

(2012) 12 AP CK 0048

In the Andhra Pradesh High Court

Case No : Cea No. 69 of 2012 and Ceasr No. 288 of 2012

Commissioner of Central Excise and Customs,
Visakhapatnam-I

APPELLANT

Vs

National Ship Design and Research Centre

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 65, 68, 73(a), 75, 75A

Citation : (2013) 39 STT 99

Hon'ble Judges : M.S. Ramachandra Rao, J;G. Raghuram, J

Bench : Division Bench

Advocate : A. Rajasekhar Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, J.—This appeal u/s 35G of the Central Excise Act, 1944 is filed by the Revenue challenging the final order No. 468/2011 in Appeal No. 114/2006 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore. The respondent M/s. National Ship Design and Research Centre, Visakhapatnam is an autonomous body under the administrative control of Ministry of Surface Transport, Government of India, and is engaged in providing services in the fields of integrated ship design, consultancy, maritime economics, research and development. The services being provided by the respondent include design (tender design to production drawings) of all kinds of floating structures and also providing consultancy in the fields of techno economic evaluation of vessels, model testing etc.

2. On a suspicion that the respondent was evading payment of Service Tax under the provisions of the Finance Act, 1994 on "Consulting Engineering Services" provided by it to clients, the Head Quarters Preventive Unit of the Central Excise Commissionerate, Visakhapatnam conducted investigations. The respondent submitted information of services rendered by it such as names of clients,

description of services rendered, amount collected towards services rendered etc. for the period 7.7.1997 to 31.3.2002. The respondent also contended that services rendered by them which are in the nature of non-research projects are alone classifiable as "Consulting Engineering Services" for the purpose of levy of Service Tax and that services shown as research projects did not fall under the above category prior to 16.7.2001 and for the period prior to 16.7.2001 the "scientific and technical consultancy services" i.e. research projects are not liable to levy of Service tax.

3. A show cause notice dated 11.6.2002 was issued by the Commissioner of Central Excise and Customs, Visakhapatnam to the respondent to show cause why:-

"(i) they should not be considered as a "Consulting Engineer" under clause 18 to Section 65 of the Finance Act, 1994 and the services so rendered by them should not be treated as taxable services under sub-clause (g) to Clause (72) to Section 65 of the Finance Act, 1994 for the purpose of levy of service tax under the provisions of the Chapter V of the Finance Act, 1994.

(ii) the gross value of services charged during the period 7.7.1997 to 31.3.2002 amounting to Rs. 9,48,76,081/- should not be assessed as the value of the taxable Consulting Engineer services so provided by them and the service tax thereon amount to Rs. 47,43,804/- (Rupees forty seven lakhs forty three thousands eight hundred and four only) should not be paid by them u/s 73(a) and Section 68 of the Finance Act, 1994.

(iii) the amount of Rs. 15,58,750/- (Rupees Fifteen lakhs fifty eight thousand seven hundred and fifty only) paid by them vide TR6 challans dated 21.2.2002 and 3.6.2002 should not be adjusted against the Service Tax payable under (ii) above.

(iv) Interest at the rate of twenty four per cent per annum as applicable u/s 75 of the Finance Act, 1994 on the amount of Service Tax payable as at (ii) above should not be demanded from them.

(v) the penalties under Sections 75A, 76, 77 and 78 of the Finance Act, 1994 should not be imposed on them.

4. The respondent gave a reply dated 25.9.2002 refuting the contentions of the Commissioner of Central Excise and Customs, Visakhapatnam and contended that it is not liable to pay Service Tax of Rs. 47,43,804/- on the amount of Rs. 9,48,76,081/- or interest or penalties as proposed in the show cause notice.

5. By Order in Original No. 16/2003-04 dated 30.12.2003, the Additional Commissioner of Central Excise and Customs, Visakhapatnam held that all the services rendered by the assessee attract Service Tax. He also held that even while doing research, the respondent renders services to its clients which come within the purview of "Consulting Engineering Services". He therefore confirmed the demand of Service Tax of Rs. 47,43,804/- apart from interest and penalties

as mentioned in the said order.

