**(2011) 04 KAR CK 0161**

**In the Karnataka High Court**

**Case No :** C.E.A. No. 102 of 2009

Commissioner of S.T., Bangalore — APPELLANT

Vs

Relq Software Pvt. Ltd. — RESPONDENT

**Date of Decision :** 20-04-2011

**Acts Referred:**
Finance Act, 1994 — Section 35 G, 65 (105) (zzi), 65 (108)

**Citation :** (2011) 23 STR 449

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

**Bench :** Division Bench

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

**Final Decision :** Dismissed

## Judgement

Ravi Malimath, J.—This appeal is by the revenue being aggrieved by the order of the Tribunal which held that the testing and analysis of software is covered u/s 65(105)(zzi) of the Finance Act, 1994 with effect from 16-5-2008 and since the period in question is prior to 16-5-2008, the assessee''s are not liable for payment of Service Tax.

2. The assessee had provided the services of "Technical Inspection and Certification Services" as defined u/s 65(108) of the Finance Act, 1994. After investigation, the revenue proceeded against them on the ground that they / had evaded payment of service tax to the tune of Rs. 1,37,49,835/- for the period from July 2003 to May 2006. Thereafter, a Show Cause Notice was issued asking them to show cause as to why services rendered by them should not be classified under the category of Technical Inspection and Certification Services covered by Section 65(108) of the Finance Act, 1994. The Assessing Officer confirmed the demand and imposed interest and penalty. Aggrieved by the same, the assessee preferred an appeal to the Tribunal contending that the services being rendered come under the category of testing and analysis of software which is covered u/s 65(105)(zzi). The Tribunal held that the services rendered by the assessee falls under the category of Technical Inspection and Certification Services and are

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-st-bangalore-...

covered u/s 65(105)(zzi) which came into effect from 16-5-2008. Hence, they are liable to tax from that day onwards and not prior to the said date. Aggrieved by the same, the present appeal is filed by the Revenue.

3. Therefore, it is clear that the question for determination is as to whether the services rendered by the assessee is covered under the category of Technical Inspection and Certification Services as defined u/s 65(108) of the Act or u/s 65(105)(zzi) of the Finance Act.

4. As this appeal is filed u/s 35G of the Act, the said question falls squarely within the exception carved out in Section 35G, ''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'', and the High Court has no jurisdiction to adjudicate the said issue, as held by this Court in the case of Commissioner of Central Excise v. M/s. Mangalore Refineries and Petro Chemicals Limited, in CEA No. 6/2007 D.D. 1-9-2010 [2011 (270) E.L.T. 49 (Kar.)]. The appeal lies to the Apex Court u/s 35L, which alone has exclusive jurisdiction to decide the said question.

5. In that view of the matter, the appeal is rejected as not maintainable, reserving liberty to the Revenue to approach the Apex Court.

6. The High Court registry is directed to return the certified copies of the orders produced, to the Department, to prefer the appeal.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-st-bangalore-…