IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/50158/2015-CU[DB]

(Arising out of Order-in-Appeal No. 171-ST/LKO/2014 dated 10/10/2014 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Shashi Cables Ltd. **Appellant**

Vs.

The Commissioner, Central Excise, Lucknow **Respondent**

Appearance:

Shri Pravin Sharma (Advocate) for Appellant
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing : 31/10/2018
Date of Decision : 31/10/2018

FINAL ORDER NO **72545 / 2018**

Per: Anil G. Shakkarwar

The present appeal is directed against impugned Order-in-Appeal No.171-ST/LKO/2014 dated 10.10.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow.

2. Brief facts of the case are that the appellants were manufacturer of 'Electrical Conductors' and they were also registered with Service Tax of payment of Service Tax. During the course of audit Revenue has come to know that appellant

had entered into Technology Transfer agreement with M/s Vijai Electricals Ltd. On the consideration received by the appellant from M/s Vijai Electricals Ltd. Revenue has entertained a view that the same is in respect of 'Scientific and Technical Consultancy' service, therefore, through a show cause notice dated 15.07.2011 appellants were called upon to show cause as to why service tax amounting to Rs.8,75,500/- should not be recovered from them for the period from May, 2008 to September, 2010 under provision of proviso to sub Section (1) of Section 73 of Finance Act, 194. On contest the issue was adjudicated through Order-in-Original dated 08.10.2013. The appellant contended before the Original Authority that they were manufacturers and they did not fall under the category of being a Scientist or Technocrat nor they are a Science and Technology Institution or Organization. The Original Authority did not appreciate their arguments and confirmed the demand and imposed equal penalty. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) did not interfere with the said Order-in-Original dated 08.10.2013. Aggrieved by the said order appellant is before this Tribunal.

3. The learned counsel for the appellant has submitted that scientific or technical consultancy service has been defined under Section 65(92) of Finance Act, 1994 and as per the said definition if a consultancy is provided by a scientist or a technocrat or a science and technology institution or

organization then only it qualifies to be defined as scientific or technical consultancy service. He has submitted that they were neither the scientist nor technocrat nor a science or technology institution nor organization and they were manufacturer and, therefore, they were not covered by the definition of scientific or technical consultancy service. He has submitted that they had received service tax of Rs.2,57,500/- from the M/s Vijai Electricals Ltd. and the invoice did not mention that the said tax was on account of scientific or technical consultancy service, however, since they had received service tax they had paid the same to the exchequer. He has submitted that in the entire course they never accepted the contention that they were providing scientific or technical consultancy service. He has further relied on the final order of this Tribunal in the case of Commissioner of Service Tax, Mumbai vs. Just Textiles Ltd. reported at 2014 (35) STR 395 (Tri. Mumbai) wherein it was held that a manufacturer is not providing scientific or technical consultancy service. He has further submitted that the said case law was relied upon in passing of the final order in the case of Wanbury Limited vs. Commissioner of C. EX. Cus. & S.T., Raigad, reported at 2016 (43) S.T.R. 226 (Tri. – Mumbai). He has further submitted that the amount of Rs.6,18,000/- plus interest deposited by them was on the insistence by audit team of Revenue.

4. Heard the learned AR. Learned AR has submitted that the appellant had raised the bill of Rs.25 lakhs on M/s Vijai

Electricals Ltd. and charged service tax payable thereon and the learned Commissioner (Appeals) has taken note of that and held that when they have collected service tax the appellant cannot keep the same for them merely on the ground of classification.

5. We have carefully gone through the records and submissions made by both the sides. We find that the appellants are neither a scientist nor a technocrat nor they are science and technology institution nor organization. Therefore, in our opinion they are not satisfying the requirement of definition of Scientific or Technical Consultancy Service. We find that the show cause notice has raised contention that the appellant were falling under the category of Scientific or Technical Consultancy Service. We, therefore, find that the said show cause notice is not sustainable as the appellants are not satisfying definition of Scientific or Technical Consultancy Service.

6. We, therefore, set aside the impugned order and allow the appeal.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Rachna Gupta)	**(Anil G. Shakkarwar)**
Member (Judicial)	**Member (Technical)**

Ankit