or mark with or without any indication of the identity of that person". CESTAT further took a view that 'Rollin' qualified to be considered as a brand name, though it was not registered. It was noted that assessee had incurred heavy expenditure on the publicity by using the said brand name. In addition to that, since the benefit of SSI had already been availed by A.K. Engineering Pvt. Ltd., it could not be extended again to the assessee.

Thus, the Supreme Court affirmed the view of the CESTAT and rejected assessee's appeal.

Value Added Tax

LD/66/92

The State of Tamilnadu

vs.

Tvl. Baron Power Ltd

16th November, 2017

'Export' also constitutes a "sale" as contemplated u/s. 3(4); High Court relies on 'Tube Investment of India Ltd' wherein the division bench held that Section 3(4) would have no application since situs of the export sales for the purpose of said Section was the State of Tamil Nadu, and by virtue of the said factual position, the applicability of Section 3(4) stood excluded for the exigibility of tax

The assessee, Baron Power Ltd., purchased raw materials availing concessional rate of tax u/s. 3(3) of the Act, by issuing Form XVII declaration. It used the raw materials in the manufacture of goods and effected export sales. However, the Assessing Authority rejected assessee's claim that purchases turnover u/s. 3(3) corresponding to export turnover would not be assessed to tax at 1% u/s. 3(4) of the Act. On appeal, the Tribunal set aside the assessment made at 1%.

Aggrieved, the Revenue filed revision applications. It relied on the Supreme Court ruling in the *State of Karnataka vs. B.M. Ashraf & Co.* [107 STC 571] wherein it was held that a sale deemed to be in the course of export u/s. 5(3) of Central Sales Tax Act, 1956, cannot be regarded as "intra-state

sale". It submitted therefore that the Tribunal had erred in interpreting the expression "in any other manner" occurring u/s. 3(4).

The High Court noted that the Supreme Court ruling in *B. M. Ashraf & Co.* (supra) had been distinguished in *Tube Investment of India Ltd.* [2010] 36 VST 67 (Mad.), wherein the Madras High court held *"sec 3(4) will have no application since situs of the export sales for the purpose of said Section was the State of Tamil Nadu, and by virtue of the said factual position, the applicability of Section 3(4) stood excluded for the exigibility of tax"*.

The High Court relied on *State of Tamil Nadu vs. Essar Inc.,* [(2015) 79 VST 588 (Mad.)] and *State of Tamil Nadu vs. Tvl. Saint Gobain Glass India Ltd.* [Tax Case (Revision) Nos.38 to 40 of 2016] and dismissed Revenue's revision applications.

LD/66/93

IJM Corporation Berhad

vs.

Commissioner of Trade & Taxes

2nd November, 2017

Interest u/s. 42 of Delhi VAT Act on refund of VAT amount accrues after period specified for processing refunds/returns u/s. 38(3)(a) and not from date of filing return

The Assessee, IJM Corporation Berhad, had filed VAT return in Form DVAT-16 for the month of March, 2012 claiming refund of tax paid. It also claimed interest on the ground that same was due and payable from the date of filing of the return. Revenue disputed that interest in terms of Section 42(1)(a) accrued after a period of one or two months from return filing date and not from date of filing of the return.

Being aggrieved, assessee preferred a writ petition before Delhi High Court.

The High Court noted that there could be time gap between filing of the original return and revised return and this aspect would depend on facts of each case. Further, the facts would matter in such case and require elucidation and clarity. It was further noted that interest was to be paid from the date when the refund was due to be paid to the assessee or date when the overpaid amount was paid, whichever was later. The High Court also observed that the date when the refund was due was the date on which the refund became payable i.e., in terms Section 38(3)(a)(i). The High court stated *"two sections, namely, Section 38(3) and 42(1) do not refer to the date of filing of return. This obviously as per the Act is not starting point for payment of interest."*

The High Court held that it would not like to go into the multifarious situations which may arise when an assessee files the revised return. It would be more appropriate and proper for the authorities under the DVAT Act to examine each and every case wherein a revised return has been filed and thereafter, determine whether the assessee would be entitled to interest and, if so, from which date, on the findings. The High Court directed the authorities to examine the question of interest payable on refund and the date from which it was payable in accordance with the aforesaid dictum and principles.

Thus, the High Court dismissed assessee's appeal.

