

Commissioner of Central Excise Vs. H.K. Rolling Mills Engg. P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-04-2007

Reported in : (2007)(116)ECC573

Judge : K Kumar

Appellant : Commissioner of Central Excise

Respondent : H.K. Rolling Mills Engg. P. Ltd.

Judgement :

2. This is an appeal filed by the Revenue and the issue is whether the respondent is liable to pay Service Tax on licence fees recovered under the Services of "Consulting Engineering" under the provisions of Finance Act, 1994. The Id. DR submitted that Section 65(18) of Chapter V of the Finance Act, 1994 has defined "Consulting Engineer" as under: "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.

He further submitted that as per the Licence & collaboration agreement dated 14.03.1997 between M/s. HSE, Germany and the respondents, the licence is the right to use patented technology for Thermex Cooling System, this technology has been patented by HSE, Germany; who have given exclusive right to the respondents to allow the use of this technology in the whole of India; the respondents grants licence to parties in India and charges their stipulated fees;

moreover the term licence itself means the permission to do something and the charges against the technical know-how is the licence fees, which the Respondents are collecting from their various clients in India; the agreement between M/s. HSE, Germany and the Respondents makes it quite clear that the licence fees are recovered against making available the Technical expertise/assistance for cooling technology and for controlling the quality of a product. Such services are covered under Section 65(18) as services provided by the "Consulting Engineer" 3. The Id. Representative appearing on behalf of the respondent inter alia submitted that the licence for using the technology we have already been charged, and we are not rendering any services. Therefore, the question of any Service Tax being charged on the respondents does not arise. He submitted that the object of the agreement is that - H&K agree to provide and the client agrees to obtain from H&K the Licence Rights to use the patented Thermex Technology of HSE Germany for the manufacture of High Strength Steel rebars as per the Thermex System and to meet the specifications for Grades Fe 415 and Fe 500 as laid down in IS 1786-1985 for the sizes 8 to 32 mm diameter; the client agrees to make available necessary space, working conditions and utilities for installation of the Thermex plant as per drawings provided by H&K.4. After hearing, perusal of the records and the agreement dated 28.06.2000 between H&K Rolling Mill Engineers Pvt. Ltd. and Rathi Super Steel Ltd., it is seen that the respondents themselves agreed to be an Engineering Company in collaboration with M/s. HSE who are the patent holders of the rapid water quenching process as per the Thermex Cooling Technology. In consideration of providing technology to their clients it is seen that they charge a price for that. The relevant clause relating to price provides that the clients has issued a Purchase Order for the value of Rs. 32 lakhs on H&K for grant of licence in the Territory, Engineering Services related to Thermex Technology, engineering assistance including supervision of erection and commissioning of Thermex Cooling System, and use of Trademark on rebars, the initial amount of Rs. 16 lakhs to H&K being payable in installments.

5. After perusal of the Order passed by the Commissioner (Appeals), I find that the Commissioner (Appeals) has wrongly held that the respondents are not covered within the Engineering Services. The agreement and the purchase order themselves make it clear and the clause as referred to above clearly proves that

they are rendering engineering services and as such I set aside the impugned order and uphold the order passed by the adjudicating authority and allow the appeal filed by the Revenue.

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