as the service is based on engineering knowledge and is integrally connected with an engineering discipline.

G. Accordingly, where technical assistance is rendered on the basis of engineering knowledge, the provider must also fall within the scope of consulting engineer service, irrespective of whether it is an individual, firm, or company.

The Ld. A.R. stated that impugned order was legal and proper and prayed that the appeals may be rejected.

Discussion & Analysis

4. We have heard the parties and perused the appeals. The present dispute pertains to a demand of service tax being confirmed on reverse charge basis, on intellectual property services and consulting engineer services allegedly received by the Appellant from entities located

outside India. The main challenge mounted by the appellant on merits is that;

(i) Transfer of technical know-how from outside India is not amenable to service tax, for it is not an IPR in India, and;

(ii) The transaction entered with Windrad is not a consulting engineering service.

The other issues pertain to limitation, revenue neutrality, interest and penalty.

Intellectual Property Services

5. An apércu of the facts relevant to the first issue are that the Appellant entered into an International Technology Transfer Agreement (**IITA**) dated 30.05.2008 with M/s. Composite Technology Center, Netherlands (**CTC**). CTC, have the proprietary rights in the technical knowledge regarding the manufacture of Rotor Blade. As a part of the IITA, CTC provided the Appellant with drawings, technical information and technical assistance of skilled personnel. For the said transfer, the Appellant pays fees for transfer of information, fees for commercial exploitation of technical know-how.

5.1 It is Revenue’s case that the transfer of designs, products, processes and technology etc. as per the IITA, for manufacture of rotor blades is temporary transfer of Intangible property by M/s CTC to the assessee and would squarely be covered under the definition of "Intellectual Property Rights Services" defined under Section 65 (55a) of the FA 1994. As such, services provided by M/s CTC to the assessee is covered under the taxable service under Section 65(105)(zzr) of the FA 1994.

5.2 Per contra it is the appellants case that these deliverables were not capable of being recognised as an intellectual property in India because the technical know-how was not registered as an IPR under the laws of India. Hence, these activities did not tantamount to Intellectual Property services under the Act.

6. We find that the question of law relating to the taxation of IPR temporarily transferred from abroad to India is no longer res integra. The Principal Bench of this Tribunal at New Delhi had examined the matter in **CHAMBAL FERTILIZERS** (supra). It held:

> "5. We have heard both sides and examined the appeal records. The only point for decision is that whether or not the appellant received taxable service under the category of "Intellectual Property Right service" during the relevant period. The admitted facts of the case are that the technical know-how, engineering design licence involved in these agreements with foreign service providers are not registered in India under Indian law. However, the original authority held that registration of IPR under Indian law is only for obtaining protection from its infringement. He observed that the levy of tax is not dependent on the fact of such registration. We find that such conclusion is not legally tenable and is beyond the scope of taxable service as defined in FA 1994:
>
> > "Section 65 (105)(zzr) of the Act defines in the taxable IPR service tax as under:
> >
> > "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;
> >
> > Section 65(55a) of the Act defines "Intellectual Property Right" to mean as under:
> >
> > "Intellectual Property Right" means 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"
>
> 6. The IPR as defined should be a right under any law for the time being in force. The legal position on this issue has been

examined by various decisions of the Tribunal which are as under:

a) Rochem Separation Systems (India) Private Limited v. Commissioner of Service tax, Mumbai I 2015 (39) STR 112 (Tri-Mum) [para 8];

b) Whirlpool of India Limited vs. C.C.E & S.T., Delhi - 2016 VIL 57 CESTAT DEL ST [para 7];

c) Tata Consultancy Services Limited vs. C.S.T., Mumbai - 2015 TIOL 2370 CESTAT MUM [para 4.1]

d) Area Brown Boveri Ltd. vs. C.C.E & S.T., Bangalore - 2016 VIL 480 CESTAT BLR ST [para 6.7.1] ;

e) Reliance Industries Ltd. vs. C.C.E. & S.Tax, Mumbai - 2016 TIOL 1654 CESTAT MUM [para 2];

7. It has been held that to be categorized for service tax purpose under IPR, such right should have been registered with trade mark/patent authority. In the present case, admittedly, there is no right recognized as IPR under any law for the time being in force in India. As such, there can be no provision of IPR service for tax liability on reverse charge basis.

8. In view of the settled legal position as held in various decisions of the Tribunal discussed above, we find that impugned order is without merits and accordingly set aside the same. The appeal is allowed."