Service Tax

LD/66/94

Commissioner of Service Tax, Mumbai-VI

vs.

M/s Gupshup Technology India Pvt. Ltd.

6th November 2017

When services are rendered to recipient located outside taxable territory who makes payment of entire consideration to service provider, then, even if such services are used in India by Indian subscribers of such foreign recipient, such services would be regarded as provided outside India and Rule 3/ Rule 8 of POPS Rules, 2012 cannot be invoked.

Facts:

In terms of agreement entered into with M/s Facebook, Ireland, the assessee provided business support services to M/s Facebook by undertaking activity of sending or receiving SMS to/from the Indian subscribers of Facebook by using a direct internet connection between them and Facebook. It was agreed that the assessee cannot charge any fee to Indian subscribers of Facebook or send any message to any subscriber other than the SMS message as directed by Facebook and entire consideration was paid by Facebook to the assessee in convertible foreign exchange. As regards the assessee's claim

for refund of unutilised cenvat credit under Rule 5 of Cenvat Credit Rules, 2004 r/w Notification No. 27/2013-CE(NT) dated 18.06.2012, the first appellate authority partly sanctioned refund claim for period 'January –June 2014' whereas, that for 'July –December 2014' was rejected entirely on the ground that services provided by the assessee are not export of services.

Revenue alleged that on behalf of Facebook, the assessee was providing SMS aggregator services within India to Indian Subscribers of Facebook; since both the service provider and service recipient i.e. Indian subscribers, are located within India; thus, in terms of Rule 3 and Rule 8 of Place of Provision of Rules, 2012 (POPS, 2012), the place of provision of service is in India and not outside India as submitted by respondent-assessee, hence, the services provided by the assessee cannot be regarded as 'export of services'.

The assessee relied upon ratio laid down in *M/s Paul Merchants Ltd. vs. CCE, Chandigarh 2013 (29) STR 257 (TRI) and M/s Vodaphone Essar Cellular Ltd - 2013-TIOL-566-CESTAT-MUM.*

Held:

The Hon'ble Tribunal noted that the Facebook initiates the transmission of SMS from their server located outside India through the assessee's API connectivity and respondent provides the services to M/s Facebook by sending or receiving SMS to subscribers of Facebook located in India, thus, the assesse is acting as aggregator/facilitator of all SMSs either originating from Facebook or subscribers of Facebook to transmit between them at direction and discretion of Facebook, for which service charges are paid by Facebook and in the entire process, respondent assessee neither interacts with the subscribers of the Facebook nor has any connection/ relation/concern with the said subscribers, the subscribers of Facebook are not even aware of existence of respondent and type of services rendered by them. Tribunal also found that CBEC itself in its education guide - Para 5.3.3 has clarified that the person who is obliged to make payment to the service provider is service recipient. Accordingly, Tribunal held that in sum and substance the recipient of services provided by the assessee would

be Facebook, Ireland and not the Indian subscribers of Facebook as alleged by Revenue.

As regards invoking Rule 3 of POPS, the Tribunal held that location of Facebook, Ireland is undisputed; thus, the Indian subscribers of Facebook cannot be termed as 'service recipient'. Further, it was held that Rule 8 would also not apply as the service recipient i.e. Facebook is located in Ireland, which is a non-taxable territory being located outside India. The Tribunal also held that if revenue considered that respondent has not rendered services outside taxable territory, however, by not issuing demand notice on the assessee for service tax on bills raised to M/s Facebook, revenue accepted that the assesse rendered services to party situated outside India being falling under category of 'Export of services', therefore, the rejection of refund claim is uncalled for. Tribunal thus held that respondent assessee is entitled to refund claim under Rule 5 of Cenvat Credit Rules, 2004.

LD/66/95

M/s Professional Education Services

vs.

CCE, Jaipur

23rd August, 2017

Tribunal allowed assessee's claim of cenvat credit pertaining to services used by assessee, for which initially the expenses were incurred by franchisor but subsequently, recovered from appellant by franchisor.

Facts:

The appellant is a commercial training and coaching center that obtained a franchisee of another training institute. The franchisor incurred advertisement expenditure for bringing students to coaching center of the appellant, also paid for courier services used by appellant and then, issued invoices to the appellant for reimbursement of proportionate amount of expenses incurred on behalf of the appellant. Appellant claimed cenvat credit on services availed for advertisement and courier services, which was denied by revenue by alleging that as appellant has not received these services, they are not entitled to cenvat credit of the same.

