(2008) 11 KAR CK 0052

In the Karnataka High Court

Case No : C.E.A. No. 63 of 2008

Commissioner of Service Tax APPELLANT

Vs

Stag Software Pvt. Ltd. RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:
Central Excise Act, 1944 — Section 35 G
Finance Act, 1994 — Section 65 (108), 65 (26)

Citation : (2009) 16 STR 144

Hon'ble Judges : K. Ramanna, J;Deepak Verma, J

Bench : Division Bench

Advocate : M.V. Chandrashekhara Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

Deepak Verma, J.—Sri M.V. Chandrashekhara Reddy, learned Counsel appeared on behalf of appellant.

2. Heard on the question of admission. Records perused.

3. This is an appeal u/s 35G of the Central Excise Act, 1944 (hereinafter referred to as the ''Act'') against the order dated 18-1-2008 (2008) 13 STJ 209 passed by Customs, Excise and Service Tax Appellate Tribunal, Bangalore.

4. Respondent herein had filed an appeal before the Tribunal against the order dated 8-3-2007 passed by the Commissioner of Service Tax, Bangalore.

5. Few facts, materials for deciding the case are mentioned hereunder:

Respondent/company is engaged in software development and other software services, more importantly, testing of software during its development. Further, it is not in dispute that it also imparts training in software to its various customers.

6. According to the appellant, testing of software is liable to Service Tax under the category of "Technical Inspection and Certification" services as defined in

65(108) of the Finance Act of 1994 reproduced herein below:

65(108) "Technical inspection and certificate" means inspection or examination of goods or process or material or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels;

7. It was also contended by the appellant herein that respondent is rendering software training which is liable for Service Tax under the category of Commercial Training and Coaching Services as contemplated under 65(26) of the Finance Act, which deals with Commercial Training or Coaching provided by a commercial training or coaching centre.

8. The Commissioner after giving opportunity of hearing to the parties, confirmed the Service Tax to the tune of Rs. 52,94,958/- u/s 73 of the Finance Act, 1994 for the period commencing from July 2003 to September 2005. He also imposed (i) penalty of Rs. 200/- per day u/s 76 of the Finance Act, (ii) penalty of Rs. 1,000/- u/s 77 of the Finance Act and (iii) penalty of Rs. 80,00,000/- u/s 78 of the Finance Act.

9. The respondent feeling aggrieved by the said order of Commissioner, preferred the appeal.

10. The Tribunal after considering the matter from all angles, came to the conclusion that the software engineering itself is completely exempted from payment of Service Tax at all times even at present. According to it, when the software engineering itself is not liable to tax, software testing which is an integral part of such development cannot be brought under the tax, under the guise of "Technical Inspection and Certification Service".

11. The celebrated judgment of the Supreme Court in Tata Consultancy Services Vs. State of Andhra Pradesh, was referred by the learned Counsel for the appellant before the Tribunal but the same has been distinguished as in the said judgment of the Supreme Court it was dealing with ''canned'' software, which was ready for sale off the shelf. In the case in hand, it has been found by the Tribunal that testing goods go hand in hand with the development cannot be treated at par with the case of ''canned'' software which could of course be treated as goods.

12. To put it more forcefully, learned Counsel for the appellant specifically placed before us reliance on Para 26 of the said judgment of the Tata Consultancy Services supra. However, we are of the opinion that the ratio decidendi of the said case is not applicable to the facts of the case in hand.

13. As regards computer training, Tribunal has held that commercial coaching of training between 10-9-2004 to 15-6-2005 was completely exempted and it has been made taxable only from 15-6-2005 by virtue of the amendment by

Notification No. 19/2005-S.T., dated 7-6-2005. After it has been made taxable respondent has also started payment thereon w.e.f. 15-6-2005 and have paid Service Tax after being registered under the category of "Training and Coaching".

14. Learned Counsel for appellant submitted that the notification on which reliance is placed was subsequently modified vide Notification No. 24/2004 but the same has not been considered by the Tribunal at all. We do not find that this ground was at all raised by the appellant before the Tribunal as no finding is recorded by the Tribunal on the subsequent notification. We do not even know whether subsequent notification was at all brought to the notice of the Tribunal. However, at this stage, we cannot permit the learned Counsel for the appellant to raise an issue, which was not specifically argued before the Tribunal. That being the position, the appeal being devoid of any merit is hereby dismissed.