**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

**Service Tax Appeal No.75922 of 2014**

(Arising out of Order-in-Original No.85/Comm/ST/KOL/2013-14 dated 24.03.2014 passed by the Commissioner of Service Tax Commissionerate, Kolkata Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

**M/s. Sastasundar Ventures Limited**
**(Known as Microsec Financial Services Limited)**
(Shivam Chambers, 1st Floor, 53, Syed Amir Ali Avenue, Kolkata-700019)

**Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Kolkata**
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

**Respondent**

**APPERANCE :**

S/Shri Rahul Dhanuka & Aditya Patwary, both Advocates for the Appellant
Shri R.K.Agarwal, Authorised Representative for the Respondent

**CORAM:**
**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.75958/2026**

DATE OF HEARING : 30 JUNE 2026

DATE OF PRONOUNCEMENT : **30 JULY 2026**

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order wherein a demand of Service Tax of Rs.65,19,360/-, along with interest has been confirmed and an equal amount of penalty under Section 78 of the Finance Act, 1994, has been imposed on the appellant and also a penalty of Rs.71,713/- has been imposed on the appellant under Rule 15(3) of the Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

2. The facts of the case are that the appellant is a Non-Banking Financial Company (NBFC) duly registered with the Reserve Bank of India, engaged primarily in the business of investment in shares/securities/units, providing loans against security/pledge and activity of professional and advisory services. The Appellant was duly registered with the Service Tax authorities under the taxable category "Banking and Financial Services" and was duly paying service tax on a self-assessment basis. Further, the Appellant also received various input services which was required for the provision of various output services and as such availed CENVAT Credit of service tax on such services.

2.1 During the relevant period, the appellant entered into the following key transactions:

(i) Invested in Venture Capital Fund ("VCF") units of Adharshila Venture Capital Fund Limited ("AVCFL") of face value of Rs.5,00,000/-and received profit from investment of Rs.4,97,16,954/-pursuant to an investment agreement dated 19.07.2007 which would also be clear from letter dated 31.03.2008 issued by AVCFL. Separately provided asset management services to AVCFL under a management advisory agreement and paid service tax on the management fees charged. For reporting purposes, the said amounts were classified together under the heading "Investment Banking Revenue" in the Books of Accounts.

(ii) Gulmohar Advisors Private Limited ("Gulmohar") had availed a short-term loan of Rs.5,00,00,000 from the Appellant but was unable to repay. In settlement, Gulmohar transferred copyright on "PRP Concept" and "PRP-SRS" (for PRP Software and Website) to the Appellant vide Agreement dated 28.03.2009. Via a subsequent agreement dated 30.03.2009, Gulmohar also transferred ancillary business rights—including trademarks, domain names, and royalty receivables from PRP Technologies Ltd.—to the appellant for a nominal consideration of Rs. 1,000. The Appellant thereafter entered into an agreement dated 01.04.2009 with PRP Technologies Ltd., under which it received royalty payments totaling Rs.36,33,663 over the relevant period, calculated at 10% of gross revenues.

2.2 An audit of the books of accounts was conducted by the Excise Authorities for the relevant period, and several documents and details were sought from the Appellant including specific details with respect to the transactions with AVCFL which were duly submitted by the Appellant.

2.3 Thereafter, a show cause notice dated 17.10.2012 was issued to the appellant, *inter alia*, demanding service tax on: (a) the profit received from AVFCL alleging it to be the consideration for "Fund Management Services" and taxable under "Banking and Financial Services"; (b) Royalty received from PRP Technologies Ltd. was alleged to be for the use of the "PRP" trademark and web portal, and thus taxable under "Intellectual Property Service". (c) CENVAT Credit was alleged to be inadmissible due to missing or improper documents. Extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 was invoked, alleging suppression of facts with the intent to evade payment of tax, along with proposals for interest and penalties. Besides, demand was also raised on account of two other allegations which were eventually dropped in the impugned order and hence no submissions have been made with respect to the same.

