(2015) 07 DEL CK 0058

In the Delhi High Court

Case No : CEAC Nos. 4 and 5 of 2015 in CM Appeal Nos. 620 and 985 of 2015 and CM Appeal Nos. 618 and 983 of 2015

Commissioner of Service Tax — APPELLANT

Vs

Amadeus India Pvt. Ltd. — RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(L), 35G, 35L, 35L (b)
Finance Act, 1994 — Section 66, 68, 73(1), 83

Citation : (2015) 39 STR 973

Hon'ble Judges : S. Muralidhar, J;Vibhu Bakhru, J

Bench : Division Bench

Advocate : Satish Kumar, Senior Standing Counsel, for the Appellant; M.S. Syali, Senior Advocate, Mayank Nagi, Bhawna Bakshi, Chanakya Sharma, M.P. Devnath and Vivek Sharma, Advocates for the Respondent

Judgement

CM Appeal No. 620/2015 (for delay in CEAC 4/2015); CM Appeal No. 985/2015 (for delay in CEAC 5/2015):

1. For the reasons stated therein, the delay in filing the present petitions is condoned. The applications are disposed of.

CEAC No. 4/2015 & CMAPPL No. 618/2015 (for stay) CEAC No. 5/2015 & CMAPPL No. 983/2015 (for stay)

2. CEAC No. 4 of 2005 is directed against the impugned order dated 3rd June 2014 passed by the Customs, Excise & Service Tax Appellate Tribunal (''CESTAT'') in Assessee''s Appeal No. ST/824/2010 & Revenue''s Appeal No. ST/934/2010.

3. CEAC No. 5 of 2005 is directed against the impugned order dated 3rd June 2014 passed by the CESTAT in Appeal No. ST/841/2010 & ST/946/2010.

4. The common question that arose for consideration in the aforementioned appeals arising out of assessment proceedings involving the Assessees was whether the export of services provided by them constituted ''service'' and was

exigible to Service tax under Section 73(1) read with Section 66 and 68 of the Finance Act, 1994 read with Rules 6 of the Service Tax Rules 1994?

5. In the impugned order, the CESTAT has followed the decision of its Larger Bench in GAP International Sourcing (India) Pvt. Ltd. v. Commissioner of Service Tax, Delhi, 2015 (37) S.T.R. 757 (Tri.-Del.) , and decided the question in the negative and in favour of the Assessee. The appeal by the Commissioner of Service Tax against the said decision, being CEAC No. 99 of 2014, was dismissed by this Court by order dated 18th November 2014 on the ground of maintainability.

6. A preliminary objection has been raised by the Respondents as regards the maintainability of the present appeals before this Court. Reliance is placed on the decision of this Court in Commissioner of Service Tax Vs. Ernst and Young Pvt. Ltd., (2014) 27 GSTR 22 : (2014) 34 STR 3 : (2014) 72 VST 51 (hereafter Ernst & Young).

7. Section 83 of the Finance Act 1994, makes the provisions of Sections 35G and 35L of the CE Act ipso facto applicable in relation to Service tax. Section 35G concerns appeals to the High Court from orders of the CESTAT whereas Section 35L deals with appeals to the Supreme Court from orders of the CESTAT. Section 35L (b) provides that appeals from orders of CESTAT would lie directly to the Supreme Court where it involves the "the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment." In Ernst & Young this Court held that any question having relation to a rate of duty would include a determination as levy of tax on a particular service. It was held that "The words ''rate of tax'' in relation to rate of tax would include the question whether or not the activity is exigible to tax under a particular or specific provision." Accordingly, it was held that an appeal under Section 35G of the CE Act against the order of the CESTAT on the question of exigibility of a service to tax was not maintainable before this Court. The Special Leave Petition (SLP) filed by the Appellant herein against the decision in Ernst & Young, being SLP [(CC) No. 21099] of 2014 (Commissioner of Service Tax v. Ernst and Young Pvt. Ltd.) (along with other similar petitions) was dismissed as withdrawn by the Supreme Court by its order dated 19th January 2015.

8. Following the decision in Ernst & Young, sub-section (2) was inserted in Section 35(L) of the CE Act by the Finance (No. 2) Act, 2014 to clarify that "the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment." A Circular was also issued on 10th July 2014 by the Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India, New Delhi clarifying the position. Therefore, these appeals are dismissed as not maintainable in this Court. The applications are also dismissed.

