

**Commr. of C. Ex. Vs. Brakewel Auto Components (i) Pvt.**

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**SooperKanoon Citation :** [sooperkanoon.com/41536](http://sooperkanoon.com/41536)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-18-2006

**Judge :** M Ravindran

**Appellant :** Commr. of C. Ex.

**Respondent :** Brakewel Auto Components (i) Pvt.

**Judgement :**

1. The respondents herein are Receiver of Consulting Engineering Services from M/s. ASK Technika Corpn., Japan, with whom they entered in the technical agreement for know how of design of plan layout, guidance for manufacturing process, quality test, installation of equipment etc. The respondents paid the technical know how fees on 1-7-98 in consideration of the technical assistance to M/s. ASK Technika Corporation. Hence, show cause notice was issued for recovery of Service Tax on the fees paid by respondents and proposing to imposition of penalty. The adjudicating authority confirmed the demand of the Service Tax along with interest and also imposed penalty. On an appeal the Commissioner (Appeals) set aside the order-in-original on the ground that the period of dispute is prior to 28-2-99 when Service Tax rule was amended to provide that in the case of a person who is non-resident or is outside from India and does not have any office in India, the Service tax thereon shall be paid either by such person or on his behalf by any person authorized by him.

2. Heard both sides and perused the records. The department's appeal is on the ground that the agreement between the respondent and the said M/s. ASK

Technika Corpn., Japan, provides for payment of License fees and Royalties etc. shall be net of any tax, charge or imposition of any kind, to contend the liability or to pay service tax is cast upon the respondents who have been authorized to make such payment by the service provider i.e. M/s. ASK Technika Corpn. Japan. However, I 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 authorized by him or the service receiver. In view of the above, I see no reason to interfere with the impugned order and accordingly uphold the same and reject the appeal.

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