2.4 The appellant vehemently denied and disputed all the allegations contained in the impugned notice and adduced documentary evidence with respect to the true nature of the transactions, demonstrating that the receipts from AVCFL were purely profits on investment and the royalty received from PRP Technologies Ltd. essentially pertained to the transfer of a copyright being in the nature of original literary work in terms of Section 13(1)(a) of Copyright Act, 1957, which is statutorily excluded from Service Tax. The Ld.Commissioner, vide its Order-In-Original dated 24.03.2014, dropped a substantial portion of the proposed demand but erroneously confirmed the Service Tax demand of Rs.61,45,016/- on the profit from investment and Rs.3,74,344/- on the royalty income. Furthermore, the impugned Order disallowed CENVAT credit amounting to Rs.71,713/- while also confirming the recovery of applicable interest under Section 75 and imposing penalties under Sections 77 and 78 of the Finance Act, 1994.

2.5 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the income/profit from investment earned by the Appellant is not towards any taxable service provided by the appellant and is distinct from the management fees charged by the appellant from AVCFL. He submits that a sum of Rs.4,97,16,954/- recorded by the appellant as Investment Banking Revenuefor the FY 2007-08 pertains to profit received from sale of units held in AVCFL. The VCF operates by pooling capital from various

investors (unit holders) and deploying those funds into target companies. Upon the successful exit or valuation gain of these underlying investments, the VCF distributes the capital gains and profits back to its unit holders. These payouts are strictly a return on the investors' risk capital. Thus, the Appellant did not manage the funds of AVCFL for this specific receipt; rather, it was a unit-holder receiving its rightful share of profits. Therefore, the question of taxing this receipt under "Fund Management Services" (as a sub-category of "Banking and Other Financial Services") does not arise. In so far as the Management Fees is concerned, the appellant has already discharged the service tax on the same and the same is not in dispute.

3.1 He further submits that the department has merely relied upon the accounting nomenclature to confirm the demand on the profit/income earned on the investments as both the profit from investment and management fees have been clubbed under the same accounting head. It is a settled principle in law that nomenclature used in books of accounts cannot determine the taxability of a transaction. Reliance in this regard is being placed on the judgement of the Hon'ble Maras High Court in the case of Firm Foundations & Housing Pvt. Ltd. Vs. Pr. Commr. Of ST, Chennai [2018 (16) G.S.T.L. 209].

3.2 It is further submitted that it had duly discharged its burden of proof by placing on record documentary evidence including the Investment Agreement dated 19.07.2007 and the specific confirmation letter from AVCFL dated 31.03.2008. These documents clearly established that the receipt of Rs.4,97,16,954 was a profit on investment and not a fee for any service. The Ld.Commissioner arbitrarily rejected this evidence, erroneously holding that the claim was "not substantive" and "not established beyond doubt". However, it is a cardinal principle that the burden to prove that a specific receipt falls within the taxing statute and constitutes taxable consideration for a rendered service lies entirely upon the Revenue. If the Department chooses to reject or dispute the documentary evidence adduced by the Appellant, the onus shifts heavily onto the Department to bring forth positive, tangible evidence to prove the contrary. Reliance in this regard is being placed on the judgement of the Hon'ble Tribunal, Chennai in the case of Commissioner of GST and Central Excise Vs. Ms. Consolidated Construction Consortium Ltd. [2025 (11) TMI 603].

3.3 Further, he submits that it is a settled law that services tax demand cannot be raised in a mechanical manner only on account of difference between the books of account and ST-3 returns. ;Reference in this regard is invited to the judgment of the Hon'ble CESTAT Kolkata in the case of Saraf Services Pvt. Ltd. vs. CST, Kolkata[(2025) 26 Centax 54 (Tri.-Cal)].

