(2010) 04 KAR CK 0219

In the Karnataka High Court

Case No : Central Excise Appeal No. 4 of 2007

C.S.T. APPELLANT

Vs

Turbotech Precision Engineering Pvt. Ltd. RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:
Finance Act, 1994 — Section 65 (105) (zzzza), 65 (13)

Citation : (2010) 18 STR 545 : (2010) 27 STT 263 : (2010) 32 VST 84

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

Bench : Division Bench

Advocate : Y. Hariprasad, 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 being aggrieved by the order of the CESTAT in Order-in-Appeal No. 59/2004-S.T. in Final Order No. 1068/06, dated 15-6-2006 [2006 (3) S.T.R. 765 (Tri. - Bang.)] raising the following substantial questions of law:

(a) Whether, the CESTAT was legal and correct in setting aside the impugned OLA No. 59/2004, dated 14-6-2004 with consequential relief, when the activities undertaken by the respondent came squarely within the ambit of Consulting Engineer service, and service tax was levied on design development only.

(b) Whether, the CESTAT was legal and correct in holding that the contracts entered into by the respondents were "Works Contracts", and hence not leviable to service tax.

(c) Whether, ratio of decisions relied on by CESTAT applies to the facts of the present case.

2. The facts leading to this case are as hereunder : The respondent-assessee is registered under the provisions of Finance Act 1994. The Department holding

that the respondent-assessee is rendering services like, design development, design review, installation and commissioning and technology transfer for study and design of oil free compressor systems, brought the respondent-Company within the scope of "Consulting Engineer" service as per Section 65(13) of the Finance Act. Accordingly, a show cause notice was issued on 10-10-2002 calling upon the respondent-assessee why a service tax of Rs. 23,58,008/- shall not be demanded from it apart from levying interest and penalty under different provisions of the Act. The respondent contended that they are not liable to pay the service tax as Section 65(13) of the Act is not applicable to the respondent-assessee. However, the contention of the assessee was rejected by the Deputy Commissioner of Central Excise (Service Tax Division), Bangalore. Being aggrieved by the same, the assessee filed an appeal before the Commissioner of Central Excise (Appeals), Bangalore, which appeal also came to be rejected. Aggrieved by the concurrent findings, a second appeal was preferred before the CESTAT. CESTAT considering the different provisions of law of the Finance Act, came to be conclusion that the assessee is not liable to pay either service tax or the interest or the penalty levied by the revenue. Accordingly, the appeal of the assessee came to be allowed by the Tribunal.

3. Being aggrieved by the same, the present appeal is filed raising the aforesaid substantial questions of law.

4. We have heard the learned Counsel for the parties.

5. The main crux of the matter in this case is whether on the date of relevant assessment period the service rendered by the assessee has to be classified under the definition Section 65(13), as ''Consulting Engineer'' and whether the assessee can be brought into tax considering the work executed by the assessee as a ''Works Contract''.

6. If these two questions are answered in favour of the revenue and against the assessee, the substantial questions of law framed in this appeal are to be answered in favour of the revenue and against the assessee. If the case of the assessee does not fall u/s 65(13) of the Act and if the works contract executed by the assessee during relevant assessment period, cannot be taxed under the Finance Act, then the substantial questions of law framed are to be answered against the revenue and in favour of the assessee.

7. During relevant period, the definition of Consulting Engineer defined u/s 65(13) reads as hereunder:

"consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.

Subsequently the definition of Consulting Engineer has been amended under the Finance Act, 2006 which has come into effect from 1st May 2006, the definition of which reads as hereunder:

65(31) "consulting engineer" means any professionally qualified engineer of any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering.

8. From the combined reading of the definition of Consulting engineer prior to 2006 and after 2006, it is clear to the Court that the service rendered by the Company had not been included under the definition of consulting engineer prior to 2006 as it stood u/s 65(13). As a matter of fact, this Court has decided the said point in CEA 12/2007 on 1st April 2010 stating that prior to the Amendment Act, 2006, the Companies were not included under the definition of consulting engineer. When we have taken such a view, considering the relevant assessment year in the present case we have to hold that the service rendered by the assessee-Company during relevant period cannot be brought under the category of consulting engineer. If the service rendered by the assessee cannot be considered as a consulting engineer, the question of calling upon the assessee to pay the service tax under the Finance Act, brought the assessee under the word consulting engineer does not arise at all. Therefore, the said point has to be answered against the revenue and in favour of the assessee.

9. So far as the execution of the works contract is concerned, the works contract is defined u/s 65(105)(zzzza) which reads as under:

(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.-- For the purposes of this sub-clause, ''works contract'' means a contract wherein,

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, hearing, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

10. This section has come into force with effect from 1-6-2007. After considering the contract entered into between the assessee and its employer, the case of the assessee falls u/s 65(105)(zzzza) Explanation (a) and (e). Even though the assessee''s case falls under the definition of works contract, but the revenue has no power to call upon the assessee to pay service tax, interest and penalty therein, since the provisions of law has come into force with effect from-1-6-2007.

11. In the present case, contract is for the period between 1997 to 2001. Therefore, the said question is also required to be answered in favour of the assessee against the revenue.

12. In view of our findings on these points, we have to answer the substantial questions of law framed against the revenue and in favour of the assessee.

13. Accordingly, the appeal is dismissed.