

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

Appeal No. ST/444 /2008 - CU[DB]

Date 19/10/2011

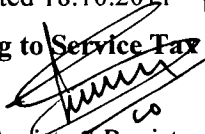
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
C.S.T. DELHI

Appellant
Vs
Respondent

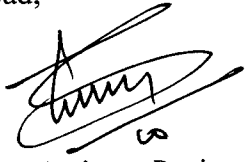
M/S SUZUKI MOTOR CORPORATION,

I am directed to transmit herewith a certified copy of **Final order No.ST/562/ 2011 CU[DB]** dated 18.10.2011
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
M/S SUZUKI MOTOR CORPORATION,
PALAM GURGAON
ROAD,GURGAON-122015.
2. Adv. / Consult
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file


Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

Service Tax Appeal No.444 of 2008

CST, Delhi

Appellant

Versus

M/s. Suzuki Motor Corporation

Respondent

[Arising out of Order-in-Original No.36/VKG/CST/2008 dated 8.4.2008
passed by the Commissioner of Service Tax, New Delhi].

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

-
1. Whether Press Reporters may be allowed to see
CESTAT (Procedure) Rules, 1982.
 2. Whether it should 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 Departmental
authorities?
-

Appearance: Rep. by Shri Sonal Bajaj, SDR for the appellant.
Rep. by none for the respondent.

CORAM : Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No. ST/562/11 Dated : 13.9.2011

Per Rakesh Kumar:

The respondent, M/s. Suzuki Motor Corporation, Japan entered into an agreement dated 15.12.98, as amended by agreement dated 31.08.99 and 9.1.2001, with M/s. Maruti ^{Udyog Ltd. (MUL)} India for transfer of technical know-how for manufacture of certain models of cars and to provide technical assistance to ^{MUL} in this regard. As per the agreement, the respondent was to depute their personnel to give technical advice and guidance in connection with manufacture of motor vehicles based on the technology transferred. As per the agreement for transfer of technical know-how and technical assistance, Maruti Udyog Ltd. was to make a lump sum payment of amount of Y 90,00,00,000/- (Rs.29,33,71,766/-) in three instalments and besides this, they were to pay running royalty at the rate specified in the agreement. The department was of the view that the amount received by the Respondent was for providing consulting engineer's services, which is taxable under Section 65 (105)(g) read with Section 65(31) of the Finance Act. It is on this basis that a show cause notice dated 14.01.2004 was issued to the respondent in Japan for recovery of service tax amounting to Rs.23,79,20,492/- for the period from 1.7.97 to 31.3.2002 along with interest and also for imposition of penalty on them under Section 76, 77 and 78 of the Finance

Act, 1994. The show cause notice was adjudicated by the Commissioner vide Order-in-Original No.36/VKG/CST/2008 dated 8.4.2008 by which the proceedings initiated against the Respondent were dropped.. The Commissioner in this case held that the consideration received as lump sum and royalty was not for any advice, consultancy and technical assistance in ^{any} engineering discipline but was for transfer of technical know-how and hence, no consulting engineer's service as defined under Section 65(105) (g) read with Section 65(31) of the Finance Act, 1994 , has been provided. This order of the Commissioner was reviewed by the Committee of Chief Commissioners directing the Commissioner to file a review appeal and accordingly, in pursuance of the directions of the Committee of Chief Commissioners, the present appeal has been filed.

2. Heard both the sides.
3. None appeared for the respondent though a notice to them had been issued.
4. Heard Shri Sonal Bajaj, Id. Sr. Departmental Representative, who assailed the impugned order by reiterating the grounds of appeal in the revenue's appeal and emphasized that the respondent during the period of dispute had provided engineering consultancy services to M/s. Maruti Suzuki Ltd.
5. We have carefully considered the submissions from both the sides and perused the records.

5.1 On going through the provisions of the agreement of the respondent with M/s. Maruti Udyog Ltd., As discussed in the show cause notice, we find that as mentioned in para-2 of the show cause notice, the agreement between M/s. Maruti Motors, Japan and M/s. Maruti Udyog Ltd., Gurgaon was to transfer the technical know-how and also provide assistance in this regard to Maruti Udyog Ltd., Gurgaon for manufacture and sale of certain models of cars in India. The technical know-how made available by the respondent to M/s. Maruti Udyog Ltd. was to be used only for manufacture and sale of the models of cars mentioned in the agreement and not for any other products. The consideration for transfer of technical know-how by the respondent to M/s. Maruti Udyog Ltd., Gurgaon for manufacture and sale of certain models of cars was a one time lump sum payment of ₹ 90 crores and a running royalty. From the various clauses of the agreement, as discussed in the show cause notice, it is clear that the purpose of the agreement was transfer of technology – transfer of certain technical information regarding manufacture of certain models of cars to Maruti Udyog Ltd subject to certain conditions. The Tribunal in the case of **CCE, Madurai Vs. Reichie De Massari Ag Switzerland reported in 2005 (184) ELT 260 (Tribunal)** has held that *technology* transfer and receipt of payments for the same is *Engineering* Consultancy Service. The same view has been taken by the Tribunal in the case of **CCE, Chennai-III Vs. Video**

Friction Material India Pvt. Ltd. reported in **2005 (185) ELT 78** wherein the Tribunal had held that transfer of technology by foreign company to the respondent against payment of royalty by the latter as consideration for transfer of technology is not engineering consultancy service. The same view has been taken by the Tribunal in the cases of **Yamaha Motors (I) Pvt. Ltd. Vs. CCE** reported in **2005 (186) ELT 161**, **M/s. Navinon Ltd. Vs. CCE, Mumbai-VI** reported in **2004 (172) ELT 400 (Tribunal)** and **M/s. Bajaj Auto Ltd. Vs. CCE, Aurangabad** reported in **2005 (179) ELT 481** holding that the transfer of technical know-how under licensing agreement against payment of royalty, whether one time or running royalty, is not consulting Engineer's Service. Therefore, the service provided by M/s. Suzuki Motor Corporation, Japan during the period of dispute could not be classified as 'Consulting Engineers' service and the same did not attract any service tax. We, therefore, do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

[Operative part of the order already pronounced in the open court].

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.