(2014) 05 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 127 Of 2009

?M/s.Bharat Seats Ltd. APPELLANT

Vs

CCE, Delhi-I RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Finance Act, 1994 — Section 66A, 75, 76, 77, 78
Service Tax Rules, 1994 — Rule 2(1)(d)(iv)

Citation : (2014) 05 CESTAT CK 0009

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Narendra Kumar Singhvi, Govind Dixit

Final Decision : Allowed

Judgement

1. In this case, the appellant are alleged to have received taxable service of Consulting Engineers during the period from 1.6.2003 to 31.3.2005 from

an offshore service provider, M/s. Houwa Kogyo Co. Ltd., Japan, in respect of which, the service tax amounting to Rs.1,52,949/- is sought to be

recovered under Rule 2(1)(d)(iv) of Service Tax Rules, 1944 along with interest thereon under Section 75 of the Finance Act, 1994. It is on this basis

that the service tax demand of the above amount was confirmed along with interest and penalties were imposed under Section 76, 77 and 78 of the

Act by the jurisdictional Asstt. Commissioner vide order-in-original dated 26.10.2007. On appeal being filed to the Commissioner (Appeals) against this

order, the same was upheld vide order-in-appeal dated 20.11.2008 against which this appeal has been filed.

2. Heard both the sides.

3. Shri N.K. Singhvi, Advocate, ld. Counsel for the appellant, pleaded that in this

case the service tax is sought to be demanded from the Appellant as

service recipient in respect of the taxable services of the Consulting Engineers alleged to have been received during the period 1.6.2003 to 31.3.2005

from M/s. Houwa Kogyo Co. Ltd., Japan , an offshore service provider, that the specific provision for recovery of service tax from the recipient in

India in respect of a taxable service provided by an offshore service provider was made by inserting Section 66A of the Finance Act, 1994 w.e.f.

18.04.2006, that the Honâ??ble Bombay High Court in the case of Indian National Ship Owners Association Ltd. reported in 2009 (13) STT 235

(Bombay) had held that since Section 66A was inserted in Finance Act, 1994 w.e.f. 18.4.2006, for the period prior to 18.4.2006, service tax could not

be recovered from the service recipient in India in respect of the taxable service provided by the offshore service provider and that in view of this, the

impugned order is not sustainable.

4. Shri Govind Dixit, ld. Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and

emphasized that even during the period prior to 18.4.2006, Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 was there, which provided for recovery of

the service tax in respect of the import of taxable service into India from the service recipient and that in view of this, there is no infirmity in the

impugned order.

5. We have considered the submissions from both the sides and perused the records.

6. We find that the issue involved in this case stands decided by the Honâ??ble Bombay High Court in the case of Indian National Ship Owners

Association Ltd. (supra), wherein after considering the provisions of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 Honâ??ble Bombay High Court

held that in absence of the specific provisions in the Finance Act, 1994 during the period prior to 18.4.2006, for recovery of the service tax, from the

service recipient in India, in case of the services provided by a service provider abroad, no service tax could be recovered from the service recipient.

In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

[operative part already pronounced]