

2010-TIOL-479-CESTAT-KOL

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

Appeal No.ST Appeal No.44/2006

Arising out of the Order-in-Original No.01/ST/Commr./2006 Dated: 25.7.2006
Passed by the Commissioner of Central Excise & Service Tax, Jamshedpur

Date of Decision: 4.2.2010

M/s MITSUI & CO LTD

Vs

CCE & ST, JAMSHEDPUR

Appellant Rep by: Shri Siladitya Sarkar, CA, Shri Rajiv Agarwal, ACA & Shri Rupindra Singh, Adv.

Respondent Rep by: Shri D K Acharya, Consultant

CORAM : S S Kang, VP
S K Gaule, Member(T)

ST - Consulting Engineer Service - Assessee enters into contract with a leading steel major in India - supplies imported drawings and designs - Revenue raises demand for consulting engineer service - assessee pleads it has paid customs duty on the designs and drawings and the value of the same should not be included in the gross value for advisory services - held, once the bill of entry was filed and customs duty paid on the designs and drawings, it is goods and no service tax can be levied on goods - issue remanded for fresh adjudication

ORDER NO.A-58/KOL/2010

Per : S S Kang:

1. Heard both sides.

2. Appellant filed this Appeal against the impugned order whereby demand of Service Tax was confirmed and penalties were also imposed treating the Appellant as provider of consulting engineering service. Contention of Appellant is that Appellant entered into a contract with M/s. Tata Iron & Steel Co. Ltd. (TISCO). The agreement was for supply of imported designs and drawings, provision of foreign technician's services for supervision of detailed engineering in India, manufacture of indigenous equipment, erection, start-up, commissioning, demonstration of performance guarantee tests and training at supplier's works for Skin Pass Mill (SPM) for Cold Rolling Mill project. The contract price is for supply of imported designs and drawings which is valued at Japanese Yen 211, 200, 000. The contention of Appellant is that the value of supply of imported designs and drawings were also taken into consideration by calculating the service tax by treating the Appellants as provider of consulting engineering service. The contention is that at the time of import, bill of entry was filed in respect of design & drawing in question which was duly assessed by the proper officer under the Customs Act. Appellant produced the copy of bill of entry. The contention is that as the Customs Authorities treated the import of designs and drawings as goods therefore the value of these cannot be taken into

consideration for the purpose of Service Tax. Similar argument is made in respect of the drawings and designs originating in India as the drawings and designs are goods as per the provisions of Central Excise Tariff and classifiable under chapter 49 of the Tariff. In respect of commissioning and erection services the contention is that the commissioning and erection services come under the scope of Service Tax w.e.f. 01.07.2003 and the present period is from April, 1999 to November, 2001 therefore the demand of Service Tax in respect of erection and commissioning is not sustainable. The Appellant relied upon the following decisions of the Tribunal:-

1) *CCE, Cochin vs. BPL Telecom Pvt.Ltd. - 2007 (5) S.T.R. 349(Tri.-Bang.)* = ([2006-TIOL-1753-CESTAT-BANG](#))

2) *Rana Udyog Pvt.Ltd. vs. CCE-Kol-II - 2007 (7) S.T.R. 526 (Tri.-Kolkata)* = ([2007-TIOL-569-CESTAT-KOL](#))

3) *Solitz Corporation vs. CCE, New Delhi-2009 (14) S.T.R. 642 (Tri.-Del.)*

3. Contention of Revenue is that the supply of designs and drawings is certainly a service liable for Service Tax under the category of consulting engineering service. It is also submitted that erection and commissioning service comes under the purview of Service Tax w.e.f. 2004. However, the same is to be treated as part of consulting engineering service. Revenue relied upon the decision of Authority of Advance Rulings(Income Tax), New Delhi in the case of *G.M.P. International v. Direction of Income Tax* reported in [2010-TIOL-03-ARA-IT](#) and the decision of the Tribunal in the case of *Nokia (I) Pvt.Ltd. v. CC, Delhi - 2006 (1) S.T.R. 233(Tri.-Del.)* = ([2006-TIOL-169-CESTAT-DEL](#)). The contention is that the consulting engineering service also include not only advisory consultative assistance but also implementation of their advice and no distinction can be made between the two. It will also be training of personnel, software support, operation/maintenance etc.

4. We find that in this case major portion of the demand is in respect of supply of imported designs and drawings. As per the Appellant the same were considered at the time of import of goods and bill of entry was filed which was duly assessed under the Customs Act. The same pleas raised in respect of the engineering and designs originating in India. We find that as the designs and drawings which are part of the contract are treated as goods by the Customs Authorities and were assessed under the Customs Act therefore the finding that the same are service is not sustainable and requires re-consideration. The impugned order is set aside and the matter is remanded to the adjudicating authority for de-novo adjudication. The adjudicating authority will decide afresh all the issues after affording an opportunity of hearing to the Appellant. Both sides are at liberty to produce evidence in support of their claims before the adjudicating authority.

5. The Appellants are directed to appear before the adjudicating authority i.e. Commissioner of Central Excise & Service Tax, Jamshedpur on 09.03.2010 and the adjudicating authority thereafter will fix a date and decide the case in accordance with law.

(Pronounced and dictated in the open court.)

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