

(2010) 04 KAR CK 0278

In the Karnataka High Court

Case No : Central Excise Appeal No. 102 of 2006

Commissioner of Central Excise

APPELLANT

Vs

B.S. Refrigerators

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2011) 44 VST 349

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Y. Hariprasad, for the Appellant; Siddharth Srivatsava for G. Shivadass, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—The Revenue has preferred this appeal by challenging the order dated June 16, 2006 2006 (111) ECC 707 passed by the Customs, Excise and Service Tax Appellate Tribunal in Appeal No. ST/22/05 in Final Order No. 1082 of 2006. The relevant facts of the case are that the respondent-assessee which is engaged in the manufacture of refrigerators and other products had engaged the services of M/s. BPL Limited as its consignment agent by agreement dated March 21, 1997. M/s. BPL Limited, in turn, had undertaken the said services as a consignment and forwarding agent. It was noticed by the Department that the respondent as a service receiver had failed to pay appropriate service tax. A show-cause notice was issued to the respondent-assessee to which a reply was given. After considering the said reply, the Assistant Commissioner of service tax by his order dated April 26, 2004 confirmed the demand of service tax and also levied interest and imposed penalty.

2. Being aggrieved by the said order, the respondent-assessee preferred an appeal before the Commissioner (Appeals), who by his order dated December 31, 2004, upheld the order-in-original.

3. Against the said order, the respondent-assessee preferred an appeal before the Tribunal, which by its order dated June 16, 2006 allowed the appeal of the respondent and granted consequential reliefs.

4. Being aggrieved by the order of the Tribunal, the Revenue has preferred this appeal by raising the following substantial questions of law:

1. Whether, the distinction drawn by the Tribunal between the consignment agency service and clearing and forwarding agency service, was legal and correct, in view of definition of "clearing and forwarding agent" under the provisions of the Finance Act, 1994?

2. Whether the Tribunal is legal and correct in holding that the respondent are required to pay service tax only on the amount attributable to the clearing and forwarding agency service and are not liable to pay service tax on the entire amount as envisaged in section 65(25) of the Act reimbursed/paid to the M/s. BPL Ltd.?

3. In view of the definition of "clearing and forwarding agent" under the provisions of the Finance Act, 1994, whether the Tribunal was legal and correct for excluding the value of taxable service and the service tax liability thereon?

5. We have heard learned counsel for the Revenue and learned counsel for the respondent-assessee.

6. It is submitted on behalf of the appellant that as far as the question of clearing and forwarding agency is concerned, this court by its decision in another case has answered that such service provider has to pay service tax and therefore question No. 1 has to be answered in favour of the appellant. He further submits that as a service receiver the respondent-assessee had to pay tax for the relevant period, namely, July 1, 1997 to March 31, 1998, since the service was received from a clearing and forwarding agent which is covered under the Act and therefore show-cause notice was rightly issued which was affirmed by the Assistant Commissioner of Service Tax and also by the Commissioner (Appeals), but the Tribunal was not right in quashing the said show-cause notice and granting relief to the respondent. He therefore submits that the order of the Tribunal has to be set aside by allowing this appeal.

7. Per contra, learned counsel for the respondent has submitted that since the relevant period in this appeal for which service tax is demanded is from July 1, 1997 to March 31, 1998, the apex court in a series of decision culminating in the case of Commissioner of Central Excise, Vadodara-I Vs. Gujarat Carbon and Industries Ltd., has held that subsequent to April 1, 1998 no show-cause notice can be issued for collection of the service tax for the period prior to it and therefore in view of the said decision, the show-cause notice dated March 28, 2001 issued in the instant case was not in accordance with law and therefore the order passed by the Tribunal does not call for any interference in this appeal.

8. Having heard learned counsel on both sides and on perusal of the material on

record, it is not in dispute that for the period from July 1, 1997 to March 31, 1998 a demand was made by way of show-cause notice dated March 28, 2001 on the respondent-assessee to pay service tax as service receiver since the respondent had engaged the services of M/s. BPL Limited as a consignment agent or a clearing and forwarding agent which is covered under the Act. However, we find that the show-cause notice issued in the instant case is dated March 28, 2001 and the same is issued contrary to the decision of the apex court in Commissioner of Central Excise, Vadodara-I Vs. Gujarat Carbon and Industries Ltd., wherein following the earlier decision in the case of Commissioner of Central Excise, Meerut-II Vs. L.H. Sugar Factories Ltd., the apex court held that show-cause notice could not have been issued for collection of service tax by making a demand after April 1, 1998. Hence, following the aforesaid decisions, we are of the view that the show-cause notice issued in the instant case is not in accordance with law.

9. Accordingly, substantial questions of law Nos. 2 and 3 have to be answered against the Revenue.

10. However, we answer substantial question No. 1 in favour of the Revenue by following the decision of this court in the case of Commissioner of Central Excise Vs. Mahaveer Generics, decided in CEA No. 6 of 2004 dated November 24, 2009 wherein this court has held that a service receiver from a clearing and forwarding agent is amenable to the definition of taxable service under the Finance Act. Accordingly, the appeal is dismissed.