(2010) 06 KAR CK 0035

In the Karnataka High Court

Case No : C.E.A. No. 159 of 2007

Commr. of Service Tax	APPELLANT
Vs	
Toyoda Iron Works Co. Ltd.	RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:
Finance Act, 1994 — Section 65 (31), 66 A

Citation : (2011) 30 STT 417 : (2011) 38 VST 558

Hon'ble Judges : N.K. Patil, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Y. Hariprasad, for the Appellant; K.S. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—This appeal is filed by the revenue by challenging the Final Order No. 734/2007 dated 28-6-2007 in Appeal No. ST/30/2005 passed by the CESTAT [2007 (7) S.T.R. 603 (Tribunal)], by raising the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the CESTAT, Bangalore was legal and correct in holding that Technical know-how and Technical Information/Technical Assistance, would not come within the scope of taxable service, viz., ''Consulting Engineer Service'', as defined under Finance Act, 1994?

(ii) Whether in view of clarification issued by the Board vide Circular F. No. B. 43/5/97-TRU dated 2-7-1997 and larger Bench''s decision cited above, the aforesaid services would not come within the purview of Consulting Engineer Service and leviable to service tax?

(iii) Since the decisions cited by CESTAT do not constitute res integra, whether the ratio of those decisions could have any applicability in the present case?

2. The facts of the case leading to filing of this appeal are that respondent-

assessee, is a Foreign Company, which entered into a technical assistance agreement with one M/s. Stanzen Toyotetsu India Private Limited, Bangalore, (Indian Company) and provided consultancy/technical assistance and transfer of technical know-how relating to the manufacture of automobile components to the Indian Company.

3. According to the revenue, the service provided be the respondent was a taxable service under the provisions of the Finance Act, 1994, pertaining to Service Tax in the category of ''Consulting Engineer Service'' and accordingly, a show-cause notice dated 5-11-2002 was issued to the respondent. The said show-cause notice was replied to and the order-in-original dated 26-7-2004 was passed against the assessee. Being aggrieved by the said order, the respondent/ assessee preferred an appeal before the Commissioner (Appeals-II), Bangalore, who held in favour of the respondent/assessee by his order dated 3-2-2005. Being aggrieved by the said order, the appellant herein preferred an appeal before the CESTAT, by contending that the respondent/assessee comes within the category'' of ''Consulting Engineer Service'' and therefore, was liable to pay service tax for the period in question namely, 1-4-1999 to 31-3-2001. The CESTAT by its order dated 20-6-2007 dismissed the appeal of the revenue. Being aggrieved by the said order, the revenue has preferred this appeal.

4. We have heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondent/assessee and perused the materials on record.

5. At the outset, it is submitted on behalf of the respondent/assessee that the substantial questions of law raised in this appeal were also raised in other appeals namely, CEA No. 11/2007 Commissioner of Service Tax Vs. SKF India Ltd.,], which appeals arise out of a common order of the CESTAT and this Court has answered the substantial questions of law against the revenue and in favour of the assessee. In support of his submission, he has placed reliance on the said orders dated 1-4-2010 and 4-3-2010, to contend that this appeal may be disposed of in terms of the orders passed in CEA No. 11/2007 and CEA No. 12/2007.

6. However, learned Counsel for the appellant has submitted that since the respondent/assessee is a service receiver, he is liable to pay tax and that the provisions of the Finance Act, 1994, are applicable to the respondent and therefore, the show-cause notice rightly demanded the said tax and that the Tribunal was not right in setting aside the order passed in original as well as the appellate order.

7. We have perused the judgment impugned in this appeal and also the earlier orders passed by this Court in CEA No. 11/2007 and CEA No. 12/2007, wherein it is stated that the definition of the ''Consulting Engineer'' as per Section 65(31) of the Finance Act, 1994, which has been amended w.e.f. 1-5-2006 and the charge of service on service received from out side India, which is u/s 66A of the Act,

has been amended w.e.f. 18-4-2006.

8. In view of the admitted facts that the respondent herein is a foreign company who is a service provider and only from the date of the aforesaid amendments, the service receiver would be liable to pay the service tax and that the respondent/assessee is not liable to pay any tax prior to amendment i.e., for the period in question 1-4-1999 to 31-3-2001. Following the decisions of this Court in CEA No. 11/2007 and CEA No. 12/2007, we hold that the substantial questions of law raised in this appeal are to be answered against the revenue.

9. Accordingly, this C.E.A. is dismissed.