

(2011) 04 KAR CK 0003
In the Karnataka High Court
Case No : CEA No. 58 of 2009

Firepro Systems Private Limited

APPELLANT

Vs

Commissioner of Service Tax

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2011) 44 VST 259

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

Bench : Division Bench

Advocate : K.S. Ravi Shankar, for the Appellant; N.R. Bhaskar, Senior Central Government Standing Counsel, for the Respondent

Judgement

Ravi Malimath, J.—This appeal is filed by the assessee being aggrieved by the order of the Tribunal which held that assessees are liable to pay service tax for the services rendered by them with effect from June 16, 2005. The assessees are in the business of undertaking "turnkey projects" involving designing, supply, installation and commissioning of fire safety and protection systems and building access/management systems. According to them, the "turnkey contract" entered by them with their client has the scope of work involving project "site work", viz., civil work, engineering, procurement and commissioning (EPC) of fire safety and protection systems. In other words, the nature of the contract entered with the customers is a "composite" one. The main point urged by the assessee is that the "composite turnkey work contract" involving fire proofing is taxable only with effect from May 1, 2007. However, the Revenue contended that the assessee is engaged in the business of rendering of service under the category of "erection, commissioning or installation" services and they are liable to pay service tax with effect from July 1, 2003 onwards. Further that the assessees were given the benefit of Notification No. 19/2003-ST dated August 21, 2003 even though the assessees claimed benefit of exemption under Notification No. 12/2003-ST dated March 1, 2003. The request of the assessees had been rejected on the ground that if the benefit of exemption under Notification No. 19 of 2003 is availed, the

above notification then benefit under Notification No. 12/2003-ST dated March 1, 2003 cannot be given and it was held that the services rendered by the assessee come under the category of erection and installation services u/s 65(39A) of the Finance Act and accordingly, confirmed the demand for the period from 7/2003 to 10/2005. Aggrieved by the same, an appeal was filed before the Tribunal. The Tribunal held that the assessee is liable to pay service tax for the services rendered by them only with effect from June 16, 2005. Being aggrieved by the same, the present appeal is filed.

2. Therefore, it is clear that the question involved in this appeal is with regard to interpretation of Notification No. 12 of 2003-ST dated March 1, 2003 with regard to the services rendered by the assessee.

3. As this appeal is filed u/s 35G of the Act, 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 Commissioner of Central Excise v. Mangalore Refineries and Petro Chemicals Limited in CEA No. 6/2007 dated September 1, 2010. The appeal lies to the apex court u/s 35L, 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 assessee to approach the apex court. The High Court registry is directed to return the certified copies of the orders produced, to the assessee, to prefer the appeal.