Held:

As regards revenue's allegation that advertisement services were not received by appellant in their premises, Tribunal found that the advertisement service is to be done in public at large for bringing students to the appellant's institute; admittedly by the advertisement done by the franchiser, the appellant got the students and thus, it was held that although the advertisement has been made by the franchisor, the advertisement service has been used by the appellant, thus, they are correctly entitled to cenvat credit.

With regard to disallowance of credit on courier services, as the said services were utilised for communication with the franchiser and students and also for procuring study material from the franchiser, Tribunal held that these were used by appellant only and not by the franchisor, thereby allowed appellant's claim for cenvat credit.

LD/66/96

Commissioner of Service Tax, Mumbai

vs.

M/s Ideal Road Builders Pvt. Ltd., M/s Mep Toll Road Pvt. Ltd.

26th September, 2017

When assessee collected toll on its own account and was required to pay fixed bid price to NHAI/MSRDC as per contractual terms, Tribunal held that assessee cannot be regarded as commission agent providing 'business auxiliary services' to NHAI/MSRDC and difference between toll collected by assessee on its own account and bid price paid by it to NHAI/MSRDC, cannot be charged to service tax as commission.

Facts:

Respondents secured rights to collect tolls for different sections of highways, on the basis of competitive bids from the National Highway Authority of India (NHAI)/Maharashtra State Road Development Corporation (MSRDC) and were obliged to pay fixed bid price for "toll collection charges" to NHAI/MSRDC irrespective of toll amounts collected by respondents. Revenue entertained a view that respondents have undertaken services of toll collection on behalf of NHAI/MSRDC i.e. respondents are collecting tolls as agents of NHAI/MSRDC and consideration for right to collect the toll was equivalent to total amount collected by respondent representing toll as reduced by bid price paid by them to NHAI/MSRDC. Thus, revenue alleged that respondents provided 'business auxiliary services'

to NHAI/MSRDC by acting as agent of NHAI/MSRDC for toll collection and part of amounts of toll as retained by respondent from toll collected, would be chargeable to service tax.

Held:

The Hon'ble Tribunal held that since NHAI/MSRDC are engaged in sovereign function and not into any business activity, respondents cannot be said to be providing services as auxiliary to business. Further, the Tribunal found that the activity of toll collection was undertaken neither on commission basis nor in lieu of any remuneration from NHAI/MSRDC; once the respondent paid bid amount to NHAI/MSRDC, all the proceeds of toll collection belong to respondents with no interference or right of NHAI/MSRDC i.e. the income generated from toll collection is respondent's own business income and NHAI/MSRDC has no right over such toll collection. Tribunal also noted that respondent did not collect the toll as representative or agent of NHAI/MSRDC nor any commission in terms of quantum of amount or percentage is charged by respondent from NHAI/MSRDC, rather they were liable to pay bid amount fixed at the auction to NHAI/MSRDC irrespective of whether such collection of toll is profitable to them or not. Accordingly it was held that toll collection by respondent is not arising out of rendering 'business auxiliary service' as alleged by revenue.

The Tribunal found that even otherwise, NHAI/MSRDC do not consider toll collection by respondents on their behalf as activity of commission agent as they consider respondent as in business of toll collection and collects tax at source u/s. 206C of Income-tax Act, 1961 from the installments paid by respondents (i.e. collection of income tax at the time of receipt of amount), further, since respondent's income is towards its own toll collection and they do not get any commission on account of collection of toll from NHAI/MSRDC, there is no deduction of tax at source under Section 194H which is towards deduction of tax as commission income. Therefore, the Tribunal held that the difference between the toll collected and the bid amount paid by the respondents to

Legal Update

M/s NHAI/MSRDC in no way can be termed as consideration for any service and set aside the demand of service tax on respondents under 'business auxiliary service'.

LD/66/97

Commissioner of Central Excise

vs.

M/s Tehri Pulp and Paper Ltd.

28th November 2017

Merely undertaking ancillary/supplementary activities of supervision and arranging transportation, commission on sale and follow up of for payment etc., while providing principal service of commission agency, would not constitute 'clearing and forwarding agency services' for which the essential condition is clearing of goods by agent on behalf of principal and thereafter forwarding these goods to particular destination at the instance and on the directions of the principal.

