(2011) 04 KAR CK 0162

In the Karnataka High Court

Case No : CEA No. 27 of 2007

Commissioner of Service Tax, Bangalore APPELLANT

Vs

Widia GMBH RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:
Central Excise Act, 1944 — Section 35 G, 35 L

Citation : (2011) 23 STR 585

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; K.S. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the Tribunal [2006 (4) S.T.R. 309 (Tri. - Bang.)] which has held that the activity carried on by the assessee comes within the category of ''Scientific and Technical Consultancy Services''.

2. This appeal was admitted to consider the following substantial question of law :

(1) Whether the Tribunal is right in holding that the technical services and opinion as enumerated in Part-6 of the agreement rendered by respondent will not amount to ''Consulting engineer'' and not taxable?

(2) Whether the Appellate Tribunal is right in holding that Technical services rendered by the respondent falls under category ''Scientific and Technical Consultancy''?

3. From the aforesaid questions raised, it is clear that the dispute is whether the activity carried on by the foreign company - the respondent, falls with in the services of ''Consulting Engineer'' or under the category of ''Scientific and Technical Consultancy''? In other words, it is a dispute regarding classification. If it falls within any one of those categories, then the question is ''Whether a

foreign company is liable to pay service tax on such activity?''

4. This appeal is preferred u/s 35G of the Central Excise Act, 1944. As is clear from the wordings of the" said section, an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal not being an order relating, among other things to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

5. The dispute regarding classification falls within the phrase "rate of duty" and therefore, this Court has no jurisdiction to go into the same. It is only the Apex Court u/s 35L of the Act, which is competent to decide the aforesaid question of law. In that view of the matter, this appeal is rejected as not maintainable reserving liberty to the revenue to prefer an appeal to the Apex Court.

6. High Court registry is directed to return the certified copies of the orders produced in this case to enable the revenue to prefer an appeal to the Apex Court.