
(2009) 11 P&H CK 0153
In the Punjab And Haryana At Chandigarh

Commissioner, Central Excise Commissionerate	APPELLANT
Vs	
Bhandari Hosiery Exports Ltd.	RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2010) 18 STR 713 : (2010) 24 STT 413

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Advocate : Sushil Gautam, for Gurpreet Singh, Indirect Taxes, for the Appellant;
Jagmohan Bansal, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of CEA No. 30 of 2009 and STA No. 14 of 2009 because common question of law and facts are involved. However, facts are being referred from CEA No. 30 of 2009.

2. The instant appeal filed by the revenue u/s 35G of the Central Excise Act, 1944 (for brevity, "the Act") is directed against order dated 19.2.2008, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, "the Tribunal"). The revenue has claimed that the following substantive questions of law would emerge from the order of the Tribunal and, thus, the same be adjudicated by this Court:

(i) Whether the service tax was leviable on the recipient of service irrespective of Section 66A of the Finance Act?

(ii) Whether non-supply of information to the department regarding overseas commission with the intention to evade service tax does not amount to suppression of facts and invite invocation of extended period of limitation?

3. It is appropriate to mention that the assessee-respondent are engaged in the manufacture of hosiery goods and are also involved in their export. In the

process they avail services of individual overseas commission agents under auxiliary services. A show-cause notice was issued to them for demand of service tax for the period from 9-7-2004 to February 2006 alleging that the assessee was recipient of services of commission agent who has been residing outside India. The Adjudicating Authority confirmed the demand and imposed penalty. However, on appeal the Commissioner (Appeals) set aside the demand to the extent it was beyond the period of limitation and also set aside the penalty. The order of the Commissioner (Appeals) has been upheld by the Tribunal on the basic premise that Section 66A of the Finance Act, 2006 (for brevity, "Finance Act"), was enforced with effect from 18-4-2006, which covered the services rendered outside India for the purposes of imposition of service tax and those services prior to enforcement of Section 66A of the Finance Act were not subjected to service tax. The Tribunal followed its own view rendered in the case of (2007) 10 STJ 227 and rejected the argument of the revenue that Section 66A could be construed retrospectively.

4. We have heard learned Counsel for the parties at a considerable length and find that there is nothing in Section 66A or Section 2(1)(d)(iv) which may lead to a conclusion that earlier to 18-4-2006 the Legislature intended imposition of tax on the services received by a recipient in India from outside India. The matter was considered in some detail by a Division Bench of Bombay High Court in the case of *Indian National Shipowners Association v. Union of India* [2009] 18 STT 212. Following the judgment of Hon'ble the Supreme Court rendered in the case of *Laghu Udyog Bharati v. Union of India* [2006] 4 STT 322, the Division Bench of Bombay High Court held that the Finance Act, 1994 was for the first time amended on 18-4-2006 whereby the revenue acquired legal authority to levy service tax on the recipient of taxable service from a person who is resident in India or has business in India. Accordingly, such a person becomes liable to payment of service tax when he received service outside India from a person who is non-resident or is from outside India after 18-4-2006. Earlier to the enforcement of Section 66A there was no authority vested by law in the revenue to levy service tax on a person who is resident in India but who receive services from a person resident outside India. Till the time Section 66A was enacted only the person who rendered the service was liable to pay tax and not the recipient of the service. Accordingly, the revenue did not have any authority to levy service tax on the assessee. The aforesaid view of the Bombay High Court has been followed and applied by a Division Bench of Delhi High Court in the case of *Unitech Ltd. Vs. Commissioner of Service Tax*, . We are in respectful agreement with the aforesaid view expressed by the Bombay and Delhi High Court.

5. In view of the above, these appeals fail and the same are accordingly dismissed.