Facts:

Respondent entered into contract with its customers for providing host of services viz. supervision of transportation, arranging transportation, commission on sale and follow-up for payment etc. The Respondent was of the view that primarily they were engaged in providing commission agency services which are chargeable to service tax under category of 'business auxiliary services' and all other services were ancillary to main service of commission agency, whereas revenue sought to demand service tax from respondent by alleging that commission agency contracts entered into between respondent and its customers are for services of 'clearing and forwarding agency'.

During appellate proceedings before Tribunal, as there was difference of opinion between judicial member and technical member, matter was referred to third member who agreed with view taken by judicial member and held that services provided by respondent cannot be said to be those of clearing and forwarding agency and allowed respondent's appeal.

Aggrieved by the order of Tribunal, revenue filed present appeal on the ground that other than that as has been noted by the Tribunal, respondent was engaged in providing supervision of transportation, supervising supplies to be made to its customers etc. and thus, services provided by them were a bundle of services which amongst others include services of commission agency to procure orders and hence, said activities taken together lead to the conclusion that the assessee was providing 'clearing and forwarding services'.

Held:

The Hon'ble High Court relied on decision of Hon'ble Supreme Court in case of *Coal Handlers Pvt. Ltd. vs. CCE 2015 (38) STR 897 (SC)*, wherein it was held that the expression 'clearing and forwarding operations' would cover those activities which pertain to clearing of goods and thereafter forwarding those goods to particular destination at the instance and on the directions of the principal. In the process it may include warehousing of the goods so cleared, receiving dispatch orders from the principal, arranging dispatch of the goods as per the instructions of the principal by engaging transport on his own or through the transporters of the principal, maintaining records of the receipt and dispatch of the goods and the stock available on the warehouses and preparing invoices on behalf of the principal, i.e. essentially the agent has to get the goods cleared, on behalf of the principal, from supplier of goods and thereafter dispatching/forwarding said goods to different destinations as per instructions of principal. Accordingly, High Court upheld order of the Tribunal by observing that view taken by technical member of Tribunal is inconsistent with ratio laid in *Coal Handlers Pvt. Ltd. (Supra)*, in as much as all the activities that have been noted by the Technical Member to conclude that the assessee was engaged in 'clearing and forwarding' service are such activities, as are not involved either with clearing of goods or with forwarding of any goods to any destination or person, rather, such activities are only ancillary or supplementary to the activity of commission agency because they only seek to ensure prompt placement of orders; prompt supply of goods and prompt payment against such supplies etc. Hon'ble High Court thus held that since such ancillary activities are all arising from contract of commission agency, in any case, these activities are not such as may be linked with any of the activities required to be performed to treat the service as "clearing and forwarding service" and dismissed revenue's appeal.

LD/66/98

M/s Sudhir Chand Jain

vs.

Commissioner of Central Excise

Tribunal held that subcontractor, who provides services through main contractor to Deputy Commissioner of SEZ, would be entitled to exemption as services were provided to Deputy Commissioner of SEZ and no further approval of Approval Committee would be required.

Facts:

Appellant rendered civil construction services in SEZ, in the capacity of sub-contractor and claimed benefit of exemption notification which provided for exemption to service provider if such services are provided for utilisation fully in SEZ. Revenue denied benefit of exemption to appellant by contending that appellant has not fulfilled conditions stipulated for being entitled to exemption in as much as appellant has failed to establish that services provided by him had been approved by board of approval of SEZ and services provided by appellant were included in list of authorised operations and have been wholly consumed in SEZ. Appellant submitted that regardless of work done by main contractor or sub-contractor, the transfer of property in goods or services has accrued to principal i.e. deputy commissioner of SEZ. Appellant also submitted that approval from the Approval Committee is required in case of a unit in the SEZ, consuming the 'specified services', however, where the service is being consumed for the development of the SEZ in the course of work allotted by the Deputy Commissioner of the SEZ, no further approval of committee is required.