3.4 It is further submitted that the royalty received by the Appellant is essential towards permitting towards use of copyrightwhich was specifically excluded from the definition of Intellectual Property Rights and as such was not taxable. He submits that the Ld. Commissioner has erroneously classified the royalty received from PRP Technologies Ltd. as a taxable "Intellectual Property Service" under Section 65(105)(zzr) of the Finance Act, 1994. The charging section relies on the definition of "Intellectual Property Right" provided under Section 65(55a) of the Act, which explicitly states:

> *"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."*

3.5 He further submits that the primary asset transferred by Gulmohar to the Appellant (and subsequently licensed to PRP Technologies Ltd.) was the copyright in the "PRP Concept" and "PRP-SRS" (Software Requirement Specifications). The said Copyright was registered with the Registrar of Copyrights as Literary works in line with Section 2(o) of the Copyright Act, 1957, which states that computer programmes, tables, and compilations are strictly categorised as "original literary works". Since the transaction fundamentally involves granting of right to use registered copyright of a literary work, it falls squarely outside the statutory definition of an "Intellectual Property Right" and cannot be taxed under this category. In this regard, he relies on the judgment of the Chennai CESTAT in the case of M/s. T.T. Krishnamachari & Co. vs. CCE, Chennai – II[2025 (3) TMI 1060].

3.6 He further submits that the Ld.Commissioner incorrectly isolated the agreement dated 01.04.2009 to conclude that the royalty was paid solely for the use of the "PRP" trademark and web portal without appreciating the fact that the said Agreement also contemplated licensing of registered copyrights. It would be pertinent to note that the Trademarks were transferred to the appellant by Gulmoharonly for a nominal value of Rs.1000 as opposed to copyrights which was transferred in lieu of settlement of loan to the tune of Rs.5,00,00,000/-. Therefore, the trademark and domain names had no standalone commercial value without the underlying copyrights which was also specified in the Agreement dated 30.03.2008 for transfer of trademarks by Gulmohar to the Appellant. In terms of Section 65A(2) of the Finance Act, 1994, when a composite service is prima facie classifiable under two or more sub-clauses, it must be classified according to the service that gives it its "essential character". The essential character of this transaction is the right to use the registered copyrighted software, for which PRP Technologies Ltd. agreed to pay a royalty of 10% (ten per cent) of its gross revenues. The transfer of the trademark was merely incidental to the effective rendering of the copyright service.

3.7 Further, it is submitted that without prejudice to the above, even when "Copyright Service" was specifically introduced as a separate taxable service under Section 65(105)(zzzzt) of the Finance Act, 1994 (w.e.f. 01.07.2010), the legislature deliberately excluded rights covered under Section 13(1)(a) of the Copyright Act, 1957. Section 13(1)(a) covers "original literary, dramatic, musical and artistic works". The CBEC Circular D.O.F. No. 334/1/2010-TRU dated 26.02.2010 also explicitly clarified that original literary works are kept out of the tax net to encourage creative works. Therefore, the royalty derived from a computer programme (a literary work) is not taxable under any category of the Finance Act, 1994.

3.8 The Id. Counsel further submits that the Ld.Adjudicating Authority has erroneously denied the substantive right of CENVAT Credit on arbitrary, procedural and hyper-technical grounds. The appellant submitted all the relevant documents/invoices/bills towards its claim of CENVAT Credit during the course of the adjudication proceedings. In spite thereof, the Ld. Ld.Commissioner has disallowed CENVAT credit of Rs.71,713 on hyper-technical grounds such as alleged non-submission of documents, mismatch of addresses, and invoices being issued in the name of key managerial personnel. It is a well-settled principle under the CENVAT Credit Rules, 2004, that the substantive right to avail credit cannot be denied due to curable procedural defects, provided that the receipt of the input service and its consumption in the provision of output services are not in dispute. The Department has not disputed the payment of Service Tax to the service providers or the actual receipt of these services by the Appellant. To support of his contention, he relies on the decision of this Tribunal in the case of Ms. Scorpion Express Private Limited Vs. Commissioner of CGST & Central Excise, Patna – I [2026 (5) TMI 1587].

