(2010) 03 KAR CK 0241

In the Karnataka High Court

Case No : C.E.A. No. 41 of 2006

C.S.T. APPELLANT

Vs

Raj Rajeshwari International Polymers (P) Ltd. RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Citation : (2010) 18 STR 390 : (2010) 34 VST 468

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : M.V. Chandrashekara Reddy, for the Appellant; K.S. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The revenue has come up in this appeal challenging the legality and correctness of the order passed by the Customs Excise and Service Tax Appellate Tribunal, Bangalore in STA 17/04, in Final Order No. 126/2005 dated. 20-1-2005 2005 (122) ECR 94].

2. The facts leading to this case are as hereunder:

The assessee is rendering service to Indian Petrochemicals Corporation Ltd., (IPCL) Vadodara, Gujarat, under two different agreements. Under one agreement it is rendering service as C&F Agent and another agreement as a Del Credere Agent. The assessee was paying service tax in respect of service rendered by it to IPCL based on the C&F Agent agreement. The dispute is related to 1-9-1999 to 31-12-2002. The respondent did not pay the service tax in respect of the service rendered by it as a Del Credere Agent of IPCL. The Deputy Commissioner of Central Excise issued a notice calling upon the respondent-assessee to pay the service tax in respect of the service rendered by it as a Del Credere Agent. The Deputy Commissioner of Central Excise, Bangalore, passed an order in Original No. 28/2003 directing the respondent-assessee to pay the tax and also the penalty. Against which the respondent-assessee filed an appeal before the

Commissioner of Central Excise (Appeals) in Order-in-Appeal No. 214/2003, where the Commissioner confirmed the order of levying of service tax on the respondent in regard to service rendered by Del Credere Agent. Being aggrieved by the same, the respondent-assessee filed an Appeal before the Cestat. Cestat has allowed the appeal holding that Del Credere Agent is not liable to pay service tax. Against which the revenue has come up in this appeal.

3. Having heard the counsel for the parties, the only substantial question of law arises in this appeal is whether the respondent is a Del Credere Agent. If he is rendered service as a Del Credere Agent to IPCL, whether the respondent-assessee is liable to pay Service tax.

4. So far as this question is concerned, today we have decided a similar question in CEA No. 26/2005 in the case of M/s. Sreenidhi Polymers (P) Ltd. [2010 (18) S.T.R. 385 (Kar.)] holding that a Del Credere Agent is not liable to pay service tax, in respect of the service rendered by it prior to 16-6-2005. Therefore, we have to answer the question of law against the revenue and in favour of the assessee following our Judgment passed in CEA No. 26/2005 in Commissioner of Service Tax v. Sreenidhi Polymers (P) Ltd.

5. Accordingly, we dismiss this appeal.

