(2004) 09 AP CK 0098

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6069 of 2004

Karvy Securities Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:
Central Excises and Salt Act, 1944 — Section 37B

Citation : (2006) 2 STR 481

Hon'ble Judges : S. Ananda Reddy, J;Bilal Nazki, J

Bench : Division Bench

Advocate : Y. Venkatesh Reddy and S.R. Ashok, for the Appellant; A. Rajashekar Reddy, SCCG, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—Heard learned Counsel for the parties.

2. This Court has granted stay earlier. Vacate Stay petition has been filed along with the counter-affidavit. Since pleadings are complete, and we have heard the learned Counsel for the parties, writ petition itself is disposed of at this stage.

3. The petitioners are aggrieved of Circular No. 66/15/2003-S.T., dated 5-11-2003 issued by the second respondent. The circular reads as under:

I am directed to say that some doubts have been raised regarding application of service tax on the activity of Mutual Fund Distribution as to whether

1. the commission received by distributors on mutual fund distribution as liable to Service Tax under the category of Business Auxiliary Services ?

2. the services provided is exempt from service tax in terms of Notification 13/2003, dated 20-6-2003 ?

In this connection, it is clarified that the services provided as referred above are primarily in nature of the services of commission agent in relation to Clause (ii) and (iv) of the category of services mentioned in the definition of Business Auxiliary Services and hence should be leviable to service tax under this category. This activity does not get covered under exemption Notification No. 13/2003-S.T. , dated 20-6-2003, as this is not in relation to sale or purchase of goods. The exemption provided under Notification 13/2003-S.T. is applicable only for commission agents dealing in goods.

Field formations and trade may be informed accordingly.

4. Sri S.R. Ashok, learned Senior Counsel appearing for the petitioner submits that basically a quasi judicial power which has to be exercised by the authorities concerned, in accordance with law, cannot be governed by the circulars like the one that is impugned in this writ petition.

5. The learned Counsel for the respondents on the other hand submitted in their counter and during the hearing that the circular is only clarificatory in nature and as a matter of fact, certain doubts were expressed by the authorities, which were sought to be cleared.

6. From bare perusal of the circular it would be emphatically known that the respondents raised two specific questions. First question is, Whether the commission received by distributors on mutual fund distribution as liable to Service Tax under the category of Business Auxiliary Services? Second one is, Whether the services provided is exempt from service tax in terms of Notification No. 13/2003, dated 20-6-2003 ?

7. It appears that there is a notification granting exemptions and this notification has been categorically interpreted by the circular by saying that the activity does not get covered under exemption notification. We fail to understand whether the authorities would go against the directions given in the circular. Besides that, the circular is also, in our view, contrary to the proviso to Section 37B of the Central Excise Act, 1944 (for short ''the Act''). Section 37B reads as under:

The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:

PROVIDED that no such orders, instructions or directions shall be issued-

(a) so as to require any Central Excise Officer to make particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the [Commissioner of Central Excise (Appeals)] in the exercise of his appellate functions.

8. If the circular is read along with Clause (a) to proviso to Section 37B, it

becomes abundantly clear that if circular is applied, the matters have to be decided in accordance with the directions given in the circular.

9. For these reasons, we feel that the circular is illegal, contrary to the proviso to Section 37B(a) of the Act and is accordingly quashed. Writ Petition is allowed. By allowing the writ petition, we have not expressed any opinion about the notification and applicability of it in a particular case or cases shall have to be determined by the appropriate authorities. No costs.

That Rule Nisi has been made absolute as above.

Witness the Hon''ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the first day of September, Two thousand and four.