3.9 It is further submitted that the extended period of limitation cannot be invoked in the facts and circumstances of the present case. He submits that the impugned notice dated 17.10.2012 seeks to demand Service Tax for the period 2007-08 to 2011-12 by invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994. It is a settled principle of law that the extended period of 5 (five) years can only be invoked if the non-payment of tax is occasioned by fraud, collusion, wilful misstatement, or suppression of facts with the deliberate intent to evade payment of tax. The burden of proving such mala fide intent lies squarely on the Department. In the present case, the impugned Order has mechanically confirmed the invocation of the extended period without adducing any positive evidence to establish a deliberate or contumacious conduct on the part of the appellant. In this regard, he relies on the decision of the Hon'ble Supreme Court in the case of Uniworth Textiles Ltd. v Commissioner of Central Excise, Raipur [2013 (288) E.L.T. 161 (SC)]. He further submits that the instant proceeding has been initiated on the basis of Audit of Books of Accounts and scrutiny of Profit & Loss A/c and no fresh material has been brought by the Revenue to allege any suppression of facts with intention to evade the tax. In that event, extended period of limitation cannot be invoked. To support of his contention, he relies on the following decisions :

(i) M/s Libra Business Private Limited Vs. Commissioner of CGST and Central Excise, Ranchi [2026 (6) TMI 956]

(ii) M/s Neo Metaliks Limited Vs. Commissioner of Central Goods and Service Tax, Bolpur [2026 (4) TMI 997]

(iii) M/s Rungta Sons Pvt. Ltd. vs. CCE, Bhubaneswar [(2024) 22 Centax 495 (Tri.-Cal)]

3.10 Again, he submits that when the entire demand has been computed on the basis of difference between the S.T.-3 Return and income as per the audited Balance Sheet/Profit & Loss Account, extended period of limitation is not invokable. In this regard, he relies on the following decisions :

(i) M/s Saraf Services Pvt. Ltd. vs. CST, Kolkata[(2025) 26 Centax 54 (Tri.-Cal)].

(ii) M/s PHI Seeds Pvt. Ltd. Vs. Commissioner of Service Tax, Hyderabad [2026 (6) TMI 1423 (Tri. – Hyd.)].

Finally, he prays for setting aside the impugned order by allowing their appeal with consequential benefits.

4. The ld.A.R. for the Revenue has justified the impugned order. Regarding short payment of Service Tax in respect of Asset/Fund Management Services, he submits that scrutiny of Books of Accounts and ST -3 revealed Short Payment of Service Tax under the category of Banking and other Financial Services. During audit, it emerged that the assessee suppressed income to the tune of Rs.4,97,16,954/- earned from management of Adharshila Venture Capital Fund for the period 2007-2008. Such activity constituted Asset Management/Fund Management Service, taxable under Banking and other Financial Services. Service tax of Rs.61,45,016/- was found short paid and therefore recoverable.

4.1 He further submits that the assessee, on the other hand submitted that appropriate ST has been paid on income earned from management of Adharshila Venture Capital Fund and that the aforesaid amount of Rs.4,97,16,954/- is not service income but is profit from investments made in the Fund and therefore not liable to ST. They also disputed the invocation of extended period of limitation and submitted that the department has not duly discharged burden of proof as regards their ST liability.

4.2 In this regard, it is submitted that the demand made by the department is based not merely on the difference in ST-3 vs Books of Accounts but on detailed examination of the nature of income, invoices issued, ledgers, notes to accounts, P&L and Balance Sheet of the assessee. On examination, it emerged that assessee had themselves disclosed income to the tune of Rs.5,07,53, 611/- for the period 2007-08 in their books under the head income from revenue management of

Adharshila Fund. These books of accounts have been duly audited and thus attained finality. It cannot be claimed at this stage that they have wrongly classified investment income/capital gains and wrongly clubbed them along with Service Receipts.

4.3 It is further submitted that as per the fundamental principles of accounting, all the material amounts merit separate disclosures and in this case, it cannot be grouped together if they do not have the same character. Here, Service income is claimed to be merely Rs.10,36,657/ whereas profit is claimed to be Rs.4,97,16,954/-, it thus ought to be classified separately, if it is capital gain/ profit from investment. It has been grouped together and audited as well implying income pertains to services only.

