

(2013) 01 DEL CK 0132
In the Delhi High Court
Case No : ST. Application 76 of 2012

Commissioner of Service Tax

APPELLANT

Vs

Consulting Engineering Services (I) Pvt. Ltd.

RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Citation : (2013) 2 AD 141 : (2013) 257 CTR 289 : (2013) 18 GSTR 419 :
(2013) 3 ILR Delhi 2110 : (2013) 30 STR 586 : (2013) 39 STT 97 : (2013) 58
VST 133

Hon'ble Judges : R.V. Easwar, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rahul Kaushik, for the Appellant; M.P. Devnath, Aditya Bhattacharya,
Tarun Jain, Bhuvnesh Satija and Mr. Abhishek Anand, for the Respondent

Judgement

Badar Durrez Ahmed, J.—We have heard the learned counsel for the parties. Admit.

2. With their consent this appeal shall be taken for disposal straightaway. The question for determination is: -

Whether, in respect of the services provided prior to 14.05.2003 but, in respect of which payments were received on or after 14.05.2003 service tax was chargeable @ 5% or @8% which rate came into force on 14.05.2003?

3. The appellant is aggrieved by the order dated 16.03.2012 passed by the Customs, Excise and Service Tax Appellate Tribunal in Service Tax Appeal No. 424/2008 where this question has been answered in favour of the assessee and against the department. The Tribunal came to the conclusion that the rate of service tax would be 5% inasmuch as the services had been provided prior to 14.05.2003. While doing so, the Tribunal placed reliance on a decision of the Tribunal, West Zonal Bench, Ahmadabad in the case of (2008) 13 STJ 164 . We find that the matter had travelled to the Gujarat High Court and the Gujarat High Court, itself, in the case of Commissioner of C. Ex. and Cus. Vs. Reliance

Industries Ltd., had affirmed the decision of the Ahmadabad Tribunal. However, this fact had not been brought to the notice of the Tribunal in the present case. In fact, the matter had travelled even up to the Supreme Court wherein the Supreme Court did not enter into the question because the same had become academic in that case. In other words, the Supreme Court had not expressed any view on this issue. However, the view of the Gujarat High Court is clear. The view of the Gujarat High Court is that the effective rate of service tax would be based on the date on which the service is provided and not the date of billing.

4. The learned counsel for the appellant submitted that the view taken by the Gujarat High Court is not binding on this Court and based upon this submission he sought to place reliance on Rule 5B of the Service Tax Rules, 1994. He also placed reliance on Rule 4(a)(i) of the Point of Taxation Rules, 2011 as also Section 67A of the Finance Act, 1994.

5. However, we find that none of these provisions are applicable in the facts and circumstances of the present case as Rule 5B of the Service Tax Rules, 1994 came into effect on 01.04.2011 and was out of the statute books on 01.07.2012. Section 67A of the Finance Act, 1994, was inserted in the said Act by virtue of the Finance Act, 2012 w.e.f. 28.05.2012. In the present case, the relevant period is April, 2003 to September, 2003. Therefore, none of the above provisions apply. Moreover, even Rule 4(a)(i) of the Point of Taxation Rules 2011 is not applicable because those Rules came into effect on 01.03.2011. In the absence of any Rules, we will have to examine as to what is the taxable event. The taxable event as per the Finance Act, 1994 is the providing of the taxable service. In the present case, we find that not only were the services admittedly provided prior of 14.05.2003 but also the bills have been raised prior to 14.05.2003. The only thing that happened after 14.05.2003 was that the payments were received after that date. That, in our view would not change the date on which the taxable event had taken place. Since the taxable event in the present case took place prior to 14.05.2003, the rate of tax applicable prior to that date would be the one that would apply. In the present case, the rate of 5% would be applicable and not the rate of 8%. Consequently, we answer the question in favour of the respondent and against the appellant. The appeal is dismissed.