6. Aggrieved thereby, the respondent filed an appeal to the Commissioner of Customs and Central Excise (Appeals), Visakhapatnam in Appeal No. 1/2004(V-I) ST. The respondent contended that it is a scientific and industrial research organization recognized by the Department of Scientific and Industrial Research, Ministry of Science and Technology; that the Revenue had wrongly classified such research related services pertaining to ship design and production and other activities as "Consulting Engineering Services"; that the research oriented scientific activity became liable for service tax from 16.7.2001 under the caption "Scientific or Technical Consultancy"; that the Revenue was not justified in demanding service tax for the period prior to 16.7.2001 on research related projects; that the Assessing Authority mechanically passed the order treating their services as "Consulting Engineering Services" without appreciating the difference between the "research consultancy" and "Consulting Engineering Services" and therefore the order of the Assessing Authority is unsustainable. The Commissioner (Appeals) by order dated 30.12.2005 held that the subject "research oriented scientific activity" became taxable only with effect from 16.7.2001, that till such time it was not covered under the head "Consulting Engineering Services"; that the respondent by letter dated 25.9.2002 had submitted a detailed calculation indicating Service Tax liability for "Consulting Engineering Services" (other than research i.e. "scientific and technical consultancy") for the period 1997-98 to 2001-02 was only Rs. 15,58,750/-, that the respondent had also included Service Tax liability with effect from 16.7.2001 for "scientific and technical consultancy" and therefore he restricted the demand of Service Tax to only Rs. 15,58,750/- for the relevant period with interest. He set aside the penalties imposed on the respondent on the ground that the matter was in dispute as to tax liability for "scientific and technical consultancy" and they had paid the dues before issuance of show cause notice.

7. Challenging the same, the Revenue filed Service Tax Appeal No. 114 of 2006 to the CESTAT, South Zonal Bench, Bangalore. By Final Order No. 468/2011 dt. 19.7.2011, the said appeal was rejected by the Tribunal holding that the finding in respect of activities undertaken by the respondent was not under challenge before it, that the respondent was carrying out advanced research and development projects in the maritime transportation sector, mainly to carry out research related to ship design and production and other activities as a support to ship building and that the order of the Commissioner of Customs and Excise (Appeals) does not suffer from any infirmity.

8. Aggrieved thereby, the present appeal has been filed by the Revenue.

9. Heard Sri A. Rajasekhar Reddy, Senior Counsel appearing on behalf of the appellant in this appeal.

10. The learned Senior Counsel for the appellant contended that the services provided by the respondent fall under the category "Consulting Engineering

Services" or "Scientific and Technical Consultancy Service", that the respondent was liable to pay Service Tax from 7.7.1997 on its activities as there is no scientific research in their activities.

11. Admittedly, levy of Service Tax on "Consulting Engineering Services" was introduced with effect from 7.7.1997 by notification No. 23/97 dated 2.7.1997 under the Finance Act, 1994 through the Finance Act, 1997. It is also not disputed that "Scientific or Technical Consultancy" was brought under Service Tax net with effect from 16.7.2001 only.

12. The assessee/respondent was not only providing "Consulting Engineering Services" but also "Scientific or Technical Consultancy" i.e. Scientific Research. The activities of "Scientific Research" and "Consulting Engineering Services" are different.

13. The respondent in their letter dated 25.9.2002 had given a calculation indicating that only Rs. 15,58,750/- is payable towards service tax liability on "Consulting Engineering Services" (other than for research) for the period 1997-98 to 2001-02. They had included service tax liability on "Scientific and Technical Consultancy Services" i.e. research also for the period subsequent to 16.7.2001. They have also paid the said amount by TR-6 challans dated 21.1.2002 and 3.6.2002 as noted in para 7 of the order of the Commissioner of Central Excise and Customs (Appeals).

14. The Commissioner of Central Excise and Customs (Appeals), in our opinion, rightly allowed the appeal filed by the respondent and the Tribunal rightly confirmed the same on the ground that the nature of activities undertaken by the respondent was not challenged before it. In our view, the issue in the case has to be decided having regard to the nature of activities undertaken by the respondent i.e. which of its activities are "Consulting Engineering Services" and "Scientific or Technical Consultancy". This is a question of fact and in our view has been correctly decided by the Commissioner of Customs and Central Excise (Appeals) and confirmed in further appeal by the Tribunal rightly. There is no substantial question of law arising in this appeal. Therefore, the appeal is dismissed at the stage of admission. No costs.