4.4 Further he submits that no document except investment agreement has been submitted. No evidences were produced before the department or before the adjudicating authority showing payment for investments; bank ledger, IT returns etc which would indicate payments made for investment or income from capital gains. Neither of any such evidences were submitted before the Hon'ble Bench as per their appeal memorandum. It does not appear to discharge the standard fact finding/burden of proof in the instant proceedings. In ST-3 they disclosed substantially lower amount leading to a difference of Rs 4,97,16,954/- resulting in Short payment of ST to the tune of Rs 61,45,016/-. The disclosure made by the assesse in their books and ST-3 thus appears misleading.

4.5 In respect of invocation of extended period, he relies on the following decisions :

(i) M/s B Electrical Company vs Pr. Commissioner of CGST & ST, Dehradun 2024 (8) TMI 786 CESTAT NEW DELHI ;

(ii) M/s Mayank Foods & Beverages Pvt. Ltd. 2026 (1) TMI 851 CESTAT-Allahabad ;

4.6 In respect of burden of proof, he relies on the decision of the Hon'ble High Court of Madras in the case of Computer Access Pvt. Ltd. Vs. The Commissioner of Central, Excise and Service Tax, Chennai [2026 (6) TMI 1369 MADRAS HIGH COURT] where the Hon'ble High Court accepted the Tribunal's reading of the work order and held that the appellant was engaged for managing and maintaining leased lines for consideration on a per-circuit, per-year basis. On a plain reading of the work order and the relevant tax entry, the activity squarely fell within Management, Maintenance and Repair service. The plea that the appellant was only rendering an insignificant part of the work for the system integrator, or that the main contractor had discharged service tax, was not accepted, particularly when no breakup was produced to establish that the tax paid by the main contractor covered the appellant's receipts for the disputed services.

4.7 Therefore, he submits that the substantial question of law framed regarding the payment of service tax by the main contractor, the Hon'ble High Court found that in the absence of breakup in respect of the receipt of service charges for maintenance being reflected in the documents, it is proved that the assessee has received consideration which is liable to be taxed under Service Tax Act. Hence, the substantial question of law was held against the assessee.

4.8 To support of his contention, he further relies on the decision of this Tribunal in the case of Sea Shipping Services [2026 (3) TMI 595-CESTAT Ahmedabad] where the appellant could not produce invoices or VAT returns conclusively showing pure sale transactions. The claim was that the transaction involves pure agent service was subsequently not found correct as they could not produce any evidence to show that they were acting as a pure agent and providing service on behalf of another person. Accordingly, he submits that the confirmed demand of service tax by invoking extended period has been upheld.

4.9 Finally, he prays for dismissing the appeal filed by the appellant and the impugned order be upheld.

5. Heard both the parties and considered the submissions.

6. On going through the arguments advanced from both sides, the following issues are under consideration :

**Issue No.(1)**

Whether the service tax can be demanded from the appellant under the category of "Banking and Financial Services" on the income earned on investment in units of M/s Adharshila Venture Capital Fund Limited on the basis of their financial records or not ?

**Issue No.(2)**

Can the service tax be demanded under the category of "Intellectual Property Services" on Royalty received for essentially permitting the use of copyright ?

**Issue No.(3)**

Whether the cenvat credit can be demanded for non-submission/ineligible documents, whereas it is not disputed that the service tax has been paid by the appellant for supply of the said service?

**Issue No.(4)**

Whether in the facts and circumstances of the case, the penalties under Section 77 & 78 of the Finance Act, 1994, are imposable on the appellant or not ?

**Issue No.(5)**

Whether in the facts and circumstances of the case, the extended period of limitation can be invoked or not ?

**Issue No.(1)**

**Whether the service tax can be demanded from the appellant under the category of "Banking and Financial Services" on the income earned on investment in units of M/s Adharshila Venture Capital Fund Limited on the basis of their financial records or not ?**

7. For better appreciation of facts, we find that the appellant has placed on record the investment agreement between the Appellant and M/s Adharsila Venture Capital Fund Limited and as per the said Agreement, the relevant terms are as under :

> *"1. That Microsec holds theunits in the Venture Capital Fund having a face bvalue of Rs.5,00,000 (Rupees five lacs only)each.*
> *2………………………………………………..*

