(2014) 09 AHC CK 0031

In the Allahabad High Court

Case No : Central Excise Appeal Nos. 23 and 159 of 2006

Commissioner of Cus. and C. Ex. APPELLANT

Vs

Moser Baer India Ltd. RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:
Finance Act, 1994 — Section 66A, 68

Citation : (2015) 38 STR 687

Hon'ble Judges : Tarun Agarwala, J;Satish Chandra, J.

Bench : Division Bench

Advocate : Siddharth Shukla, K.C. Sinha and Subodh Kumar, for the Appellant; M.P. Devnath, Nishant Misra and A.R. Madhav Rao, for the Respondent

Judgement

1. Both the appeals have been filed by the Department against the Orders dated 17-12-2004 and 1-7-2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Appeal Nos. ST/25/2005-A and 706/2005-ST , 2006 (3) S.T.R. 710 (Tri.-Del.)] . The facts and circumstances are identical, hence both the appeals are decided by this consolidated order for the sake of convenience.

2. The brief facts of the case are that the respondent-assessee had signed a sales agreement with M/s. Staeg Haematch AG Ferdinand (in short ''SHF'') for the purchase of equipments for production of Compacts Discs. The A.O. was of the view that the respondent failed to pay Service Tax on behalf of SHF for rendering service in the capacity of Consulting Engineer. So, the demand was made pertaining to the Service Tax. The penalty was also imposed under various Sections. The first Appellate Authority has confirmed the order, but the Tribunal has deleted the demand and cancelled the penalty. Being aggrieved, the Department has filed the present appeals.

3. With this background, we have heard Sri Siddharth Shukla, learned Counsel for the appellant and Sri Aditya Bhattacharya alongwith Sri Nishant Mishra, learned Counsel for the respondent.

4. From the record, it appears that as per Section 68 of the of Finance Act, 1994, the Service Tax is liable and to be paid by the person who is providing taxable service. But the legislature has made an exception in the case of service provided by entities outside India. In such cases by virtue of Section 66A of the Act, the service recipient will have to pay Service Tax. Section 66A of the Act was introduced by the legislature vide Finance Act, 2006, with effect from 18-4-2006. Prior to Section 66A, the statute had provided no mechanism for recovery of payment from entities outside India.

5. In the instant case, the dispute pertains to the period December, 2000 to December, 2001 i.e. before the enactment of Section 66A of the Act. The A.O. relying on the second proviso to Rule 6 of the Service Tax Rules, 1994, which states that in case the service provider is a non-resident or is outside India then service tax will be paid by such person who has authorized by him. The said rule reads as under:-

Rule 6(1) The Service Tax on the value of taxable services received during any calendar month shall be paid to the credit of the Central Government by the 25th of the month immediately following the said calendar month:

Provided further that where the assessee is an individual or propriety firm or partnership firm, the Service Tax on the value of taxable service received during any quarter shall be paid to the credit of the Central Government by 25th of the month immediately following the said quarter:

Provided further that, in case of a person who is a non-resident or is from outside India, does not have any office in India and is liable to pay Service Tax on taxable services provided in India:-

(i) The Service Tax thereon shall be paid by such person or on his behalf by any other person authorized by him, who shall submit to the Commissioner of Central Excise in whose jurisdiction the taxable service have been rendered, a return, containing the following details.

6. The said rule was later converted into Rule 2(1)(d)(iv) of the Service Tax Rules, 1994. The Rule 2(1)(d)(iv) speaks that:-

"RULE 2(1) ....

(a) ....

(b) ....

(c) ....

(d) "person liable for paying the Service Tax" means,-

(iv) in relation to any taxable service provided by a person who is a nonresident or is from outside India, does not have any office in India, the person receiving the taxable service in India."

7. The said Rule 2(1)(d)(iv) was challenged before the Bombay High Court in the case of Indian National Shipowners Association Vs. Union of India (UOI), and the said rule was declared ultra vires. The Hon''ble Supreme Court in the S.L.P., uphold the order of the Bombay High Court in the case of Union of India v. Indian National Shipowners Association - 2010 (17) S.T.R. (J57) (S.C.) . Thus, the said verdict has attained finality. In other words, the said rule was declared as ultra vires. Thereafter, the Department has also issued a Circular No. 276/8/2009-CX, dated 26-9-2011 by stating that service received from non-resident or person located outside India will not be taxed before 18-4-2006 i.e. before coming into effect of Section 66A of the Finance Act, 1944.

8. In the circumstances, it is evident that when the aforesaid rule was declared as ultra vires, then the respondent-assessee is not entitled to pay any tax under the said rule which was declared invalid by the Hon''ble Apex Court.

9. In view of the above, we find no reason to interfere with the impugned orders passed by the Tribunal. The same are hereby sustained alongwith the reasons mentioned therein. In the result both the appeals are hereby dismissed at the admission stage.