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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-12-2005

Judge : J Balasundaram, Vice, N T C.N.B.

Appellant : Samsung Electronics Co. Limited

Respondent : Cce

Judgement :

1. All these appeals are directed against the same order. Therefore, they were taken up together for hearing and are disposed of under this common order.
2. M/s Samsung India Electronics Limited is a subsidiary of M/s Samsung Electronics Co. Limited, Korea, The Indian subsidiary and the Korean parent got into "Technology Licence" and "Trade Mark" Agreements. Based on the technology and trade marks so transferred the Indian company manufacture washing machine, colour television in India. The agreement was entered in September 1995 and commercial production started from 17.6.97. In terms of the agreements the Indian Co. made "know-how fee" "royalty" payments from July, 1998 to June 2002.
3. The Central Excise authorities considered the agreements to be ones for 'engineering consultancy' and demanded service tax in regard to the payments made. the appellants contended that the transaction involved transfer of intellectual property like know-how, trade marks etc. and not rendering of engineering consultancy service. It was also contended that no service tax was

attracted inasmuch as the transfer had taken place well before imposition of service tax on consulting engineering service w.e.f. July 1997. M/s Samsung India Electronics Limited took a further defence that it was not liable to pay any service tax at all, inasmuch as, service was on the party rendering service and not on the recipient of the service. It was also contended that the provisions brought into force from 16.8.2002 under Rule 6(1) (in the case of a person who is non-resident or who is outside India and does not have any office in India and is liable to pay service tax, the service tax thereon shall be paid by such person or by any other person authorized) also would have no effect inasmuch as the subsidiary was not an agent or had not been authorized by the Korean company. These submissions found no acceptance in adjudication. Thereupon, appeals were filed before the Commissioner of Central Excise (Appeals) Noida. Vide his order in appeal dated 28.10.2004, the Commissioner gave some relief to the appellants, in regard to duty demand for part of the period and in regard to penalty. The present appeals are directed against that order of Commissioner (Appeals). The appellant companies contend that no service tax was payable at all, while the Revenue is in appeal contending that the relief granted by the Commissioner (Appeals) should be reversed.

4. We have perused the records and considered the submissions made by both sides.

5. The contention of the appellant company is that no service tax was attracted as engineering consultancy in regard to technology and trade mark agreements. It is being pointed out that know-how patent, trade mark are intellectual property and trading in them is not rendering any service, but is transfer of property. It is also being contended that the issue raised in this appeal remains covered in favour of the appellants by the judgment of this Tribunal in the case of Bajaj Auto Limited v. CCE&C, Aurangabad, 2004 (65) RLT 857 and Navinon Ltd. v. CCE, Mumbai-VI, 2004 (172) ELT 400. It is being pointed out that the very issues came up for consideration in Bajaj auto Limited and the Tribunal held that royalty paid towards right to use trade mark is not consultancy or advice and not subject to levy of service tax on engineering consultancy. Similarly, it is being pointed out that the Indian Co. is not an agent in the absence of specific authorization and no liability

for payment of tax rested on it, according to the judgments. Yet another submission is that these judgments held that the amendment of August, 2002 would have no retrospective effect.

7. We find that the appellant Cos. are right in their contention that the issues raised in these appeals remain covered in favour of them by the aforesaid judgements. The Tribunal has held with regard to royalty payments that it is not consultancy. we read para 8 of Bajaj Auto Limited and para 5 of Navinon Ltd. judgments:- "8. The contention of the appellants that payment of royalty is not subject to levy of service tax also requires acceptance in the light of Tribunal's order in Aviat Chemicals Pvt. Ltd. v. CCE (ST), Mumbai 2004 (64) RLT 11 (CESTAT-Del) : 2004 (170) ELT 466, wherein it has been held that right to use trade mark is a transaction in property and not consultancy or advice and that no consultancy or advice is involved in lease or sale of trade mark as it is a transaction in intangible property and in the present case, as clearly seen from the agreement, BAL has right to use trade mark/trade name of KHL, as per article 7 (agreement dated 9.3.98 and 7.11.00) which deals with industrial property rights and brand names".

"5. The amounts, which the appellants have to remit to M/s Ciba Geigy Ltd., Switzerland, are mentioned in the agreement under the heading "royalty". payments of royalty in the common parlance are not insisted as payment for a service provided. It is understood as a share of product or profit reserved by owner for permitting another the use of his property. Royalty payments in the present case for the use of technology and know-how cannot be equated with any services to be provided by M/s Ciba Geigy Ltd., to the appellants and therefore, the order of the lower authorities attracting a levy of tax on royalty payments made are required to be set aside." The amendment of August 2002 would have no application to the present case as the demands related to the previous period.

8. The Revenue's appeal has no merit as the issues remain covered in favour of the appellant company's.

9. In view of what is stated above, the appeals of M/s Samsung Electronics Co. Ltd., Korea and M/s Samsung India Electronics Ltd., are allowed after setting

aside the impugned order and the appeal of revenue is rejected.

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