Held:

The Tribunal held that since admittedly the work order has been issued by Deputy Commissioner, SEZ, it amounts to providing and consuming service to SEZ i.e. there is *ipso facto* approval of the Deputy Commissioner of the SEZ and no further approval of the Approval Committee is

required. Further, relying upon ratio laid down by Hon'ble Apex Court in case of *Imagic Creative* and by Hon'ble Patna High Court in the case of *Hindustan Dorr Oliver Ltd. vs. State of Bihar*, Tribunal held that appellant as subcontractor, through main contractor, has provided construction services to Deputy Commissioner of SEZ, thus entitled to benefit of exemption and thereby set aside impugned order demanding service tax along with penalties.

Transfer Pricing

LD/66/99

Amrit Feeds Ltd

vs.

DCIT

6th November, 2017

Tribunal dismisses Assessee's appeal against CIT's revisionary order u/s. 263 on the ground that AO failed to verify specified domestic transactions; Tribunal ruled "...Simply submission of necessary details in form of 3CEB does not prove that the AO has verified the details regarding the deduction claimed by the assessee u/s. 80IB/80IE of the Act"; When there was no examination by the AO because the AO has not even raised any query on this issue, then it is a clear case of non- conduct of any enquiry on the issue

The Tribunal noted that CIT (A) had held that the assessee was very much carrying out the manufacturing activity and therefore eligible for deduction u/s. 80IB/80IE. However, ITAT observed that the quantum of deduction u/s. 80IB/80IE was not decided by CIT (A) as this issue was never raised before him. The Tribunal rejected assessee's argument that AO's order got merged with CIT(A)'s order with respect to determination of the question whether the activity of assessee is manufacturing in the nature or not.

ITAT stated that Circular No.3/2003 issued by CBDT was in relation to international transactions and same was mandatory in terms of judgment of Delhi HC in the case of *Ranbaxy Laboratories Limited* [345 ITR 193 (Del)]. ITAT explained that the concept of specified domestic transactions came into force with effect from A.Y. 2013-14 under the provision of Section 92C. Prior to the A.Y. 2013-14, there was no concept of determination of ALP in relation to specified domestic transactions. Thus, ITAT held that *"we have no hesitation in holding that the provisions as contained in CBDT's Instruction No.3/2003 cannot be applied to the specified domestic transactions"*.

The Tribunal stated that the AO must have verified the necessary details with regard to the deduction claimed u/s. 80IB/80IE of the Act. The assessee had also not brought anything on record suggesting that the AO had raised some queries with regard to the deduction claimed u/s. 80IB/80IE of the Act other than submission that the form 3CEB was available before the AO. It was further held that *"Simply submission of necessary details in form of 3CEB does not prove that the AO has verified the details regarding the deduction claimed by the assessee u/s. 80IB/80IE of the Act"*.

The Tribunal ruled that *"the AO has not made any verification for the quantum of deduction claimed by the assessee u/s. 80IB/80IE of the Act. When there was no examination by the AO because the AO has not even raised any query on this issue, then it is a clear case of non- conduct of any enquiry on the issue"*. The Tribunal noted that the AO did not ask any question, any record or explanation to justify the quantum of deduction claimed u/s. 80IB/80IE. The Tribunal held that *"a case of complete lack of enquiry which renders the order of the AO erroneous so far as prejudicial to the interest of the revenue"* and dismissed assessee's appeal.

LD/66/100

Bausch & Lomb India Pvt. Ltd.

vs.

ACIT

Delhi ITAT

Power of the Dispute Resolution Panel is co-terminus with that of the Assessing Officer/ Transfer Pricing Officer and DRP can do all such things, which the authorities could have done but omitted to do.

Facts and Background:

The assessee, Bausch & Lomb India Pvt. Ltd., is engaged in the manufacturing and trading of soft contact lenses, eyecare solution and protein removing enzyme tablets. The assessee is also involved in the trading of surgical equipments, such as, Excimer Laser System and Cataract Machines and Intra Ocular lenses.

During the course of transfer pricing assessment, TPO did not propose any transfer pricing adjustment in his order on account of

intra group services. During the course of hearing, DRP found that TPO inadvertently overlooked intra group services while passing the order. The DRP required the TPO to incorporate the benchmarking analysis and propose transfer pricing adjustment w.r.t. intra group services in his order.

Accordingly, TPO carried out such benchmarking analysis and determined Nil ALP of such a transaction. The DRP, after due notice to the assessee and having entertained its objections, directed to make transfer pricing adjustment on account of intra group transaction.

Issue:

Whether the powers of DRP are coterminous with that of AO/TPO?

