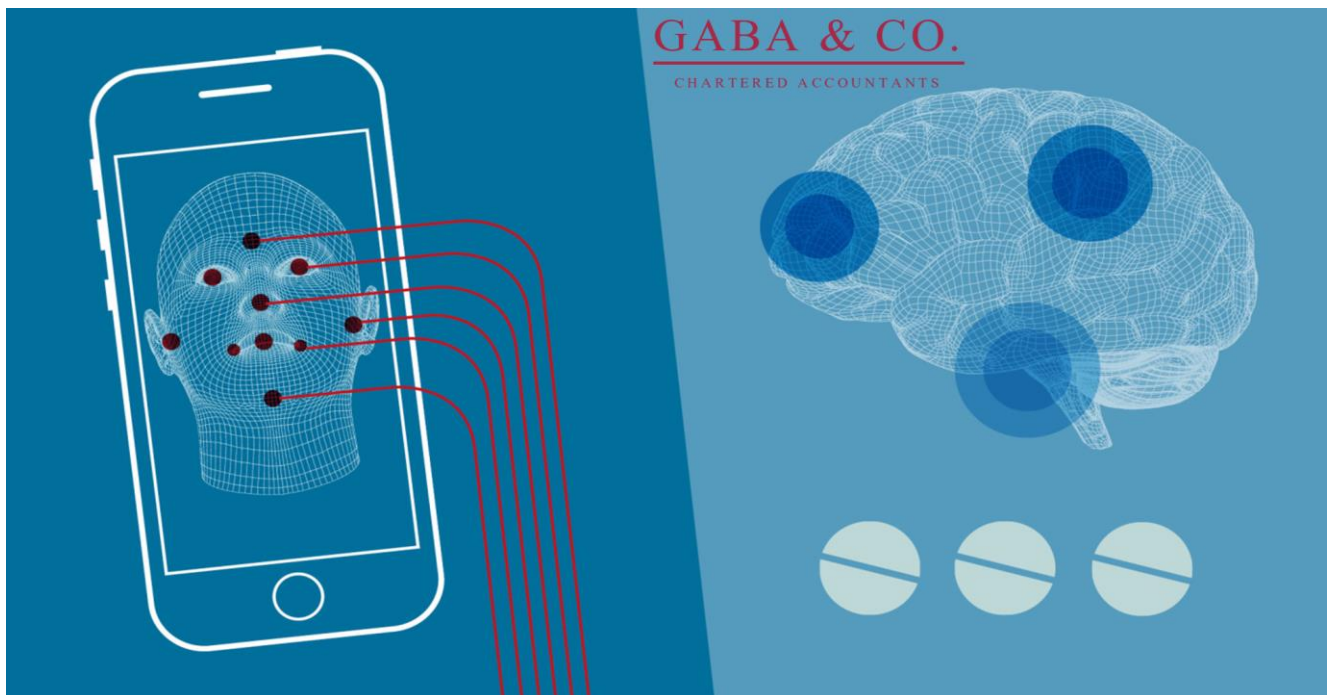


Permanent Transfer of Intellectual Property Rights – Service Tax & GST Implications



It is to apprise you about an important decision by the Tribunal in the case of ***Skol Breweries Limited v. CCE & CST 2020 (11) TMI 391-CESTAT Bangalore***. The Tribunal was dealing with the exigibility of Service Tax ('ST') on acquisition of Trademark by the Appellant by way of assignment from a foreign entity.

FACTS & CONTENTIONS IN BRIEF

- The Appellant purchased trademark of 'Foster' brand by way an exclusive, perpetual, and irrevocable assignment from Foster's Australia Limited (entity outside India) for an agreed consideration.
- The Department raised demand contending that such an assignment is an import of services by the Appellant under the head 'Temporary transfer of Intellectual Property Rights ('IPR')'.
- The Appellant contended that since the assignment of IPR was perpetual, exclusive, and irrevocable, the same must be considered as permanent. Thus, ST is not payable on the same.

DECISION BY TRIBUNAL

- The Tribunal observed that the dominant intention of the contract was to transfer the IPR on permanent basis. Also, the Appellant registered themselves as proprietor under the Trademark Act, 1999.
- It was, therefore, held that assignment of Trademark by foreign entity to the Appellant amounts to permanent transfer of IPR and thus, not exigible to ST.

GABA & CO. | REMARKS

- We agree with the decision of Tribunal that permanent transfer of IPR is not liable to ST.
- Needless to mention that such international transaction was not liable to VAT as well.

GABA & CO. | TAKE ON GST IMPLICATIONS

- Under Goods and Services Tax ('GST'), rate notification issued for services specifically mentions rate for temporary as well as permanent transfer of IPR.
- Interestingly, Schedule II of the Central GST Act specify only 'temporary transfer or permission for use or enjoyment of IPR' as supply of services.
- It is well established that an IPR is an intangible goods. Thus, a permanent transfer of IPR would amount to supply of goods. In fact, rate notification issued for goods specifically mentions the same to be chargeable at 12 percent.
- It is, however, notable that there is no chapter under Customs Tariff Act, 1975 which covers IPR. Thus, it may be challenged that there is no GST on permanent transfer of IPR. The challenge to the levability becomes stronger in case the transfer is from a foreign entity to an Indian entity.

Disclaimer:

The views expressed in the update are strictly personal, based on our understanding of the underlying law. We are not responsible for any injury, loss or cost arising to any person who refers this update and acts or refrains from any act accordingly. We would suggest that a detailed legal advice must be sought before relying on this update.