Switzer Instrument Ltd. Vs. Cst

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-16-2008

Judge : K T P.

Appellant : Switzer Instrument Ltd.

Respondent : Cst

Judgement :

1. The impugned order demanded an amount of Rs. 36,052/- from M/s.

Switzer Instrument Ltd., Chennai, found to be due from them towards service tax under the category of Consulting Engineer. The Commissioner also demanded interest on the above amount of service tax. He imposed penalty under Section 76 (Rs. 100), Section 77 (Rs. 1000) and Section 78 (Rs. 37,000/-) on the appellants. The appellant had received technical know how, technical knowledge, information and drawings for manufacturing temperature switches, pressure switches and transmitters/transducers from M/s. Delta Controls Ltd., UK under a manufacturing licensing agreement. As per the agreement, the appellant was required to pay royalty to M/s. Delta Controls as a percentage of the sale price of the products licensed under the agreement. The appellants had received technical know how etc. during the material period August, 2002 to February, 2003. The original authority had dropped the proposals to demand service tax on the royalty paid by the appellants following the ratio of the decision of the Tribunal in Navinon Ltd. v. CCE . The impugned order was passed pursuant to revision in terms of Section 84 of the Finance Act, 1994.

2. Moving the application for waiver of predeposit and stay, the Ld.

Counsel for the appellants submits that there are a catena of decisions of the Tribunal holding that royalty payments in exchange for technical know how/technical knowledge etc. was not exigible to service tax under the category of 'Consulting Engineer's Service'. The Ld. Counsel relies on the following decisions wherein the Tribunal had vacated the demands for service tax in cases of similar facts.Shore Mis Private Ltd. v. CCE 2007 (5) STR 109 (Tri.-Chen.)Turbo Energy Ltd. v. CCE 3. Honda Siel Power Products Ltd. v. CST, Pondy. 2008 (9) STR 557 (Tri.-Chen.) 3. Ld. JDR relies on the decision of the Tribunal in Indian Farmers Fertilizer Co-op. Ltd v. CCE reported in 2007 (5) STR 281 (Tri.-Del) and Nokia (I) Pvt. Ltd., v. CC 4. I have carefully considered the submissions. I find that the dispute is no longer res integra. The issue has already been settled in favour of the assessee. The case law cited by the Ld. Counsel support his prayer for waiver and stay. The IFFCO case covers a situation where the provision of service included rendering of engineering services in terms of the agreement, as observed by the Tribunal. In the Nokia India (P) Ltd. case there was no transfer of technical know how for which royalty was paid. That decision only held that technical assistance rendered to a person also came within the purview of 'Consulting Engineer's Service'. In view of the case law on the subject the appellant has made a prima facie case against the penalty and demand.

Accordingly, there shall be waiver of predeposit of demand and penalty and stay of its recovery till the disposal of the appeal.