Held:

On perusal of Section 144C(8) read with the Explanation (inserted retrospectively from 1.4.2000), ITAT stated that it clearly emerged that the DRP has a power to enhance variations proposed in the draft order on an international transaction, even if it was not raised by the assessee.

ITAT clarified that `Enhance the variations' include not only increasing the amount of TP adjustment already proposed, but also making a new TP adjustment, which was omitted to be proposed/ made by AO/TPO.

Accordingly, ITAT stated that power of the DRP is co-terminus with that of the AO/TPO and DRP can also do all such things, which the authorities could have done but omitted to do. ITAT further opined that *"If the language of the provision is read as disabling the DRP to exercise the power of enhancement in the circumstances as are obtaining in the instant case, as has been canvassed on behalf of the assessee, it would amount to diluting the power, which the statute has expressly granted."*

Further, ITAT referred to Section 144C(7) which provides that DRP, before issuing any final directions u/s. 144C(5) may either (a) make such further enquiry, as it thinks fit; or (b) cause any further enquiry to be made by any income-tax authority and report the result of the same

to it. ITAT stated that *"In the instant case, the DRP has impliedly taken recourse to clause (b) of sub-section (7) by causing the further enquiry to be made by the TPO before issuing direction u/s 144C(5). In view of the foregoing discussion, it is clear that no exception can be taken to the course adopted by the DRP in making the enhancement."*

ITAT also rejected assessee's contention that if there was some mistake in the order of the TPO or the draft order, then the remedy was with the CIT to revise the order u/s. 263 and not in making the enhancement by the DRP. In this regard, ITAT referred to Section 263(1) which clearly provides that CIT may call for and examine the record of any proceeding under this Act, and if he considers that any `order' passed therein by the AO is erroneous in so far as it is prejudicial to the interests of the revenue. ITAT clarified that an order can be prejudicial to the interest of the revenue only when it crystallises the liability of the assessee to pay and notice of demand is issued, which in the opinion of the authority is prejudicial to the interest of the revenue.

If no final liability, pursuant to which a demand notice can be issued, is capable of determination at that stage, such a draft order ceases to be characterised as an `order' capable of revision u/s. 263.

International Taxation

LD/66/101

Google India Pvt. Ltd.

vs.

ACIT

Bangalore ITAT

The Google Adwords advertisement module is not merely an agreement to provide advertisement space but is an agreement for facilitating the display and publishing of an advertisement to the targeted customer using Google's patented algorithm, tools and software. Google Adwords uses data regarding the age, gender, region, language, taste habits, food habits, etc. of the customer so as to maximise the impression and conversion to the ads of the advertisers. Consequently, the payments to Google Ireland are taxable as "royalty" and the assessee ought to have deducted TDS thereon u/s. 195

Facts & Background

Google India is a wholly owned subsidiary of Google International LLC.

Google India was appointed as a non-exclusive authorised distributor of Google Ireland's *AdWords program* in India under an agreement dated December 12, 2005 for resale of online advertisement space to advertisers in India.

Apart from marketing and distribution services provided to Google Ireland, under the Distribution Agreement with Google Ireland, Google India was also required to provide pre-sale and post-sale customer support services to the advertisers.

During the relevant year, the assessing officer observed that Google India had credited ₹ 119 crore to the account of Google Ireland without deduction of taxes.

As per Google India, purchase of AdWords Space under the Distribution Agreement would be characterised as business income in Google Ireland's hands and in the absence of a permanent establishment of Google Ireland in India, such income would not be liable to tax in India.

However, the AO treated the payments as royalties on which tax should have been withheld by Google India. Aggrieved, Google India appealed to the Commissioner of Income Tax (Appeals), however, CIT(A) upheld the order of the AO.

According to Department, Google India's marketing and distribution functions involved the sale of certain rights in the AdWords Program, for which Google India required a license to use the AdWords Program.

The distribution rights granted to Google India under the Distribution Agreement were therefore in effect a license to use Google Ireland's intellectual property i.e., *inter-alia*, the copyright in the underlying software code of the AdWords Program.

The grant of distribution rights also involves transfer of right in processes, including Google Ireland's databases software tools etc., without which it would not be able to perform its marketing and distribution functions.

The grant of distribution rights also involves the transfer of right to use Google Ireland's industrial, commercial and scientific equipment i.e., the servers on which the AdWords Program runs.