
(2010) 09 P&H CK 0193
In the Punjab And Haryana At Chandigarh
Case No : S.T.A. No. 29 of 2010 (O and M)

Commissioner of Service Tax

APPELLANT

Vs

NYCO

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Finance Act, 1994 — Section 65(105), 65(21)
Finance Act, 2006 — Section 66A

Citation : (2010) 20 STR 599 : (2011) 42 VST 170

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of STA Nos. 29, 31, 33 and 34 of 2010 as these involve common question of levy of service tax for the period in question.

2. In STA No. 29 of 2010, following substantial question of law has been proposed:

Whether CESTAT in present case was right in accepting the plea of the Respondents that the services undertaken by them were not covered under "Technical Assistance" and "Consulting Engineering Services"?

3. Show cause notice dated 19.4.2005 was issued by the Department stating that M/s AVI Oil India Pvt. Ltd., District Faridabad was engaged in manufacture of oils, fluid etc. with the technical advice of M/s NYCO, Paris for which an agreement dated 3.12.1993 has been reached. The said technical advice amounted to service exigible to tax u/s 65(105) read with Section 65(21) of the Finance Act, 1994. As per notification dated 2.7.1997, services rendered by the Consulting Engineer were taxable.

4. After considering the response of the notice, the demand for service tax was raised.

5. On appeal to the Tribunal, the demand was set aside with a finding that no service was provided which may attract levy of service tax. What was done was sharing of knowledge not amounting to rendering of service. The finding recorded is as under:

We have thoroughly gone through the averments of both the sides. To appreciate the case of the Revenue, Revenue should have brought too record that NYCO is a consulting engineering firm providing engineering service commercially having been manned by professional qualified engineers. But primary object appears to be sharing of know how to participate in a joint venture to enjoy fruit thereof by each other. Nothing is shown by Revenue to establish that Nyco shall leave India after rendering consulting engineering service without participation in joint venture. We find from the averments of the Id. Counsel for appellants that the very incorporation of a joint venture Company in India is to share the fruits of joint venture by both the parties manufacturing described goods. No doubt engineering aspect may be involved while rendering the expertise but to bring any concern to the fold of law, Revenue has to strictly discharge its burden of proof, proving that the concern is already engaged as a consulting engineering service having competent and qualified engineers within its command to provide consulting engineering service. Therefore, providing of service of engineering is totally ruled out with the assistance of statutory definition.

6. Notice was issued on application for condonation of delay, in response to which reply has been filed in STA No. 31 of 2010 stating that in view of circular of the Central Board of Excise and Customs dated June 30, 2010, service tax was not leviable on service provided by a non-resident and received in India prior to 1.1.2005 and services which are received outside India prior to 18.4.2006. Reliance has been placed on the judgment of this Court in Commissioner Central Excise Commissionerate Ludhiana v. Bhandari Hosiery Exports Ltd. CEA No. 30 of 2009 decided on November 17, 2009, wherein it was held that since Section 66A of the Finance Act, 2006 was enforced w.e.f. 18.4.2006 in respect of service rendered outside India, no service tax was leviable in respect of rendering of such services prior to the said date. Reliance was placed therein on judgment of the Hon"ble Supreme Court in Laghu Udyog Bharati and Another Vs. Union of India and Others, , judgment of Bombay High Court in Indian National Shipowners Association Vs. Union of India (UOI), and judgment of Delhi High Court in Unitech Ltd. v. Commissioner of Service Tax Delhi 2009 (15) S.T.R. 385 .

7. Learned Counsel for the revenue does not dispute the applicability of the circular relied upon on behalf of the assessee and also applicability of the judgments, referred to above. It could not be disputed that the service in question prior to 18.4.2006 received outside India will not attract the provisions of service tax. In view of this undisputed legal position, question of delay in filing the appeal need not be gone into.

8. In view of above, no substantial question of law arises.

9. Accordingly, the appeals are dismissed.