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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/339 /2006 Date 18/07/2008

Assistant Registrar
C.E.S.T.A.T,.New Delhi

To :
M/S BHARAT HEAVY ELECTRICAL LTD
BLOCK VII ANNEX W.W. GROUND FLOOR, P.O.
PIPLANI, BHIPAL
462003

M/S BHARAT HEAVY ELECTRICAL LTD Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/139/08 Customs dated 17/07/08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E BHOPAL
HOSHANGABAD ROAD. 48. ADMINISTRATIVE AREA. AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
MR.Z. U. ALVI
D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Service Tax Appeal No. 339 of 2006

[Arising out of the Order-in-Appeal No. 56/ST/APPL/BPL/2006 dated 08/05/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Bhopal (M.P.).]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

M/s Bharat Heavy Electricals Ltd. Appellant

Versus

CCE, Bhopal Respondent

Appearance

Shri Z.U. Alvi, Advocate – for the appellant.

Shri B.K. Singh, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

<u>DATE OF HEARING : 01/07/2008.</u>
<u>DATE OF DECISION: 17.7.08</u>

Final Order No. ST/139/08 Dated : 17/7/08

<u>Per. Rakesh Kumar :-</u>

The point of dispute in this case is whether the agreement between the Appellant and M/s Siemens A.G., Germany, granting the Appellant a non-transferable, non-exclusive licence to manufacture certain products in India by using the technology developed by M/s Siemens, and consideration for which is payable to M/s Siemens, as detailed in Article 8 of the Agreement, which consists of a one time payment for supply of manufacturing documentation, technical documentation and training of the Appellant's personnel and also royalty charges payable at 2% of the computation basis during the term of the agreement, can be treated as agreement for receiving engineering consultancy service under Section 65 (105g) from M/s Siemens and whether on this basis, the Appellant's as service recipient from ~~as of share~~ an offshore service provider are liable to pay service tax on the consideration of Rs. 2,89,98,385/- ~~period~~ paid to M/s Siemens during the period from 17/01/03 to 31/03/04.

2. Heard both the sides.

2.1 Shri Z.U. Alvi, Advocate, the learned counsel for the Appellant~~s~~ pleaded that from the agreement between the Appellant and M/s Siemens, it is clear that it is an agreement for transfer of right to use ~~potential~~ patented technology and brand name and not engineering consultancy and therefore it will not attract any service tax. The IPR service was not taxable during the period of dispute. In support of his argument that an agreement for transfer of ~~potential~~ patented technology and ~~a~~ technical collaboration agreement is not engineering consultancy service, he relied upon the following judgments :-

(i) Navinon Ltd. vs. CCE, Mumbai – VI reported in 2004 (172) E.L.T. 400 (Tri. – Mumbai)

(ii) Araco Corporation vs. CCE, Bangalore reported in 2005 (180) E.L.T. 91 (Tri. – Bang.)

(iii) Samsung Electronics Co. Ltd. vs. CCE, Noida reported in 2005 (07) LCX 0248

(iv) CCE, Bangalore vs. Toyoda Iron Works Co. Ltd. reported in 2007 (06) LCX 0052

(v) Yamaha Motors (I) Pvt. Ltd. vs. CCE, Delhi-IV (Faridabad) reported in 2005 (04) LCX 0071

2.2 Shri B.K. Singh, the learned Departmental Representative, defended the impugned order stating that exemption Notification No. 18/02-ST dated 16/12/02 provides for partial service tax exemption to – "taxable services provided by a consulting engineer to a client on transfer of technology" from which it is clear that the transfer of technology is covered by the Engineering Consultancy Services.

3. We have given careful consideration to the submissions from both the sides. The issue as to whether a particular activity is covered by the definition of a particular taxable service, cannot be decided on the basis of an exemption notification. We find that the issue involved in this case stands settled by a series of the judgments of the Tribunal as mentioned in para 2.1 above. Transfer of right to use a patented ~~potential~~ technology and a brand name is IPR service, which became taxable w.e.f. 10/09/04 only, while the period of dispute in this case is 17/1/03 to 31/03/04. We, therefore, hold

that the Appellants have not received any taxable service and the impugned order upholding the service tax demand against the Appellant and imposing penalty on them is not sustainable. The impugned order is, therefore, set aside and the Appeal is allowed.

(Pronounced in open court on 17.7.08)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK