

(2014) 06 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 698 Of 2008

?CCE, Jaipur-I

APPELLANT

Vs

M/s. Brenco Incorporated

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Finance Act, 1994 — Section 65(31), 65(25), 65(105)(zzr), 66, 66A, 75A, 76, 77, 78
Service Tax Rules, 1994 — Rule 2(1)(d)(iv)

Customs, Excise And Service Tax Appellate Tribunal (Procedure) Rules, 1982 — Rule 21

Citation : (2014) 06 CESTAT CK 0008

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Yashpal Sharma

Final Decision : Dismissed

Judgement

1. THE facts leading to filing of this appeal are, in brief, as under: -

1.1 The respondent is a company incorporated and operating from USA. The respondent in terms of their agreement with M/s. National Engineering

Industries Ltd. (NEI) had during 2003-2004 provided technical knowhow in form of latest technology for making certain new types of bearings and

upgradation in technology for better quality of the product under a licence agreement and for this, M/s. NEI paid royalty to the respondent. The total

amount of royalty paid by M/s. NEI to the respondent during 2003-04 was Rs.73,90,463/-. The department being of the view that the respondent have

provided taxable services of Consulting Engineers in India, are liable to pay service tax on the same, as this service was taxable under Section 65(31)

read with Section 65(25) of the Finance Act, 1994, issued a show cause notice to them for demand of service tax amounting to Rs.5,91,237/- from

them along with interest and also for imposition of penalty under Sections 75A, 76, 77 and 78 of the Finance Act, 1994. The show cause notice was adjudicated by the Addl. Commissioner vide order-in-original dated 2.8.2002 by which the above mentioned service tax demand was confirmed against the respondent along with interest and besides this, penalties were imposed on them under Sections 75A, 76 and 78 of the Finance Act, 1994. In course of hearing before the Addl. Commissioner, it was pleaded on behalf of the respondent that during the period of dispute in view of the provisions of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, it is the service recipient who is liable to pay service tax and not the respondent, who had provided the services and also the respondent, a company located abroad not having any branch or establishment in India and who had provided the services from abroad and for this reason, they are not liable to pay any service tax, but this plea was not accepted and the service tax demand was confirmed against the respondent, a company incorporated in and operating from USA. On appeal being filed to the Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 22.08.2009 set aside the Addl. Commissioner's order and allowed the appeal relying upon the Tribunal judgment in the case of Philcorp Pte. Ltd. vs. CCE, Goa reported in 2007 (7) S.T.R. 266 (Tribunal-Mumbai) and also in case of Relax Safety Industries & Others vs. Commissioner of Customs, Mumbai reported in 2002 (53) RLT 1100 (CEGAT-Mumbai), wherein it was held that Finance Act, 1994 does not prescribe payment of service tax by a person who is a non -resident or is from outside India and does not have any office or establishment in India, as the provision of service tax are not applicable beyond the Indian territory. Against this order of the Commissioner (Appeals), this appeal has been filed by the Revenue and the Revenue have filed a cross objection.

2. None appeared for the respondent. Since a notice of hearing had been sent to the respondent well in time, in accordance with the provisions of Rule 21 of CESTAT (Procedure) Rules, so far as the respondent are concerned, the matter is being decided ex parte.

3. Heard Shri Yashpal, Id. Departmental Representative, who assailed the impugned order by reiterating the grounds of appeal in the Revenue's appeal and emphasized that the respondent, who had provided the taxable service of Consulting Engineer to a person in India, would be liable to pay

the service tax on the amount received from the service recipient in terms of Section 66 of the Finance Act, 1994, as this section does not make any distinction between a foreigner or an Indian as regards the liability to pay the service tax on the taxable service provided in India and that in this regard, there is no immunity to any foreigner from the applicability to the said Act.

4. We have considered the submissions of the learned DR and have perused the records.

5. The undisputed facts are that the respondent is a company incorporated in and operating from USA and has no branch office or any business

establishment whatsoever in India. There is also no dispute that the service provided is transfer of technology for manufacture of ball bearings under

licence agreement with M/s. NEI Ltd., Jaipur against payment of royalty. The service tax is sought to be recovered on the amount of royalty received

by the respondent from M/s. NEI during the period 2003-04. First of all, in our view, the service provided by the respondent to M/s. NEI is not the

service of Consulting Engineer but is Intellectual Property service, which became taxable w.e.f. 10.09.2004 under Section 65(105)(zzr) and, therefore,

during the period of dispute, the service provided by the respondent would not attract any service tax. In this regard, we find support from the

Tribunal's judgment in the cases of Novinon Ltd. vs. CCE-2004 (172) E.L.T. 400 (Tribunal-Mum.), Biocon Ltd. vs. CST, Bangalore reported in 2007

(7) S.T.R. 214 (Tri.-Bang.) and M/s. Bajaj Auto Ltd. vs. CCE reported in 2005 (179) E.L.T. 481, wherein it has been held that transfer of technology

under licence agreement against payment of royalty is not the Consulting Engineer's Service. Thus, on merit, the Department has no case. Moreover,

we also fully agree with the Commissioner (Appeals)'s view that when the respondent service provider is a company incorporated in USA and

operating from USA and does not has any branch or business establishment in India, and when the service has been provided by the respondent from

abroad, no service tax can be demanded from the respondent. Such receipt of a taxable service by a person in India from a foreign service provider

became taxable by making the service recipient as the person liable to pay the service tax with effect from 18.04.2006 by introducing Section 66A of

the Finance Act, 1994 and hence, during the period of dispute prior to this date, the service tax could not be demanded even from the service recipient.

We also find that the findings of the Commissioner (Appeals) that no service tax can be recovered from the respondent, a company incorporated in

USA and operating from USA and not having any branch or establishment in India are based on the judgments of the Tribunal in the cases of Relax

Safety Industries & Others (supra) and Philcorp Pte. Ltd. (supra), wherein it was held that the service tax demand was not applicable to a person or

company located outside India having no business or establishment in India. In view of this, we find no illegality or impropriety in the impugned order.

The Revenue's appeal is, therefore, dismissed.

(Operative portion already pronounced in the open Court)