(2009) 05 DEL CK 0219

In the Delhi High Court

Case No : CEAC No. 18 of 2008

Unitech Ltd. APPELLANT

Vs

Commissioner of Service Tax RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 66A, 68(2), 83
Service Tax Rules, 1994 — Rule 2(1)

Citation : (2009) 15 STR 385 : (2009) 21 STT 330

Hon'ble Judges : Vikramajit Sen, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : J.K. Mittal and Sunil Upadhyay, for the Appellant; Mukesh Anand, Shailesh Tiwary, Sunit Batra, Vaibhav Jain and RCS Bhadauria, for the Respondent

Final Decision : Allowed

Judgement

1. The assessee has preferred the present appeal against the judgment dated 25-8-2008 passed in ST/221/2008 by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''the CESTAT'') u/s 35G of the Central Excise Act, 1944 as made applicable to service tax appeals as per the provisions of Section 83 of Chapter V of the Finance Act, 1994.

2. The assessee is aggrieved by virtue of the fact that even though it was a recipient of taxable services of the nature of architectural services from a nonresident, viz., Callison Architecture Inc., USA, it was called upon to pay service tax in terms of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994. The service tax demanded from the assessee is an amount of Rs. 1,83,10,592 on an amount of Rs. 22,61,54,796 paid to Callison Architecture Inc., USA.

3. The CESTAT based on its own judgment passed by a three member Bench in the case of (2008) 15 STJ 115 came to the conclusion that since Notification No. 36/2004-ST dated 31-12-2004 issued under the provisions of Section 68(2) of the Finance Act, 1994 by which the assessee as the recipient became liable to

pay service tax, came into effect from 1-1-2005, the assessee was liable to pay service tax only for the period commencing from 1-1-2005. In other words, the CESTAT held that the assessee was not liable to pay service tax prior to 1-1-2005.

3.1 At this stage it would be important to note that the counsel for the revenue Mr. Mukesh Anand has informed the Court that a SLP was filed against the order passed by the CESTAT in Hindustan Zinc Ltd.''s case {supra) which was dismissed. He states, on instructions, that the Department is in the process of filing a review petition.

4. The assessee before us is aggrieved by the fact that its liability to pay service tax has been confirmed by the CESTAT with respect to the period 1-1-2005 to 15-6-2005. The learned Counsel for the assessee submits that service tax is being paid by the assessee with effect from 15-6-2005. It is, however, the contention of the assessee that in view of the judgment of the Division Bench of Bombay High Court passed in [Writ Petition No. 1449/2006, dated 11-12-2008] entitled Indian National Shipowners Association v. Union of India [2009] 18 STT 212 it stands declared that the revenue can collect tax only upon being invested with due legal authority; an event which occurred on the insertion of Section 66A in the Finance Act, 1994 with effect from 18-4-2006 by virtue of the Finance Act, 2006.

4.1 We had queried the learned Counsel for the revenue as to whether they had preferred an appeal against judgment of the Division Bench of the Bombay High Court in the case of Indian National Shipowners Association (supra). Apropos we have been informed that the Department is in the process of filing an appeal against the said judgment of Bombay High Court.

5. In the present appeal, the assessee is aggrieved only with respect to its liability for the period 1-1-2005 to 15-6-2005.

5.1 In view of the above the following substantial question of law has arisen for our consideration:

Whether the Tribunal misdirected itself in law in coming to the conclusion that the assessee will be liable to pay service tax for the period 1-1-2005 to 15-6-2005.

5.2 The answer to the question is squarely covered by the judgment of the Bombay High Court in the case of Indian National Shipowners Association (supra) with which we are in respectful agreement. Accordingly, the question of law is answered in favour of the assessee. The appeal is allowed and the impugned judgment passed by the Tribunal is set aside. No costs.