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(2011) 04 KAR CK 0058

In the Karnataka High Court

Case No : C.E.A. No. 115 of 2007

Commr. of S.T, Bangalore — APPELLANT

Vs

Maini Material Movement Pvt. Ltd — RESPONDENT

Date of Decision : 13-04-2011

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

Citation : (2012) 26 ELT 106 : (2012) 26 STR 106

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the Tribunal [2007 (7) S.T.R. 175 (Tribunal)], which has held that the activity carried on by the assessee do not fall within the ambit of ''Consulting Engineer Services'' and therefore they are not liable to pay Service tax. The assessee M/s. Maini Material Movement (P) Ltd, entered into an agreement dated 3-5-2000 with M/s. Transistor Devices Inc, U.S.A, for transfer of technical know-how and technical information and assistance to allow the said assessee to manufacture certain battery charges/AC/DC converters on the terms and conditions of the said agreement. Accordingly, the assessee paid a sum of Rs. 4,12,229/- to the foreign company as technical know-how as detailed in the Annexure. The said technical know-how falls within the ambit of ''Consulting Engineer Services'' as defined u/s 65 of the Finance Act, 1994, which is the subject to Service tax with effect from 7-7-1997. A show cause notice came to be issued on 12-3-2004 to the assessee calling upon him to show cause as to why they are not liable to pay Service tax, interest and penalty for the aforesaid services obtained during the period 23rd April 2003 to 21st August 2003. The assessee filed reply to the show cause notice and contended that for the said service received by them comes within the category of ''Consulting Engineers'', they are the recipient of the services and not the provider of the service and

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therefore, they contend that they are not liable to pay Service tax. Accepting their contention, the Assistant Commissioner dropped the proceedings in pursuance of the show cause notice. However, the Commissioner issued a show cause notice for reviewing the said order on 12-6-2006. The assessee reiterated the stand before the Commissioner, which did not find favour of the Commissioner. The Commissioner reviewed the order of the Assistant Commissioner and set aside 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. This appeal was admitted to consider the following substantial questions of law :

1. Whether in the facts and circumstances of the case, the CESTAT, Bangalore was legal and correct in holding that transfer, of technology/ technical know-how and Technical Assistance, received by the respondent, would not come within the scope of taxable service, viz, ''Consulting Engineer Service", as defined u/s 65(31) of the Finance Act, 1994?

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

3. Whether the decisions relied by CESTAT do constitute res Integra, and whether the ratio of those decisions could have any applicability to the present case?

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 relating to the rate of duty of excise or to the value of goods for purpose 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 order produced, to the Department, to prefer the appeal.

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