

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

**MA (EH)-75594/18
& S.T.Appeal No.76171/17**

(Arising out of Order-in-Original No.14/S.Tax/Commr./2016 dated 16.12.2016 passed by the Commissioner of Central Excise & Service Tax, Jsr.)

M/s Ramkrishna Forgings Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise & S. Tax, Jamshedpur

Respondent (s)

Appearance:

Shri Ravi Raghavan, Advocate & Shri H.Shukla, C.A. for the Appellant (s)
Shri S. Mukhopadhyay, Supdt. (A.R.) for the Revenue(s)

CORAM:

HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Date of Hearing : 02.05.2018

Date of Decision : 02.05.2018

ORDER NO - **FO/ST/A/75921/2018 & MO/75589/2018**

Per Shri V. Padmanabhan :

For the reasons mentioned in the application, the early hearing is granted. With the consent of both sides, the appeal is taken up for disposal on merit.

2. The present appeal is filed against the Order-in-Original No. 14/S.Tax/Commr./2016 dated 16.12.2016 passed by the Commissioner of Central Excise & Service Tax, Jamshedpur.

3. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of forged components for various customers. The period of dispute is July, 2012 to March, 2015. The customers supplied the drawing for preparation of moulds, which are

required to be used for the manufacture of forging. Towards the design of such moulds, certain charges were filed by the appellant. The Department was of the view that such design charges are liable to payment of service tax under the category of “design services” under Section 65(105)(zzzzd) of the Finance Act, 1994. Accordingly, service tax stands demanded and aggrieved by this demand, the appellant filed the present appeal.

4. With this background, we have heard Shri Ravi Raghavan, Id.Counsel for the appellant as well as Shri S.Mukhopadhy, Id.A.R. for the Revenue.

5. It is the submission of the Id.Advocate for the appellant that the design and drawings supplied by the customers, were used within the factory for preparation of moulds. Such moulds are repeatedly used in the manufacture of forging for the customer and after use of such moulds, the same are retained in the factory and if the same is cleared out of the factory, duty is liable to be paid. Accordingly, it is his submission that the design charges are, in fact, paid to the appellants by customers towards the manufacture of the moulds and since these are liable to payment of excise duty, there is no justification to demand of service tax.

6. On the other hand, the Id.D.R. for the Revenue, justified the impugned order. He explains that the charges paid to the appellant by the customer, are towards the design of the moulds and the customer in fact supplied drawing and the appellant is expected to use it in the design of such moulds and such charges are liable to service tax under design services.

6. After hearing both sides and carefully perusing the record, we find that the appellant has been supplied the design and drawings and were paid certain amount towards preparation of moulds. Such moulds are used repeatedly in the manufacture of forging and until cleared out of the factory are eligible for excise duty exemption under Notification 67/97 for captive consumption. It is observed that the design and drawing supplied by the customers have been utilized by way of design and preparation of the moulds within the factory. It is evident that the moulds are, in fact, prepared within the factory and the product came into existence in the factory and is liable to payment of excise duty if the same is cleared out of the factory. We are convinced that the activity undertaken by the appellant is nothing but the manufacture of moulds and hence levy of service tax on such amount under the category of design services under Section 65(105)(zzzzd) of the Finance Act, 1994, is not justified.

7. We find that a similar situation has been considered by the Tribunal in the case of M/s Metzeler Automotive Profiles India Pvt. Ltd. Vs. CCEx., Ghaziabad : 2005 (187) ELT 244 (Tri.-Del.), in which the Tribunal has considered the case where amount is received for design and development of tooling, which has been held to be not chargeable to service tax. The relevant portion of this order is reproduced below :

“4.We find that as per the provision of the Finance Act, 1994, the consulting engineer means any professionally qualified engineer or engineering firm who either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more

disciplines of engineering. No doubt, that the appellant in their balance sheet treated this amount as design and development charges. However, from the facts of the case, we find that the appellants were charging for the design and development of tooling, which were used in the manufacture of the rubber components of the motor vehicle. The rubber components so manufactured were cleared on the payment of excise duty and the value of rubber components are also included to the cost of these tooling. In these circumstances, we find that the demand confirming in respect of service tax treating the appellant as consulting engineering is not sustainable and set aside the impugned order. The appeal is allowed."

8. Similar view has been taken by the Tribunal in the case of M/s Ashok Iron Works Ltd. Vs. Commr. of Central Excise, Belgaum : 2004 (168) ELT 198 (Tri.-Bang.).

9. In line with the above observations, we find no justification for levy of service tax on design and drawing and the same is set aside and the appeal is allowed.

(Dictated and pronounced in the open court.)

Sd/
(V.Padmanabhan)
Member (Technical)
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Sd/
(Justice Dr. Satish Chandra)
President