(2010) 04 KAR CK 0216

In the Karnataka High Court

Case No : C.E.A. No. 50 of 2006

Commissioner of Service Tax APPELLANT

Vs

Vaman Pharma Pvt. Ltd. RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:
Finance Act, 1994 — Section 65 (25), 73

Citation : (2010) 19 STR 804 : (2010) 27 STT 205 : (2010) 34 VST 13

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

Bench : Division Bench

Advocate : S. Nagamani, for Latha Prasad, for the Appellant; G. Shivadas and B. Anil Kumar, for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—This appeal is filed by the Revenue by challenging the order dated 22-11-2005 passed by CESTAT in Final Order No. 1920/2005 [2006 (1) S.T.R. 274 (Tribunal)] by raising the following substantial questions of law:

1. Whether the CESTAT is legal and correct in holding that the service provided by the respondent is not covered under the category of "clearing and forwarding Agent" as defined u/s 65(25) of the Finance Act, 1994?

2. When the facts and circumstances of the case clearly establish that the respondent''s activities fall under the category of "clearing and forwarding agent", whether the impugned order of CESTAT is legally sustainable?

3. Whether the CESTAT is legal and correct in applying the ratio of the judgment rendered in the case of 2004 (95) ECC 54], when the facts are 1 On appeal from 2006 (1) S.T.R. 274 (Tri. - Bang.) not identical and the legality of CESTAT''s order in the case of M/s. Mahavir Generics is pending decision before Hon''ble High Court?

2. During the course of the arguments it is submitted by the learned Counsel for

the appellant that the order of CESTAT has been made by following the decision in the case of M/s. Mahavir Generics and that since the said decision has been reversed by this Court in CEA No. 6/2004 dated 24-11-2009, [2010 (17) S.T.R. 225 (Kar)] order of the Tribunal impugned in this appeal has to be set aside on the said short ground.

3. Per contra, counsel for the respondent-assessee submits that although that is the position in law, tribunal did not consider the fact that no show cause notice was issued, to the respondent-assessee u/s 73 of the Finance Act, 1984 and therefore though this Court has set aside the order passed in M/s. Mahavir Generics by the tribunal, question as to whether the respondent-assessee is under a duty to pay Service tax, has to be considered by the Tribunal.

4. Saving heard the learned Counsel for both sides and having perused the material on record it is noted that in the impugned order the tribunal has allowed the appeal of the assessee by following the decision in the case of Mahavir Generics v. CCE which decision has been reversed by this Court in the case of Commissioner of Central Excise, Bangalore v. Mahaveer Generics, in CEA 6/04 by order dated 24-11-2009 [2010 (17) S.T.R. 225 (Kar)]. Under the circumstances, the Tribunal''s order by relying on its decision in M/s., Mahaveer Generics calls for interference in this appeal. In the circumstances, matter has to be remanded back to the tribunal to re-consider the entire issue in the light of the order passed by this Court in CEA No. 6/04 dated 24-11-2009 and also in the light of facts and circumstances of the present case and dispose of the entire issue in accordance with law.

5. For the aforesaid reasons, without answering the substantial questions of law raised in this appeal, matter is remanded back to the tribunal for fresh consideration. Accordingly, the appeal is allowed.