*3. That Adharshila shall pay profit on investments against the units held by Microsec till the end."*

and the service showing profit earned by the appellant is also extracted herein below :

**Adharshila Venture Capital Fund Limited**

31.03.2008

To,
Microsec Financial Services Limited
Shivam Chambers, 1st Floor,
53, Syed Amir Ali Avenue,
Kolkata – 700 019

Dear Sir,

**Sub :- Payment of profit for the year ended 31st March, 2008 regarding your investment made in Adharshila Venture Capital Fund**

This is with respect to your investments with us, we would like to state that your account is credited by the following amount being profit on your investment made with us

| Particulars | Amount (Rs.) |
|---|---|
| Profit on investment | 4,97,16,954 |
| **Total** | **4,97,16,954** |

Kindly acknowledge the receipt of the same.

Thanking you

**For Adharshila Venture Capital Fund Ltd.**

(Authorised Signatory)

R. K. Singh

8. It is also a fact on record that the appellant is paying service tax on the basis of such agreement and paid service tax thereon. On the

basis of the documents placed before us, we find that the appellant has earned profit of Rs.4,97,16,954/- pertains to profit received during the period 2007-08 from sale of units holding AVCFL.

9. We further find that the appellant did not manage the funds of AVCFL for this specific receipt, rather, the appellant was a unit-holder receiving its rightful share of profits. The Revenue has relied upon the accounting nomenclature to confirm the demand on the profit/income earned on the investments as both the profit from investment and management fees have been clubbed under the same accounting head. It is settled principle in law that the nomenclature used in books of accounts cannot determine the taxability of a transaction. In the case of Firm Foundation & Housing Pvt. Ltd. (supra), the Hon'ble Madras High Court has observed as under :

> "***25.*** *Instead of such determination by application of the provisions of Rule 3, the respondent relies upon the P and L accounts to conclude that the amounts reflected therein have not been offered for service tax. The reporting of income in the P and L being irrelevant for the purposes of determination of service tax payable, the basis of the impugned assessment is erroneous."*

10. We further take note of the fact that the show-cause notice has been issued to the appellant on the difference between the ST-3, Audited Balance Sheet and Profit and Loss Account that cannot be the reason to hold that the appellant has evaded the payment of service tax by way of suppression. To prove that the profit shown by the appellant towards the service provided by the appellant is on the Revenue, which the Revenue has failed to do so and confirmed the demand without

adducing any supporting evidence, in that circumstances, we hold that the income earned by the appellant on the basis of differential figures between the books of accounts and ST-3 Returns, cannot form the taxable service provided by the appellant. Therefore, the demand of Rs.4,97,16,954/- is dropped.

**Issue No.(2)**

**Can the service tax be demanded under the category of "Intellectual Property Services" on Royalty received for essentially permitting the use of copyright ?**

11. We find that the service tax has been demanded under "Intellectual Property Service" on Royalty received for permitting the use of copyright. We find that the "Intellectual Property Service" has been defined under Section 65(55a) of the Act, which is 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."*

As per the "Intellectual Property Service", the copyright is excluded from the taxable service. In this case, the demand of service tax has been confirmed against the appellant shown as Royalty received by the appellant. The permission to use of their copyright to M/s Gulmohar Advisors Pvt. Ltd. was given vide Agreement dated 28.03.2009.

12. We further take note of the fact that the payment of Royalty has been made as per the Agreement dated 1st April, 2009 between the

Appellant and PRP Technologies Limited. The terms of the agreement for payment of Royalty is as under :

> *" B. Gulmohar has transferred the Copyright of PRP Concept and PRP-SRS to MFSL through an agreement dated 28th March, 2009.*
>
> *C. Gulmohar has also through an agreement dated 30th March, 2009 transferred to MFSL the i) trademarks PRP, Personal Resource Planning, ii) Registered website domain name and iii) Business right to receive royalty from PRP.*
>
> ***2. Payment of Royalty :***
>
> *In view of clause 3 of the Deed of Assignment dated 30th October, 2008 executed between Gulmohar and PRP, PRP shall pay to MFSL, a royalty equal to ten percent (10%) of PRP's Gross Revenues earned for each financial year ended on March 31 of each year. The PRP has agreed the same and shall make the payment due to MFSL, within 6 months from the end of each financial year or such other period as mutually agreed between the parties hereto."*

