

(2011) 04 KAR CK 0056
In the Karnataka High Court
Case No : CEA No. 122 of 2007

Commr. of S.T., Bangalore

APPELLANT

Vs

Aquamall Water Solutions Ltd.

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Central Excise Act, 1944 — Section 35 G, 35 L

Citation : (2012) 25 STR 233 : (2012) 50 VST 264

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

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; Lakshmi Kumaran 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, which has held that the assessee is not liable to pay service tax. The assessee M/s. Aquamall Water Solutions Limited have entered into an agreement with a foreign company by name M/s. Dometic A.B. Sweden for the transfer of technology and paid a sum of Rs. 10,40,368/- for the years 2002 and 2003. A show cause notice was issued on 24-5-2004 under Rule 2(1)(d) (iv) of the Service Tax Rules, 1994 treating activity under the said agreement as falling within the category of Consulting Engineer Services and calling upon them to show cause as to why service tax, interest and penalty should not be levied on the aforesaid amount. The assessee filed his reply to the said show cause notice contending that Dometic A.B., Sweden had manufacturing facilities in China for the manufacture of Water Purifiers for their global requirements. They decided to close down the factory at China and shifted the moulds to the assessee's factory at Bangalore. In terms of the agreement and the Technology Transfer Agreement these moulds are to be utilized for manufacturing the components required for manufacture of water purifiers, which is primarily for purchase by Dometic A.B. or their nominees situated across the globe. The assessee is also permitted to

sell the products manufactured as above in India. The moulds and tools which are received from China are not paid for by the assessee as they are meant for manufacture of products required by Dometic A.B. The assessee was permitted to sell the goods in India also for which utilization of moulds are necessary a consideration in the form of percentage to sales was arrived at in the technology transfer and leasing agreement. Hence, the payment made by the assessee to Dometic A.B. is towards moulds usage charges and not towards transfer of any technology. The definition of services of Consulting Engineers does not encompass charges paid for moulds usage and therefore, they sought for dropping of the proceedings. Accepting the said contention, the Assistant Commissioner dropped the proceedings in pursuance of the said show cause notice. However, the Commissioner issued a show cause notice for reviewing the said order passed by the Assistant Commissioner. The assessee reiterated the stand before the Commissioner, which did not find favour of the Commissioner. Therefore, he passed an order dated 15-9-2006 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 the activity does not fall within the ambit of Consulting Engineer and therefore, they are not liable to pay any service tax. Aggrieved by the same, the revenue is in appeal.

2. 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.

3. The said question falls squarely within the exception carved out 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 *The Commissioner of Central Excise Vs. Mangalore Refineries and Petrochemicals Ltd.*, 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.

4. In that view of the matter, the appeal is rejected as not maintainable, reserving liberty to the Revenue to approach the Apex Court. The High Court registry is directed to return the certified copies of the orders produced, to the Department, to prefer the appeal.