6.1 Recently a Coordinate Bench of this Tribunal at Kolkatta in **M/s. Hindustan Aeronautics Limited Vs Commissioner of Central Excise, Customs and Service Tax** [FINAL ORDER NO. 75700 / 2024, Dated: 17.04.2024], held as under:

"9.2 It may further be pointed out that this Tribunal in the case of **SICPA India Pvt. Ltd. Vs Commissioner of Cus., C.Ex. & S.T., Siliguri** [2018 (15) G.S.T.L. 375 (Tri. – Kol.)], held that technical knowhow provided by a foreign company to an Indian company under a licence for manufacture of goods for consideration of Royalty equal to a percentage of net sale price of the goods, was nowhere registered / patented in India as an IPR service and therefore, the recipient of such service was not liable to pay Service Tax under RCM as IPR service.

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10.1 It was further held by this Tribunal in the case of **Munjal Showa Ltd. Vs Commissioner of C.Ex. & S.T., Delhi (Gurgaon)** [2017 (5) G.S.T.L. 145 (Tri. – Chan.)], that to tax a service under IPR, such rights ought to be registered with the trademark / patent authorities; there was nothing on record to show that the same were registered in India. In view of the law as propounded in the said case, we are of the view that the Department has not been able to make out any sustainable case, seeking recovery of tax with reference to the issue as made out in paragraph 3(i) of this Order.

10.2 The Ld. Advocate has also placed reliance to the law as laid down in the cases of **Lurgi India International Services Pvt. Ltd. Vs Commr. of C.Ex., Cus. & S.T., Hyderabad** [020 (34) G.S.T.L. 507 (Tri. – Hyd.)] and **Technova Imaging Systems Pvt. Ltd. Vs Commissioner of C.Ex., Mumbai** [2019 (31) G.S.T.L. 472 (Tri. – Mum.)], both specific case laws in respect of IPR service and the issue herein."

6.2 We find that Revenue has not disputed the Appellants contention that the technical know-how received as per the IITA from CTC was not registered as an IPR under the laws of India. This being so and in the light of the judgments of this Tribunal cited above, we hold that the Department has not discharged its burden of proof of exigibility of the activity to tax under the head of "Intellectual Property Service" and the demand for duty under the RCM as per Section 68(2) of the FA 1994 merits to be dropped.

Consulting Engineering Service

7. The second issue pertains to the Engineering Consultancy Agreement (ECA) dated 08.01.2008 entered into by the appellant with M/s. Windrad Engineering, Germany. The appellant has stated that the service availed Under the ECA is only technical know-how and not engineering consultancy service.

7.1 As per the ECA, Windrad have considerable experience in providing engineering consultancy for development of wind turbines. They have agreed to provide necessary engineering services for development of wind turbines. Their development team consists of eight engineers and were to work along with the Appellants Research and Development team consisting of 6 engineers to make the project successful. The project was divided into two phases (i) the concept, design and detailing phase, AND (ii) the erection of prototype phase. Technical assistance was to be provided by Windard to the Appellant during the start-up phase of production. Windrad was to be reimbursed for the above services at the standard hourly rates of 65 Euro/working hour, and all expenses, and to pay any taxes applicable thereto (especially TDS). The payment schedule for the project, which included the successful erection & commissioning of the prototype turbine, was to be divided by 15 months. Materials and data produced or obtained by Windrad would vest the sole ownership, right, title and interest on the appellant, upon full payment.

7.2 As per Revenue the 'Consultancy Services' paid to Windrad was gathered from the Profit and Loss account of the assessee. From the ECA it appeared to the Department that Windrad who have considerable experience in providing engineering consultancy for development of wind turbines by way of technical assistance have provided the taxable service of 'Consulting Engineering Service'.

7.3 We have considered the terms of the ECA in the light of the statutory requirements of 'Consulting Engineering Service' under the Finance Act, 1994. The nature of the transaction has to be gathered

from the substance of the agreement and the obligations undertaken thereunder, and not from the nomenclature adopted in the Profit and Loss account of the appellant etc. On a plain reading of the ECA, we find that the arrangement is one for collaborative development of a wind turbine project, covering design, detailing, prototype-related work and start-up support, and is not a mere contract for advice, consultancy or technical assistance simpliciter.

