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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Dec-02-2005

Judge : P Chacko

Appellant : Commr. of C. Ex.

Respondent : Daylight Electronics Pvt. Ltd.

Judgement :

1. This appeal of the Revenue does not figure in today's cause list despite specific direction by the bench to post the case for being heard today. The respondent's Counsel has appeared today to present his case and accordingly the case records have been called for.

2. Examined the records and heard both sides. It appears that the respondents had entered into a joint venture agreement with M/s. Power Gems Ltd., U.K., on 14-3-1997, In terms of this agreement, the respondents received technical know-how in the form of detailed plans, specifications, blueprints, drawings and other data/information from the foreign company for the manufacture of electronic items such as ballast converters, inverters etc., in India. As a consideration for this benefit, the foreign company was to be paid by the respondents an annual remuneration, which, for the first financial year, was 2.5% of the respondent's turnover within three months from the end of such financial year and, for the successive financial years, 5% of the turnover of the company within three months from the end of the relevant financial year. According to these provisions laid down in clause 8.4 of the above agreement, the respondents paid a sum of Rs.

16,59,168/- for the period 1999-2000 to 2001-02, to the foreign company as technical know-how/assistance fee. The Department considered this amount as consideration paid by the respondents to the foreign company for "Consulting Engineers Service" and accordingly demanded Service Tax of Rs. 82,958/- from the respondents under Sections 68 and 75 of the Finance Act, 1994. Interest was also sought to be levied on this amount. Penalties were sought to be imposed on the assessee. The original authority upheld these proposals and accordingly demanded Service Tax of Rs. 82,9587- from the assessee under Section 73 of the Finance Act, 1994 read with Section 68 of the said Act. It also demanded interest on the above amount under Section 75 of the said Act, besides imposing penalties on the assessee under Sections 76 and 77 of the Act. Aggrieved, the assessee preferred appeal to the Commissioner (Appeals). Their appeal was allowed with consequential reliefs. Hence the present appeal of the Revenue.

3. Ld- SDR reiterates the grounds of this appeal. Referring to the observations made by Id. Commissioner (Appeals) that Section 73 of the Finance Act, 1994 was not invoked in the show cause notice for demanding Service Tax from the assessee, Id. SDK points out that, though in the original show cause notice, the provision was not invoked, a corrigendum dated 15-9-2003 added this provision to the original notice and, therefore, the above observation of the appellate authority is not factually correct. Referring to the provisions of the joint venture agreement, Id. SDK submits that 'technical assistance' and 'advice' were expressly mentioned therein as services to be rendered to the assessee by their foreign collaborator and, therefore, it could be reasonably inferred that the service contemplated under the above agreement was in the nature of a "Consulting Engineer's Service" as defined under Section 65(25) of the Finance Act, 1994. This submission is contested by Id. Counsel, who submits that, on a reading of the agreement in its totality, it would emerge that the benefit granted to the assessee by their foreign collaborator was only technical know-how and assistance for manufacture of the specified products in India. There was no element of "Consulting Engineer's Service" in such benefit. Reliance is placed on the following decisions of the Tribunal:-Aviat Chemicals Pvt. Ltd. v. CCE (Service Tax), Mumbai CCE, Chennai v. Veleo Friction Material India Pvt. Ltd. (vii) CCE, Madurai v. Reichie De Massari Ag Switzerland Diamond Cables Ltd. v. CCE, Vadodara 4. After giving careful

consideration to the submissions, I do not find a good case for the Revenue. The very definition of "Consulting Engineer" is till a question mark for the appellant. According to this definition "Consulting Engineer" means any professionally qualified engineer or an engineering firm, who either directly or indirectly renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering". In order to place any person within the ambit of such "Consulting Engineer", the Revenue should, in the first instance, establish that he is a professionally qualified engineer. The Revenue has not established this. The original authority observed that such advice and technical assistance as contemplated under the above agreement cannot be rendered by anybody other than a professionally qualified engineer and, therefore, M/s. Power Gem Ltd., would come within the ambit of "Consulting Engineer" as defined under Section 65 of the Finance Act, 1994. This observation of the original authority is just a presumption.

No tax could be levied on the basis of presumption. The above definition of "Consulting Engineer" called for a finding, supported by evidence, that M/s. Power Gem Ltd., U.K. were professionally qualified engineers. No such finding is forthcoming from the Order-in-Original.

Apart from this, the said order does not even mention the disciplines of engineering in which the so-called advice, consultancy or technical assistance was rendered to the assessee by the foreign company. Thus, the Revenue has not been able to make a good case with reference to the definition of "Consulting Engineer".

5. It has been consistently held by this Tribunal that any royalty or other consideration for technical know-how received by an assessee in India from a foreign company was not taxable under the Finance Act, 1994 vide case law cited above. Admittedly, the payment of an amount of Rs. 16,59,168/- made by the assessee to the foreign company is in the nature of running royalty for the technical know-how/assistance rendered by the latter, which service was not to be treated as "Consulting Engineers Service" for the reasons already recorded.

6. In the result, the impugned order gets affirmed and this appeal is dismissed.

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