
(2015) 08 SC CK 0148

In the Supreme Court Of India

Case No : Civil Appeal No. 1701 of 2006

Commissioner of Customs, Chennai

APPELLANT

Vs

Denso Kirloskar Industries Pvt. Ltd.

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Citation : (2015) 08 SC CK 0148

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Yashank Adhyaru, Sr. Advocate, Ritesh Kumar, Shenkar Datta and B. Krishna Prasad, Advocates, for the Appellant; M.P. Devanath, Vivek Sharma, R. Ramchandran, Aditya Bhattacharya, Hemant Bajaj, Anandh K., S. Vasudevan and Abhinav Jaganathan, Advocates, for

Final Decision : Dismissed

Judgement

1. A joint venture was formed between M/s. Denso Corporation Japan and M/s. Kirloskar Oil Engines Ltd., India on 07.10.1998. Thereafter, a technical licence agreement dated 28.01.1999 was entered into by the joint venture, viz., M/s. Denso Kirloskar Industries (Pvt.) Ltd., Bangalore, with M/s. Denso Corporation Japan. As per this agreement, the joint venture company (the Respondent herein) was to produce the products like air conditioners/radiators. For this purpose, the Respondent imported machinery components from M/s. Denso Corporation Japan and M/s. PT Denso Indonesia Corporation, Indonesia. The dispute relates to the transaction value that is to be arrived at for the purpose of import duty on the aforesaid import.

2. We may point out that there was a technical know-how agreement as well entered into between the Respondent and the Japanese company and the consideration which was paid for the technical know-how provided by the Japanese company was sought to be included in the transaction value. As per this agreement, technical information which was to be provided is of the following nature:

(4) "TECHNICAL INFORMATION"

i) Designs, engineering data, manufacturing land process data, basic machinery and facility layouts, testing and quality control data, and production and testing equipment data (including drawings of tool, jig, die and drawings of special machines and equipment of LICENSOR's design which LICENSOR and LICENSEE mutually agree as being necessary in the manufacture of CONTRACT PRODUCTS by LICENSEE) RELEASED IN AND USED BY licensor-during the term of this Agreement in the commercial production of CONTRACT PRODUCTS specifically excluding:

- 1) Information for innovative technology different from that at EFFECTIVE DATA,
 - 2) such information concerning integral components and materials per se which, although forming part of or used in the manufacture of CONTRACT PRODUCTS, involve techniques or relate to fields of research, development, design, engineering or manufacture separate and distinct from CONTRACT PRODUCTS (such as, but not limited to, semiconductor devices, and other components and materials including bolts and nuts which are not manufactured in LICENSOR's facilities), and
 - 3) information for excluded components, unit and assembly specified in Annex. I.
- ii) Purchase specifications and available material-standards for the purchase of those integral components and materials excluded in the above as not being manufactured in LICENSOR's facilities.

3. Though the Commissioner included the aforesaid value, the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") has vide the impugned judgment dated 22.07.2005 held that the consideration paid for the aforesaid technical information provided by the Japanese company cannot be included as the same is for post importation.

4. On the plain reading of the aforesaid agreement, it becomes clear that the technical information which was to be provided by the Japanese company to the Respondent was for the manufacture of the contract products by the Respondent herein, naturally, after the setting up of the plant. This cost is, thus, incurred after the importation of the goods.

5. The matter is squarely covered by the judgment of this Court in Civil Appeal No. 3042 of 2004 dated 13.04.2015 in the case of "Commissioner of Customs, Ahmedabad v. Essar Steel Ltd.". We, thus, do not find any merit in this appeal which is accordingly, dismissed.