

Commissioner of Central Excise Vs. Motherson Auto Component Engg.

Commissioner of Central Excise Vs. Motherson Auto Component Engg.

SooperKanoon Citation : sooperkanoon.com/38491

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-2005

Reported in : (2005)(186)ELT96TriDel

Judge : J Balasundaram, Vice-, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Motherson Auto Component Engg.

Judgement :

1. The respondents herein are receivers of consulting engineering services from M/s. WOCO Franz Wolf & Co. Germany with whom they entered into agreement for know-how and license agreement on 5-11-1997. They paid technical know-how fees in consideration of technical assistance and consulting services to M/s. Woco during the period 1998 to 1999.

Service tax was not paid either by M/s. Woco or by the respondents.

Hence, show cause notice proposing recovery of service tax of Rs. 11,88,061.75 and proposing imposition of penalty, was issued to the respondents. The notice was adjudicated by the Deputy Commissioner who confirmed demand of service tax along with interest and also imposed penalty of amount equal to the tax plus penalty of Rs. 50,000/- under Section 76 and Rs. 1,000/- under Section 77 of the Finance Act, 1994; Commissioner (Appeals) set aside the adjudication order on the ground that the period of dispute was prior to 28-2-1999 and prior to August

2002 when service tax rule was amended to provide that in the case of a person who is a non-resident or is outside from India and does not have office in India, service tax shall be paid either by such a person or on his behalf by any person authorised by him, and prior to August 2002 when the service tax receiver was made liable to pay tax. Hence, this appeal.

2. We have heard both sides. The department relies upon Clause 4.07 of the collaboration agreement dated 5-11-1997 providing that "the licensee (respondents) shall deduct from the payment to be made hereunder ... tax from time to time" to contend that the liability to pay service tax is cast upon the respondents who has been authorised to make such payment by the service provider i.e. M/s. Woco. However, we see no merit in this plea in the light of clear language of the rule, as it stood during the relevant period when it was only the service provider who was liable to pay service tax and not any person authorised by him or the service receiver. We, therefore, see no reason to interfere with the impugned order and accordingly uphold the same and reject the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com