
(2011) 04 KAR CK 0104
In the Karnataka High Court

Commr. of C. Ex. and S.T., Ltu, Bangalore	APPELLANT
Vs	
Volvo India Ltd.	RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Central Excise Act, 1944 — Section 35 G, 35 L
Service Tax Rules, 1994 — Rule 2 (1) (d) (iv)

Citation : (2011) 04 KAR CK 0104

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

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; Lakshmikumaran and Sridharan, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the Tribunal (2007) 9 STJ 162 , which has held that the assessee is not liable to pay service tax.

2. The assessee M/s. Volvo India Ltd., entered into an agreement with M/s. SCHMITZ-ANHANGER FAHRZEUGBAU GESELL SCH AFT MBH & CO., of Germany for transfer of technology & know-how for setting up of a plant in Hoskote for the manufacture of trailers. In terms of the agreement, the assessee has paid royalty charges of Rs. 25,03,019/- to M/s. SAFG & Co. on 1-10-2003. Therefore, on 16-6-2004, a show cause notice came to be issued under Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 calling upon them to show cause as to why service tax, interest and penalty should not be levied on the aforesaid royalty charges. The assessee filed his reply to the said show cause notice contending that technical collaboration is a license for the manufacture and sale of the patented goods described in the schedule of the agreement. The payment of royalty is for (i) the grant of the licensor's rights for use of technical information as well as the technical assistance for the manufacture of the patented goods (ii) the grant of rights for use of intellectual property or patent for the manufacture of the

patented goods in accordance with the patented technology (iii) the Company is not engaged in the profession of a Consulting Engineer providing advise, consultancy or technical assistance in one or more disciplines of engineering. The transaction between the two companies is a transaction in property and not a transaction of service and the License to use the patent and or patented technology is a transaction of sale since the patent is of the goods and the license granted to use the patent is a right to use the goods and therefore, they are not liable to pay service tax. Accepting the said contention, the Assistant Commissioner dropped the proceedings in pursuance of the said show cause notice. However, the Commissioner issued a snow cause notice on 4-5-2006 for reviewing the said order. The assessee reiterated the stand before the Commissioner, which did not find favour of the Commissioner. Therefore, he passed an order dated 6-9-2006 by setting aside the order passed by the Assistant Commissioner and levied the service tax, interest and penalty. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal following its earlier judgments held that no service tax is leviable in the facts of the case and therefore, he set aside the order of the Commissioner and restored the order of the Assistant Commissioner. Aggrieved by the same, the revenue is in appeal.

3. Therefore, the question that arises for our consideration in this appeal is whether the assessee is liable to pay service tax under the aforesaid agreements. In other words, the question relates to payment of rate of duty/tax.

4. The said question falls squarely within the exception carved cut in Section 35G, "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 of the Central Excise Act, 1944, 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.