

Micrometic Grinding Technology Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-2007

Reported in : (2007)9STJ76CESTATNew(Delhi)

Judge : N T C.N.B., M Ravindran

Appellant : Micrometic Grinding Technology

Respondent : C.C.E.

Judgement :

1. The appeal is directed against denial of refund of Rs. 1,56,250/- which was paid by the appellant during the investigation of service tax liability of the appellant. The liability itself was in regard to purchase of Technical Know How by the appellant from M/s. Lizzini SPA.2. Under the impugned order, it has been held that the agreement was for Consulting Engineering Service and that service was liable to service tax.

4. We may note the relevant portion of the agreement between the parties to understand the subject of transaction.

AND WHEREAS it is the mutual desire of the parties hereto that Licensor should grant exclusive license, provide technical information and assistance, provide the complete design documentation besides training to enable Licensee to manufacture and sell CNC Internal Grinding Machines of Polar model and its variants The Licensor for the period of this agreement, grants to the Licensee

under its Technical Information and Improvement furnished by the Licensor to the Licensee pursuant to this agreement as well as under relevant patents of the Licensor which the Licensor has filed or file for said Technical Information, exclusive, transferable rights to manufacture Contract Products in India and to sell Contract Products in accordance with Article 7.2.

The Licensee shall make arrangement for the selling of Contract Products in India and export thereof to other countries all over the world, except Europe where sales can only be made after entering into a specific written agreement with the Licensor. The Licensee shall also provide to the Licensor with the names of all the customers where the machines are sold and installed.

In consideration of the documentation prepared and transmitted, rights and licenses including use of patent/trademark for the design documentation and of the technical information and training to be provided, the Licensee shall pay to the Licensor a lump-sum payment of Technical Know how (Royalty) fees of Indian Rupees 68,75,000/- (Rupees Sixty Eight Lakhs Seventy Five Thousand) subject to the applicable withholding and other taxes applicable from time to time in the instalments 4. A perusal of the above provisions in the agreement brings out the point that the agreement is for transfer of exclusive license, technical information and assistance for manufacture and sale of CNC Internal Grinding Machines of Polar model and its variants. There is no element of consultancy.

5. In the result, no service tax was payable by the appellant. The amount paid during the period is, therefore, liable to be refunded. The impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

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