As per the Agreement dated 31st March, 2009 between the Appellant and M/s Gulmohar Advisors Pvt. Ltd., the terms and conditions are as under :

> *"II. Gulmohar as on date also possess some other Business Rights viz, a) Trademark of the words "Personal Resource Planning" and PRP, b) Registered website domain names, and c) Business Rights to received Royalty from PRP Technologies Limited in its name. At the initial stage of PRP development, these business rights does not hold any value as such. (hereinafter referred to as "Business Rights and more specifically described in Schedule A hereinafter.)*

*III. ………………………………………………………*
*IV. Gulmohar has agreed to transfer business rights herein above to Microsec at a total consideration of Rs. 1,000/- (Rupess One Thousand Only)"*

Admittedly, as per the Agreement, the Royalty is towards the copyright permitted by the appellant for use, which is clearly excluded from "Intellectual Property Right Service", therefore, on Royalty received by the appellant, the demand cannot be raised under "Intellectual Property Right Service". Therefore, the said demand is also set aside.

**Issue No.(3)**

**Whether the cenvat credit can be demanded for non-submission/ineligible documents, whereas it is not disputed that the service tax has been paid by the appellant for supply of the said service?**

13. We further take note of the fact that in this case the cenvat credit sough to be denied on technical grounds that the documents are deficient in terms of Rule 9 of the Cenvat Credit Rules, 2004, therefore, the cenvat credit has been denied.

14. We find that it is an admitted position that the appellant has availed cenvat credit on payment of service tax by supplier of service, which is not disputed by the Revenue. In this regard, this Tribunal in the case of M/s Scorpion Express Pvt. Ltd. (supra), held that the disputed invoices were issued in the names of the appellant's operating divisions, later covered by centralized registration, and that the services covered by those invoices were received for the appellant's

business and accounted for in its books. Therefore, it was held that the substantive cenvat credit could not be denied on mere procedural or clerical discrepancies in invoice names when receipt of services, payment of tax by the provider and use for output services were not disputed. Admittedly, in this case also, the cenvat credit sought to be denied for non-submission of documents, mis-match of invoices, which are in the name of key managerial personnel, but admittedly, it is not disputed by the Revenue that the said services availed by the appellant on payment of service tax by the service provider and the same has been used for payment on output services provided by the appellant and the said service was received by the appellant for providing output services. In that circumstances, merely on technical grounds, the cenvat credit cannot be denied.

In view of the above, the Issue No.(3) is answered in favour of the appellant.

**Issue No.(4)**

**Whether in the facts and circumstances of the case, the extended period of limitation can be invoked or not ?**

15. We find that the demand of service tax of Rs.4,97,16,954/- has been confirmed on the invoices dated 31.03.2008, which was shown by the appellant in their Books of Account and thereafter, financial balance sheet and in this case, the show-cause notice has been issued on 17.10.2012 as all those invoices are available in their financial report for the year 2007-2008 itself. Therefore, the show-cause notice issued on 17.10.2012 is highly barred by limitation. Therefore, the appellant succeeds on limitation also.

**Issue No.(5)**

**Whether in the facts and circumstances of the case, the penalties under Section 77 & 78 of the Finance Act, 1994, are imposable on the appellant or not ?**

16. We find that when the demand of service tax is not sustainable against the appellant, consequently, no penalties imposed on the appellant, are also not sustainable. Therefore, the penalties imposed under Section 77 & 78 of the Finance Act, 1994, on the appellant, are set aside.

17. In view of the above discussions, we hold that the impugned demand of service tax is not sustainable. Accordingly, the same is set aside and no penalties are imposable on the appellant.

18. Therefore, the appeal filed by the appellant is allowed with consequential relief, if any.

(Pronounced in the open court on **30.07.2026**)

**(Ashok Jindal)**
**Member (Judicial)**

**(K.Anpazhakan)**
**Member (Technical)**

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