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Commissioner of Central Excise Vs. Flex Engineering Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-2005

Reported in : (2006)STR208

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Flex Engineering Ltd.

Judgement :

1. Revenue is in appeal contending that the Commissioner (Appeals) was in error in setting aside the service tax demand of about Rs. 46 lakhs.

3. Commissioner (Appeals) set aside the said service tax demand upon a finding that the respondent had entered into a work contract with M/s.

Flex Chemicals Ltd. and the work contract cannot come under the purview of service rendered by a 'Consulting Engineer', as contended by the Revenue Commissioner (Appeals) observed as under : 21. In the present case, I find that the appellants have entered into a work contract with M/s. FCL and the same does not come under the purview of the "Consulting Engineer". The design drawing in question involved in whole process is incidental/essential to the execution of the work contract. The drawings were made for their own purpose, for the execution of the work contract. Following the ratio decided by Hon'ble CESTAT in the Daelim Industrial Co. case (supra), I allow the appeal.

During the hearing of the case, the learned Counsel for the respondent took us through the contract between the parties and the detailed terms of the contract. It is seen that the work in question was awarded vide letter dated 15th May 1998 for M/s. Flex Chemicals Ltd. That letter spoke of accepting the "detailed proposals" dated 6-4-98 of the respondents. The proposal was to enhance the capacity of the plant of Flex Chemicals Ltd. from 45000 MT to 55000 MT per annum and subsequently to 72000 MT P.A. The details of the proposal are to be seen in the document dated 6th April 1998. The index to that proposal gives the summery of the major items of work. We reproduce that index :5.

Prepolymer Filter Candles Cleaning ...

24 Systems 4. A perusal of the proposal makes it clear that different equipment and facilities in the factory of the Flex Chemicals Ltd. were being modified or fresh equipment added to increase the capacity. Thus, it is clear that the agreement between the parties was for a work contract as correctly found by the Commissioner (Appeals).

5. While passing the order, the Commissioner (Appeals) relied on the Order of this Tribunal in the case of Daelim Industrial Co. Ltd. v.CCE, Vadodam - . In that order, we held that a work contract is not amenable to be taxed as engineering consultancy contract. We further held that even if a work contract includes elements of engineering consultancy the contract cannot be vivisected and part of it subjected to tax as engineering consultancy. Upon a perusal of the record we are satisfied with the Commissioner's (Appeals) finding that the ratio of our decision in the case of Daelim Industrial Co. Ltd. (supra) applied to the facts of the present case and the Commissioner (Appeals) had rightly followed that order.

6. In view of what is stated above, there is no merit in the appeal of the Revenue. It fails and is rejected.

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