(2010) 08 P&H CK 0301

In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise APPELLANT

Vs

Active International RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 83, 94(1), 94(2)
Service Tax Rules, 1994 — Rule 2(1)

Citation : (2010) 08 P&H CK 0301

Hon'ble Judges : Ajay Kumar Mittalm, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 (for short, "the Act") read with Section 83 of the Finance Act, 1994 against the order dated 25.11.2008 in appeal No. 517/2007-CU(DB) passed by the Customs, Excise & Services Tax Appellate Tribunal, New Delhi, proposing to raise following substantial question of law:

Whether service tax on the overseas commission on account of service rendered by the foreign based commission agent is not leviable on the recipient of service w.e.f. 16.8.2002 in the light of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, which were framed by the Central Govt. in exercise of the powers conferred u/s 94(1) & (2) of the Finance Act, 1994?

2. We have heard learned Counsel for the revenue.

3. Learned Counsel for the revenue fairly states that service rendered being prior to addition of Section 66A of the Act, providing for taxability of amounts received from services outside India, the view taken by the Tribunal that the said amount was not exigible to service tax, cannot be held to be erroneous, particularly in view of judgment of the Hon''ble Supreme Court in Laghu Udyog Bharati and Another Vs. Union of India and Others, , which has been followed by this Court in

order dated 17.11.2009 in C.E.A. No. 30 of 2009 Commissioner, Central Excise Commissionerate, Ludhiana v. M/s Bhandari Hosiery Exports Ltd.

4. In view of above, this appeal is dismissed.

