Nova Chemicals (international) Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/47118

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-13-2008

Judge : S Jha, V T M.

Appellant : Nova Chemicals (international)

Respondent : Cce

Judgement :

2. The applicant who became the successor in business to M/s Du Pont, a manufacturer of polyethylene and they hold by inheritance the patent for processes/ technology associated with the manufacturing of the said product. The original patent holder M/s Du Pont and M/s GAIL had entered into a license agreement in 1993 permitting the latter to use the technology and the said agreement was limited to manufacture of 160 million kgs. of the said product per annum. M/s GAIL wanted to expand the capacity and accordingly the applicant and M/s GAIL entered into a supplementary license agreement on 10.9.2001 permitting increase of the capacity from 160 million kgs. to 210 million kgs. per annum on payment of one time fees amounting to US$ 4 million. The commissioner held them as rendering the services under the category of consulting engineer and confirmed demand of duty amounting to Rs. 33,93,475/- besides imposition of penalties under various Sections of the Finance Act 1994.

3. We have been taken through the supplementary license agreement by the Learned Advocate for the appellant. He submits that the applicant is basically a patent holder and not a consulting engineering firm.

They have transferred the necessary technology/ processes (for which they hold patent) to increase the capacity from 160 million kgs. to 210 million kgs. per annum. As in any case of transfer of technology, certain services are rendered which are in the nature of subsidiary services to implement the transfer of the technology. M/s GAIL is entitled to manufacture within the enhanced capacity for indefinite period without payment of any further fee to the patent holder as long as they do not exceed the limit of 210 million Kgs per annum.

Therefore, he contests the demand of service tax and imposition of penalty on them as consulting engineer. He draws our attention to the amendment to service tax law w.e.f. 10.9.2004 by which the intellectual property service has also been brought into service tax net. He submits that from the said date an agreement of this type will be covered by service tax under the head intellectual property service and as a corollary, for the earlier period the same service cannot be treated as consulting engineering service.

4. He also relies on several judgments of the Tribunal to support the contention that agreements for transfer of technology/ know-how can not considered to fall under category of consulting engineer, in spite of certain components of services like technical assistance, training being imparted in pursuance of the agreements.

5. Learned Departmental representative submits that in this case the agreement provides for detailed assistance in every aspects relating to expansion and they have supplied "expansion of basic package" and they have also rendered assistance in conducting trial of the installed additional plant.

6. We have carefully considered the submissions made by both the sides.

We note that the applicant is a patent holder and already has given certain rights to M/s GAIL. This is an additional agreement to expand the production capacity. We are of the prima facie opinion that the relationship between M/s GAIL and the applicant may not fall under the category of consulting engineer and client and the same is a relationship between a licensor and licensee. Therefore, we hold that the applicant has made out a prima-facie case in their favour and accordingly entitled to waiver of pre-deposit and stay of recovery of the dues as per the order

of the original authority.