

Diffusion Engineers Ltd. Vs. Commissioner of Central Excise Nagpur

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-09-2010

Judge : The Honourable Mr. D.N. Panda, Member (Judicial) & the Honourable Mr. S.K. Gaule, Member (Technical)

Appeal No. : APPEAL NO: ST/96/2004 [Arising out of Order-in-Appeal No: RK/300/NGP-II/2004 dated 19/10/2004

Appellant : Diffusion Engineers Ltd.

Respondent : Commissioner of Central Excise Nagpur

Advocate for Pet/Ap. : Shri Durgesh Nadkarni, Advocate for the appellant. Shri B.P. Pereira, Authorised Representative (JDR) for the respondent.

Judgement :

Per: D.N. Panda, Member (Judicial)

1. Both sides are on rival submissions as to recovery of service tax from the appellant on the service provided by the foreign consultant to the appellant prior to a notified date. Revenue's claim is that the appellant agreed in terms of an agreement, to pay service tax liability, for which it shall be liable following the decision of the Hon'ble Supreme Court in Kerala State Electricity Board vs. CCE, Thiruvananthapuram 2008 (9) STR 3 (SC). But the appellant rely on the judgment of the Hon'ble Supreme Court in the case of Indian National Shipowners Association reported in 2009 (13) STR 235 (Bom.) and upheld by the Hon'ble

Supreme Court as reported in 2010 (17) STR J57 (SC) and negates the proposition of Revenue.

2. There is no dispute that the adjudication related to the period 1999-2000 and 2000-01. Consultancy service was provided by foreign consultant to the Indian appellant in terms of an agreement and as per appellate order para 7(vii), there was a term that the appellant shall collect service tax from the foreign company and pay to government. There was service tax demand of Rs. 1,40,833/- for the above period on the above account in respect of payment of Rs. 15,91,000/- and Rs. 12,25,667/- made to foreign consultant for the period 1999-2000 and 2000-01. The appellant was paying service tax after 16/08/2002. Record does not show whether any service tax was collected by the appellant from service provider. Finding the latest judgment of the apex court in Indian National Shipowners Association case cited (supra) as to determination of liability and realisability thereof from recipient of service after 18/04/2006 only and that impugned period in this case being 1999-2000 and 2000-01, we are unable to conceive that liability to tax on the appellant arises. Having no dispute that the appellant availed service of foreign consultant and the duty liability of the appellant is after a notified date, the appeal of the appellant is allowed for no evidence of service tax collected, on record. We make it clear that when there was no liability declaration by law at the relevant point of time, mere consent of parties by an agreement shall not create a liability.

3. Consequently, we allow the appeal of the appellant.

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