7.4 It is therefore apposite to examine the statutory definition of 'Consulting Engineering Service' as it stood at the relevant time under the Finance Act, 1994, extracted in paragraph 30 of the impugned order:

> **"Section 65(31)**: "consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, **renders any advice, consultancy or technical assistance in any manner** to a client in one or more disciplines of engineering."
> *****. *****. *****
> **Section 65(105)(g)**: "taxable service" **means** any service provided or to be provided to any person, by a consulting engineer in relation **to advice, consultancy or technical assistance in any manner** in one or more disciplines of engineering including the discipline of computer hardware engineering.
> Explanation. For the purposes of this sub-clause, it is hereby declared that **services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause**:"
> (emphasis added)

7.5 A plain reading of section 65(105)(g) shows that the levy is attracted only when the service in question is rendered by a consulting engineer and is in relation to advice, consultancy or technical assistance in one or more disciplines of engineering. The mere fact that

the contract pertains to an engineering subject is, by itself, not sufficient. The Department is required to establish that the consideration was paid for an advisory or consultative service or technical assistance falling squarely within the taxable entry simpliciter, and not for execution-oriented obligations undertaken under a composite agreement.

7.6 No doubt, the expressions "in relation to" and "in any manner" are of wide amplitude. Even so, they cannot be so expansively construed as to obliterate the essential character of the taxable service itself, by including the manufacture, erection & commissioning of the prototype turbine, within the service definition. **The expressions must, therefore, be understood in a cognate sense, namely, assistance of an advisory or consultative character, and not actual participation in the execution of work. Any wider construction would impermissibly enlarge the taxable entry and render the associated words redundant.** This is because the definition employs the word "means", thereby making the entry exhaustive and confining it to the services expressly enumerated therein. As stated in the five Judge decision of the Hon'ble Supreme Court in **Hariprasad Shivshankar Shukla Vs A.D. Divikar** [1957 SCR 121 / AIR 1957 SUPREME COURT 121], a meaning of words used, cannot be readily assumed beyond their ordinary connotation, in the absence of compelling words showing clear legislative indication of such an intent. Likewise, a five Judge decision of the Apex Court in **Punjab Land Development and Reclamation Corporation Ltd. Vs Presiding Officer, Labour Court** [1990 SCR (3) 111 / 1990 SCC (3)

682], held that where the legislature uses the word "means", the definition is exhaustive.

> "The definition has used the word 'means'. When a statute says that a word or phrase shall "mean"--not merely that it shall "include"--certain things or acts, **"the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition"** (per Esher, M.R., Gough v. Gough, [1891] 2 QB 665). **A definition is an explicit statement of the full connotation of a term**." (emphasis added)

Consequently, unless the service rendered is, in substance of the genre of advice, consultancy or technical assistance, simpliciter, the activity cannot be brought within section 65(105)(g) merely because it arises in an engineering context.

7.7 **The expression "technical" undoubtedly postulates the application of specialised knowledge, skill and expertise. However, for the purposes of the present levy, the decisive consideration is the manner in which such expertise is deployed**. In **CIT Vs Bharti Cellular Ltd.** [(2009) 319 ITR 139], the Hon'ble Delhi High Court observed that the concept of a consultant is founded upon deliberation, conferring and rendering of opinion. Examined on that touchstone, the ECA cannot be regarded as a mere advisory contract. Windrad was required to depute a team of engineers to work with the appellant's own R&D personnel over a period of 15 months in relation to concept development, design, detailing, prototype-related work and start-up support. The agreement also contemplated the generation of materials and data, ownership whereof was to vest in the appellant upon final payment. These features, in our view, are indicative of a composite arrangement involving active

participation in execution and creation of deliverables, and not of a standalone consulting engagement alone. The contract, therefore, cannot be vivisected so as to isolate the engineering skill embedded in its performance and tax the same as 'Engineering Consultancy service'.

7.8 In **Skycell Communications Ltd. Vs Deputy Commissioner of Income-Tax** [(2001) 251 ITR 53], the Hon'ble Madras High Court held that where the expression "technical services" as appearing in Explanation 2 to section 9(1)(vii) of the Income Tax Act 1961, is imprecise, the rule of noscitur a sociis may legitimately be invoked, so that the word "technical" takes colour from the words "managerial" and "consultancy" accompanying it. Though rendered in the context of the Income-tax Act, the principle of interpretation is apposite. Relevant portion is extracted below:

