(2017) 04 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : 997 of 2010, MP Nos 01 of 2017, 1354 of 2010

M/s Standard Gun Works APPELLANT

Vs

Union of India and ors. RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Finance Act, 1994, Section 64, Section 64 - Extent, commencement and application - Extent, commencement and application

Citation : (2017) 04 J&K CK 0014

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : B. L. Kalgotra, Vishal Bharti

Final Decision : Allowed

Judgement

1. The petition is of the year 2010.,,

2. The issue raised in the writ petition is whether the respondent- Department is entitled to charge service tax in relation to services said to be,,

rendered by Gun testing conducted by Quality Assurance Establishes (SA) Kanpur for the purposes of quality assurance.,,

3. Impugned communication dated 27th July, 2010 reads as under:-",,

M/s Standard Gun Works,",,

Industrial Estate Extension Area,",,

JAMMU CANTT-180003 (J&K),,

DETAILS OF SERVICE TAX ON QA CHARGES FOR THE PERIOD W.E.F. 01 JULY2003 to 31MARCH 2010,,

Ref: (i) HQ DQA (A) New Delhi letter No. 94297/QA Charges & ST/DGQA/DQA (A) TC/OFB dated 04 June 10 (copy,, enclosed),,

(ii) This Estt letter of even no. dated 13 Nov 2009,,

Dear Sir,",,

In the light of HQ DQA (A) New Delhi letter quoted under reference (i) above, you are requested to deposit the Service Tax w.e.f",,

01 July 2003 to 31 March 2010 with interest at the earliest.,,

The Service Tax arrears in respect of your firm is Rs. 627708.00.,,

This procedure of depositing the Service Tax will be followed in future yers also.,,

Sd/-,,

(Nand Ram),,

Jr. Technical Officer,,

For Sr. Quality Assurance officer""",,

4. The above said communication is challenged by stating that in the State of Jammu and Kashmir service tax is not leviable in terms of Section 64,,

of the Finance Act, 1994. Learned counsel for the petitioner also states that quality testing conducting by the Quality Assurance Establishes (SA)",,

Kanpur does not fall within the definition of service.,,

5. Learned counsel for the petitioner relies upon the decision of the Division Bench of this Court in the case of M/S Bumrah Gun Works and ors,,

vs. Union of India and ors, OWP No. 1391/2010 decided on 22.11.2016, where a batch of writ petitions on the similar claim was considered by",,

the Division Bench of this Court and disposed of by holding that in terms of Section 64 of the Finance Act, 1994, service tax is not applicable to",,

the State of Jammu and Kashmir. It was also held that the quality testing of guns does not attract the service tax.,,

6. Operative part of the judgment rendered in OWP No. 1391 of 2010 and connected petitions reads as follows:-,,

9. It is not in dispute that Units of the writ petitioners are granted licence to manufacture shot guns under Section 5 of the Arms Act,",,

1959 by Government of India , Ministry of Home, New Delhi and the promoters of the petitioners'' units are residents of J&K State.",,

Section 64 (Chapter V) of the Finance Act, 1994 is not applicable to the J&K State. It is also not in dispute that source to demand",, service tax is as per Chapter V of the Finance Act 1994. The learned counsel appearing for the respondents is relying on Rule 4 of,,

the Place of Provisions of Services Rules, 2012 which states that the place where the services are actually performed the service tax",,

is leviable to justify the demand of service tax. We need not go into the said issue in view of the other grounds which is raised and,,

emphasised. The Government of India, Ministry of Finance, Department of Revenue Tax Resource Unit by Circular No. 96/7/2007-",,

ST, New Delhi dated 23rd August, 2007 issued clarifications to various services as to whether Services Tax is leviable to different",,

kinds of services. In No. 999.01/23.08.07 it is clarified as follows:-,,

,,

999.0

1/

23.08.

07","Sovereign/public authorities perform functions

assigned to them under the law in force, known

as ""statutory functions"".

For example,

Regional Reference Standards Laboratories

(RRSL) undertake verification, approval and

calibration of weighing and measuring

instruments;

Regional Transport Officers (RTO) issue fitness

certificate to motor vehicles;

Director of Boilers inspects and issue

certificates for boilers; or

Explosive Department inspects and issues

certificate for petroleum storage tank,

LPG/CNG tank in terms of provisions of the

relevant laws.

Authorities providing such functions, required to

be performed as per law, may collect specific

amount or fee and the amount so collected is

deposited into government account.

Whether such activities of a sovereign/public

authority, performed under a statute, can be

considered as ''provision of service'' for the

purpose of levy of service tax and the amount

or fee collected, if any, for such purposes can

be treated as consideration for the services

provided?","Activities assigned to and performed by the sovereign/public authorities

under the provisions of any law are statutory duties. The fee or amount

collected as per the provisions of the relevant statute for performing such

functions is in the nature of a compulsory levy and are deposited into the

Government account.

Such activities are purely in public interest and are undertaken as

mandatory and statutory functions. These are not to be treated as services

provided for a consideration. Therefore, such activities assigned to and

performed by a sovereign public authority under the provisions of any law,

do not constitute taxable services. Any amount/fee collected in such cases

are not to be treated as consideration for the purpose of levy of service

tax.

However, if a sovereign/public authority provides a service, which is not in

the nature of statutory activity and the same is undertaken for a

consideration (not a statutory fee), then in such cases, service tax would be

leviable as long as the activity undertaken falls within the scope of a taxable

service as defined.

7. In view of the above said decision rendered by Division Bench of this Court, impugned demand notice dated 27th July, 2010 is set aside.",,

The writ petition is, accordingly, allowed.",,

