

Prudent Communication Systems Vs. the Commissioner of Central

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SooperKanoon Citation : sooperkanoon.com/43828

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Oct-09-2006

Reported in : (2007)(114)ECC99

Judge : S Peeran, J T T.K.

Appellant : Prudent Communication Systems

Respondent : The Commissioner of Central

Judgement :

1. This appeal arises from OIA No. 11/2004 dated 27.01.2004 by which the activity undertaken by the appellant in regard to transfer of technology has been considered by the Revenue as coming within the category of 'Consulting Engineer'. This is challenged by the appellants on the ground that both the orders clearly accepted the fact as stated in the Show Cause Notice that the appellants were only transferring the technology in the form of supplying the designs. This activity cannot come within the ambit of Consulting Engineer as held in the following judgments. Amco Batteries Ltd. v. CCE, Bangalore Payment of know how and royalty is not consultancy and so also the right to use trade mark is a transaction of property and no consultancy or advise is involved. Not liable to Service Tax under the category of Consulting Engineer.

Technology transfer and receipt of payment for the same is distinguishable from Consulting Engineer services.

Technical know how received from foreign collaborator would not amount to services of 'Consulting Engineer'.

Payment made to foreign collaborators during 1988-99 till April 2002 in terms of 'technical assistance agreement'. The Tribunal held that technology transfer is distinct and separate from engineering consultancy service, hence no service tax liable on royalty paid on technical assistance.

Scientific Engineering House P. Ltd. v. Commissioner of Income Tax, A.P. Technical know how required for manufacture of microscope was held to be payment made towards acquisition of depreciable asset. The Apex Court further observed that the expenditure was capital in nature. That the article being tools of the trade and that it has some degree of durability would be construed to be in the nature of 'plant'. Hence considering transfer of technology as consultancy, technical assistance or advice is incorrect.

2. The learned Counsel submits that this issue is covered in their favour in terms of the above judgments and the gist of citations already noted therein, which is extracted supra. He submits that the appeal is required to be allowed in terms of the above judgments.

3. The learned JDR in his usual fairness submitted that the Revenue is not denying the fact that the assessee was only transferring the technology. Therefore, he leaves the matter to the discretion of the bench.

4. On a careful consideration, we notice from the facts of the case that the appellants were only transferring the technology and were not rendering any consulting services in the field of engineering.

Therefore, in terms of the above noted judgments, the activity of transferring technology cannot be brought within the ambit of 'Consulting Engineer'. The ratio of the above judgments clearly apply to the facts of the case. The impugned order is not legal and proper and the same is set aside by allowing the appeal with consequential relief, if any.