(2014) 11 MAD CK 0016

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3193 of 2009

The Commissioner of Central Excise APPELLANT

Vs

Saradha Terry Products Ltd. RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:
Finance Act, 1994 — Section 66A, 69, 70

Citation : (2014) 11 MAD CK 0016

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.

1. This Civil Miscellaneous Appeal filed by the Revenue as against the order of the Customs, Excise and Service Tax Appellate Tribunal was admitted by this Court on the following substantial question of law:

"Whether the decision of the Hon''ble CESTAT, Chennai is legally correct in going against the intention of the Govt., behind the various amendments made in relation to imposition tax on the service recipient under the impugned category of service-Business Auxiliary Service?"

2. The issue involved in this appeal is what is the date from which the recipient of services rendered outside India by a service provider is liable to pay service tax.

3. The first respondent is the manufacturer of terry towels falling under CETH 6302.60.00 of CETA''85. Alleging contravention of the provision of Section 69 of Chapter V of the Finance Act, 1994 read with 2(1)(d)(iv) and Rule 4 of the Service Tax Rules 1994 and Section 70 of the Chapter V of the Finance Act, 1994 read with Rule 6(1) of the Service Tax Rules, 1994 and Section 70 of Chapter V of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as they have failed to obtain registration for the receipt of "Business Auxiliary Services" from the persons who are non-resident/persons from outside India and failed to

pay service tax, show cause notices were issued on 22.11.2006 and 09.10.2006.

4. In response to the said show cause notices, the first respondent herein inter alia contended that the service in question has been rendered outside the territory of India and in the absence of any statutory provision to tax the services received from abroad in India, the demand of service tax is not sustainable.

5. The Adjudicating Authority rejected the plea of the appellant and confirmed the demand made in the show cause notices. Aggrieved by the same, the assessee preferred an appeal before the Tribunal. The Tribunal, following the decision of the Bombay High Court in the case of Indian National Shipowners Association Vs. Union of India (UOI), , allowed the appeal filed by the assessee. Aggrieved by the order of the Tribunal, the Revenue is before this Court.

6. When the matter is taken up for hearing, learned Standing Counsel appearing for the appellant produced before us the Circular issued by the Government of India, Ministry of Finance dated 26th September, 2011 in F.No. 276/8/2009-CX8A, in which it is stated as follows:

"2. In view of the aforementioned judgments of the Hon''ble Supreme Court, the service tax liability on any taxable service provided by a non resident or a person located outside India, to a recipient in India would arise w.e.f. 18.4.2006, i.e., the date of enactment of section 66A of the Finance Act, 1994. The Board has accepted this position. Accordingly, the instruction F.No. 275/7/2010-CX8A dated 30.6.2010 stands rescinded."

7. In view of the above circular issued by the Government of India, nothing survives in this Civil Miscellaneous Appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed as having become infructuous. No costs.

