

(2010) 05 DEL CK 0150
In the Delhi High Court
Case No : Writ Petition (C) 9041 of 2007

S.R. Batliboi and Associates

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Finance Act, 1994 — Section 65(105), 66A
Finance Act, 2006 — Section 66A

Citation : (2010) 05 DEL CK 0150

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : N. Venkataraman, Achin Goel and R. Satish Kumar, for the Appellant; Mukesh Anand, Shailesh Tiwari and Sumit Batra for Respondent Nos. 2-3, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—These writ petitions are taken up for disposal together because they raise common issues.

2. The petitioners urged that prior to 18.04.2006, that is, the date on which Section 66A was introduced in the Finance Act, 1994, cross-border services provided by a foreign service provider could not be taxed at the hands of resident recipients, such as the petitioners. However, after 18.04.2006, by virtue of the introduction of Section 66A, if any service specified in Section 65(105) of the Finance Act, 1994, is provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and such service is received by a person, who has his place of business, fixed establishment, permanent address or usual place of residence in India, then, such service shall, for the purposes of the said section, be the taxable service and such taxable service shall be treated as if the recipient had himself provided the service in India and accordingly all

the provisions of Chapter V would apply.

3. In the present writ petitions, the services provided by the foreign service provider were in the nature of management consultancy services falling u/s 65(105)(r) of the Finance Act, 1994. Although the period covered in these writ petitions spill over 18.04.2006, the learned Counsel appearing on behalf of the petitioners made a categorical statement that these writ petitions are confined only to the period prior to 18.04.2006. Insofar as the period beginning 18.04.2006 is concerned, the learned Counsel makes a statement at the Bar that the petitioners have remitted the service tax on the basis of the provisions of Section 66A of the Finance Act, 1994.

4. Now, coming to the issue at hand, we find that the same is no longer a debatable issue inasmuch as this Court in the case of *Unitech Ltd. Vs. Commissioner of Service Tax*, following the decision of the Bombay High Court in the case of *Indian National Shipowners Association Vs. Union of India (UOI)*, held that the provisions of Section 66A would be applicable only from 18.04.2006 and that prior to that date, services rendered by a non-resident service provider to a resident recipient could not be taxed as a service at the hands of the resident recipient.

5. In fact, the Bombay High Court in *Indian National Shipowners Association (supra)* has more than adequately dealt with the entire issue. The concluding observations of the Bombay High Court are as under:

...It appears that it is the first time when the Act was amended and Section 66A was inserted by Finance Act, 2006 w.e.f. 18-4-2006, the Respondents got legal authority to levy service tax on the recipients of the taxable service. Now, because of the enactment of Section 66A, a person who is resident in India or business in India becomes liable to be levied service tax when he receives service outside India from a person who is non-resident or is from outside India. Before enactment of Section 66A it is apparent that there was no authority vested by law in the Respondents to levy service tax on a person who is resident in India, but who receives services outside India. In that case till Section 66A was enacted a person liable was the one who rendered the services. In other words, it is only after enactment of Section 66A that taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian residents. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. Before enactment of Section 66A, there was no such provision in the Act and therefore, the Respondents had no authority to levy service tax on the members of the Petitioners-association.

21. In the result, therefore, the petition succeeds and is allowed. Respondents are restrained from levying service tax from the members of the Petitioners-association for the period from 1-3-2002 till 17-4-2006, in relation to the services received by the vessels and ships of the members of the Petitioners-association outside India, from persons who are non-residents of India and are

from outside India.

We are also informed that a SLP was also preferred before the Supreme Court by the Union of India against the said decision of the Bombay High Court. However, the Supreme Court dismissed the said petition by virtue of its order dated 14.12.2009 in Civil Appeal No. 18932/2009.

6. The learned Counsel for the petitioners also placed reliance on a decision of the High Court of Punjab and Haryana in the case of Commissioner of Central Excise Commissionerate, Ludhiana v. Bhandari Hosiery Exports Ltd. 2010 TIOL 103 HC P&H ST. The said decision, in turn, placed reliance on the decision of the Bombay High Court in the case of Indian National Shipowners Association (supra) as well as on the decision of this Court in Unitech Limited (supra).

7. As pointed out above, the issue stands covered by the decision of this Court in the case of Unitech Limited (supra). Consequently, the impugned show cause notices issued by the Commissioner of Service Tax, Delhi (the respondent No. 2 herein), to the extent they pertain to the period prior to 18.04.2006 and relate to the service in question, stand quashed.

The writ petitions stand allowed to the aforesaid extent. There shall be no order as to costs.