> "8. Thus while stating that "technical service" would include managerial and consultancy service, the Legislature has not set out with precision as to what would constitute "technical" service to render it "technical service". **The meaning of the word "technical" as given in the New Oxford Dictionary is** adjective 1. of or relating to a particular subject, art or craft or its techniques: technical terms (especially of a book or article) requiring special knowledge to be understood: a technical report. 2. of involving or concerned with applied and industrial sciences: an important technical achievement. 3. resulting from mechanical failure: a technical fault. 4. according to a strict application or interpretation of the law or the rules: the arrest was a technical violation of the treaty.
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> *****. *****. *****
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> 14. We have already pointed out that the expression "fees for technical services" as appearing in section 194J of the said Act has the same meaning as given to the expression in Explanation 2 to section 9(1)(vii) of the said Act. In the said Explanation the expression "fees for technical services" means any consideration for rendering of any "managerial, technical or consultancy services". The word "technical" is preceded by the word

"managerial" and succeeded by the word "consultancy". **Since the expression "technical services" is in doubt and is unclear, the rule of noscitur a sociis is clearly applicable.** The said rule is explained in **Maxwell on the Interpretation of Statutes** (Twelfth Edition) in the following words (page 289) :

> "Where two or more words which are susceptible of analogous meaning are coupled together, **noscuntur a sociis,** they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general."

15. **This would mean that the word "technical" would take colour from the words "managerial" and "consultancy", between which it is sandwiched.**"
(emphasis added)

7.9 The scope of 'Consulting Engineering Service' under FA 1994, fell for consideration before a Coordinate Bench of this Tribunal in **Jyoti Ltd.**, (supra) relied upon by the appellant. Due to a difference of opinion among the Members of the Bench, the matter was referred to a Third Member. The majority view followed an approach similar to that seen in **Skycell Communications**, above. It held:

> "4. As is further seen that such engineering firm should be rendering any advice, consultancy or technical assistance to a client to make them liable to service tax. **To render advice means to give opinion or to make a recommendation regarding decision or course of conduct. Consulting means seek information or advice from a person or to take counsel.** Person consulted is a consultant and hence consultancy means rendering professional advice or service. **Similarly, 'technical assistance' means providing assistance on the basis of special skill and knowledge.** Where a person himself undertakes a job on contract basis for installation, erection and commissioning of machine, services are in the nature of execution of jobs and not in the nature of advice, consultancy or technical assistance. As observed by the original adjudicating authority, the word 'technical assistance' is preceded by the words 'advice' and 'consultancy'. Principle regarding interpretation of words has been laid down by Hon'ble Supreme

> Court in the case of **Rohit Pulp and Paper Mills Ltd. and case of State v. Hospital Mazdoor Sabha** 1960 - 2 SCR 886.
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> 15. **It is evident that the meaning of the words 'technical assistance', thus is required to be judged from the words 'advice' and 'consultancy'.** Both these words mean "to give opinion on any subject". **It does not include actual performance of any work.** The execution of the work is not included under the words, 'advice', 'consultancy' or 'technical assistance'. Thus, the amounts realized towards execution of work will not be covered under Service Tax."

The appeal filed by the Department against the Order before the Hon'ble Supreme Court was dismissed on merits, by holding that the activity involving erection/installation etc and incidentally providing the service of drawing, design etc was a works contract. [**Commissioner of Customs Vs Jyoti Limited** - 2022 (64) G.S.T.L. 129 (S.C.)- paragraph 4]. Applying the above ratio to the facts of the present case, we find that Windrad did not merely render opinion, advice or consultancy to the appellant. On the contrary, it undertook to deploy engineers to work in conjunction with the appellant's engineers for carrying forward a defined development programme comprising design, detailing, prototype-related activities and production start-up support, besides generating materials and data ownership of which was to ultimately vest in the appellant. The consideration paid under the ECA was thus for a composite, performance-linked development Agreement and not for a standalone taxable consulting engineering service. In these circumstances, Revenue has not discharged its burden of proving that the services received under the ECA were that of 'Consulting Engineering Service' covered under section 65(105)(g) of the Finance Act, 1994 and hence the demand cannot be sustained.

The issue is accordingly answered in favour of the appellant and against the Revenue.

8. Revenue has relied upon the judgment of the Hon'ble Kolkatta High Court in the case of **M.N. Dastur & Co. Ltd. Vs Union of India** [2002 (140) E.L.T. 341 (High Court Cal.)], where the issue was whether every person who provides the service of "Consulting Engineer Service" would include natural persons as well as juristic persons, be they individuals, partnership concerns or incorporated companies and is hence distinguished on facts.

9. In the light of the above discussions the other issues pertain to limitation, revenue neutrality, interest and penalty do not survive.

Conclusion

10. Accordingly, we set aside the impugned order. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 27.05.2026)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

Rex