(2014) 05 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 469 Of 2007

?C.C.E., Jaipur I — APPELLANT

Vs

Shah Technical Consultant Pvt. Ltd. — RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:
Finance Act, 1994 — Section 65(31)

Citation : (2014) 05 CESTAT CK 0010

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Suchitra Sharma, Sukriti Das

Final Decision : Dismissed

Judgement

1. Revenue has preferred this appeal against the order passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur dated 18.5.2007,

allowing an appeal preferred by the respondent/assessee against the adjudication order dated 24.8.2006 passed by the Joint Commissioner of Central

Excise, Jaipur.

2. Proceedings were initiated against the assessee proposing service tax demand of Rs.14,60,386/-, apart from interest and penalties, for having under-

reported the gross consideration charged by it for having provided â??consulting engineerâ? service during 2001 to March, 2005. The alleged under-

reporting was regarding reimbursement of the expenses incurred by the assessee for having provided â??consulting engineerâ? service during the

relevant period. The petitioner is a private limited company registered under the Companies Act, 1956. The primary Authority concluded that

reimbursement of the expenses incurred by the assessee on purchase of fixed assets i.e. furniture, office equipment, travelling per diem, production of tenders and reports, photocopying, payment of legal fess etc. are liable to be included in the gross consideration received for having provided the

taxable service; that these receipts were not reported and thus under-remittance of tax occurred.

3. The Appellate Authority however granted relief by excluding the expenses reimbursed. Consequently, the appeal of the assessee was allowed.

4. The Karnataka High Court and the Delhi High Court in C.S.T., Bangalore vs. Turbotech Precision Engineering Pvt. Ltd. - 2010 (18) STR 545

(Kar.) and C.C.E.& Service Tax vs. Simplex Infrastructure & Foundry Works - 2014 (34) STR 191 (Del.) clearly ruled that prior to 1.5.2006, a

company registered under the Companies Act, 1956 was not included within the definition of â??consulting engineerâ? defined in Section 65(31) of

the Finance Act, 1994.

5. In the light of the binding precedents, the respondent/assessee is not liable to remit service tax for providing â??consulting engineerâ? service

during 2001 to March, 2005, prior to 1.5.2006.

6. On the analysis above, the appeal by Revenue has no merits and is accordingly dismissed. No costs.

