
(2012) 01 P&H CK 0217
In the Punjab And Haryana At Chandigarh
Case No : STA No. 16 of 2011 (O and M)

Commissioner of Central Excise

APPELLANT

Vs

M/s Kansal Hosiery Exports

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Finance Act, 1994 — Section 2(1), 66A, 73, 75, 76

Citation : (2012) 189 ECR 262 : (2013) 30 STR 137 : (2012) 48 VST 248

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The short issue raised in the instant appeal preferred by the Revenue is "what is the effect of implementation of Section 66A in the Finance Act, 1994". It was by the aforesaid provision that the service tax was levied. The provision was introduced on 18.4.2006. The Tribunal by placing reliance on a judgement of the Bombay High Court in the case of Indian National Shipowners Association Vs. Union of India (UOI), has held that any transaction prior to 18.4.2006 will not be exigible to the service tax and accordingly accepted the appeal of the assessee-respondent by holding that even Special Leave to Appeal (Civil) No. 18932 of 2009 has been dismissed on 14.12.2009, against the judgement of the Bombay High Court in the case of Indian National Shipowners Association (supra).

2. We have heard Mr. H.P.S. Ghuman, learned Senior Standing Counsel (Indirect Taxes) and has confronted him with the view taken by the Division Bench of the Bombay High Court as well as the judgement of this Court in the case of Commissioner, Central Excise Commissionerate Vs. Bhandari Hosiery Exports Ltd., The learned counsel has not been able to highlight any distinguishing feature between the case in hand and the one decided by the Division Bench of the Bombay High Court or this Court in the case of Bhandari Hosiery Exports Ltd. (supra). The view of the Division Bench of this Court is discernible from para 4 of

the judgement which reads thus:

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 Vs. Union of India (UOI),). Following the judgment of Hon"ble the Supreme Court rendered in the case of Laghu Udyog Bharati and Another Vs. Union of India and Others, 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.

3. The facts of the present case reveal that the material period involved in the instant appeal is 9.7.2004 to 18.1.2006 when the assessee had paid Rs. 74,83,295/-to Non-resident Service Providers and a show cause notice for recovery of service tax amounting to Rs.7,20,822/-alongwith interest u/s 73 read with Section 75 of the Act was issued with a proposal to impose penalty under Sections 76, 77 and 78 of the Act. The case was adjudicated by the Joint Commissioner Central Excise, Commissionerate, Ludhiana and the Adjudicating Authority affirmed the aforesaid demand and also imposed penalty. The assessee-respondent filed an appeal with the Commissioner (Appeals), Chandigarh which was rejected vide order dated 3.8.2007. On further appeal to the Customs, Excise and Service Tax Appellate Tribunal the assessee-respondent succeeded as it placed reliance on the judgement rendered in the case of Indian National Ship Owners Association (supra), against which SLP has been dismissed, holding that the party was not liable to pay service tax on the service provided to them by the Non-resident prior to insertion of Section 66A in the Act i.e. 18.4.2006. The view of the Division Bench of this Court in the case of Bhandari Hosiery Exports Ltd. (supra) and that of the Bombay High Court in Indian National Shipowners Association's case (supra) put the matter beyond any doubt. Any service provided to the assessee-respondent by Non-resident prior to insertion of Section 66A of the Act was not exigible to service tax. Accordingly the appeal of the

revenue is without any merit and does not warrant admission. Dismissed.