(2007) 11 KAR CK 0031

In the Karnataka High Court

Case No : C.E.A. No. 104 of 2007

Commr. of Service Tax — APPELLANT

Vs

Shiva Analyticals (I) Ltd. — RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Citation : (2009) 14 STR 301 : (2009) 21 STT 328

Hon'ble Judges : V. Gopala Gowda, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The correctness of the order dated 22-2-2007 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) is questioned in this appeal.

2. The respondent claimed refund of Service tax amounting to Rs. 5,69,259/-. The same was granted by an order dated 9-1-2004 by the original authority. It was the subject matter of revision before the Commissioner, who, by his order dated 27-1-2005, held that the refund granted was erroneous and directed to re-credit the amount. The respondent questioned the same before the CESTAT. The Tribunal allowed the appeal vide order dated 1-3-2007. The correctness of the same is questioned in this appeal.

3. We have carefully gone through the orders passed by the authorities. The service tax was paid by the respondent on wrong assumption that they are liable to pay it. Having realised their mistake, refund was claimed. Service Tax is payable by a service provider. The original authority found that respondent has not rendered any service. The revisional authority reversed the same. The Tribunal held that since the respondent issued credit notes towards refund of service tax, the refund order passed by the original authority is legal and proper. To arrive at that conclusion, the Tribunal relied upon the decision in the case of

Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax reported in 2004 (6) SCC 1083 SC. The order under appeal is perfectly legal and valid and does not call for interference. No questions of law much less the substantial questions framed in the appeal arise for consideration. The appeal is devoid of merit and liable to be dismissed.

4. Accordingly, the appeal is dismissed.

