

(2010) 04 KAR CK 0258
In the Karnataka High Court
Case No : C.E. Appeal No. 12 of 2007

Commissioner of Service Tax

APPELLANT

Vs

Araco Corpn.

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Service Tax Act — Section 65 (31), 65 (34)

Citation : (2010) 27 STT 193 : (2010) 32 VST 450

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

Bench : Division Bench

Advocate : C. Shashikantha, for the Appellant; K.S. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Revenue has come up in this appeal challenging the order passed by CESTAT order-in-appeal Final Order Nos. 1061 to 1063/06, dated 15-6-2006.

2. Being aggrieved by the order of the Assistant Commissioner of Central Excise, respondent-assessee had preferred an appeal before the Commissioner of Central Excise (Appeals), Bangalore contending that it is not liable to pay service tax in respect of the service rendered by the assessee (Foreign Company) to an Indian Company on the ground that Service Tax Act was not applicable for the relevant period. Disputed period is between November, 1998 and December, 2000. The contention of the assessee was rejected by the Commissioner of Central Excise (Appeals), Bangalore, against which assessee filed an appeal before the CESTAT, Bangalore. Along with the respondent-assessee two more companies had also preferred appeals viz., M/s. Bharat Electronics Ltd. and M/s. SKF India Ltd. The Tribunal, by a common order, held that the services rendered by the assessee does not attract the service tax by relying upon the judgments relied upon by the assessee. Being aggrieved by the same, revenue has come up in this appeal raising the following substantial question of law:

Whether, during the relevant period, in view of Board's Circular dated 2-7-1997 the technical assistance and technical know-how received by the Respondent from a foreign company did not constitute taxable service, viz., Consulting Engineer Services?

3. Counsel for the revenue contends that the Tribunal has committed a serious error in not considering the fact that the assessee being a foreign company has rendered the services to an Indian Company and service rendered to an Indian Company is liable to pay service tax. To substantiate his case, he relied upon the provisions of Sub-section (31) of Section 65 of the Service Tax Act, contends that the respondent-assessee as a consultant engineer has rendered professional technical know-how is liable to be taxed under the Service Tax Act. Therefore, he contends that the Tribunal has committed a serious error in not considering the provisions of Sub-section (31) of Section 65 of the Service Tax Act. Per contra, Mr. Ravi Shankar contends that Sub-section (31) of Section 65 only deals with the definition of the words "Consulting Engineer". Sub-section (31) reads as hereunder:

31 "Consulting Engineer" means any professionally qualified engineer or [any body corporate or any other firm] who, either directly or indirectly, renders any advise, consultancy or technical assistance in any manner (to any person) in one or more disciplines of engineering.

He further contends that the words "anybody corporate or any other firm" has been substituted with effect from 1-5-2006 by the Finance Act, 2006 (21 /06). According to him, prior to the amendment of the Finance Act, consulting engineer was applicable to a particular person or individual and not to a body corporate or a firm. Therefore, he contends that even if the case of the revenue is accepted since respondent-assessee is a corporate body as the dispute is pertaining to prior to the amendment of the Finance Act, revenue cannot rely upon the said provision of law. He further contends that Sub-section (34) of Section 65 would be applicable to a person who renders service as a consulting engineer only in the case of service provider of Indian Origin. According to him, in spite of foreign collaborator, a provision has been introduced by amending the Act on account of the introduction of Section 66A which reads as hereunder:

66A. Charge of service tax on services received from outside India:

(1) Where any service specified in Clause (105) of Section 65 is,-

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence in a country other than India, and

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

such service shall, for the purpose of this section, be the taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purpose of this section.

Explanation 1.-A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2-Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

4. He further contends that Section 66A has come into force with effect from 18-4-2006. Even if this provision is made applicable to the case of foreign service provider only on or after in respect of the service rendered on or after 18-4-2006. Under any circumstances, revenue cannot levy service tax on the respondent-assessee. He lastly contends that the Tribunal had passed a common order in the case of BEL Respondent-assessee and SKF India Ltd., revenue had preferred an appeal in the case of SKF India Ltd. in CEA 11/2007 and this Court by its order dated 4-3-2010 has dismissed the appeal of the revenue by answering the questions of law framed therein against the revenue and he further contends that the question of law framed in the present appeal and the questions of law framed in CEA 11 /2007 in the matter of SKF India Ltd. are one and the same, therefore he requests the court to dismiss the appeal answering the questions of law against the revenue and in favour of the assessee.

5. Per contra, Sri Shashikantha contends that facts involved in SKF India Ltd., are different from the facts involved in the present case.

6. Having heard the counsel for the parties, we have to consider the substantial question of law framed in this appeal as hereunder: Admittedly, assessee is a foreign company. Even if the arguments advanced by Mr. Shashikantha is accepted, Sub-section (31) of Section 65 of the Act would apply to the services rendered by an Indian as a consulting engineer. In the present case, the dispute is in regard to November, 1998 to December, 2000. As on November, 1998, the word "company" or "Firm" was not included under the definition of Sub-section

(31) of Section 65 of the Act. Therefore, the contention of Mr. Shashikantha cannot be accepted even if it is considered that Sub-section (31) of Section 65 of the Act would apply to a service provider of foreign origin. Section 66A of the Act has come into force with effect from 18-4-2006. If the provision has come into force with effect from 18-4-2006, in the absence of the revenue enlightened the court to levy service tax on a foreign company during the relevant assessment year, we are afraid to accept the contention urged by Mr. Shashikantha in order to rely upon Section 66A of the Act. If Sub-section (31) of Section 65 of the Act and Section 66A of the Act are not applicable, we have no other option than to answer question of law against the revenue and in favour of the assessee. Moreover, question of law raised in this appeal is answered by this Court in a connected matter in CEA 11/2007 in the case of SKF India Ltd. Therefore, answering the question of law against the revenue, we dismiss this appeal.