(2011) 11 KAR CK 0249

Karnataka High Court

Case No: Writ Petition No. 23077 of 2011 (CESTAT)

Karnataka Government Insurance Department (K.G.I.D.)		APPELLANT
	Vs	
Assistant Commissioner of Central Excise		RESPONDENT

Date of Decision: Nov. 4, 2011

Acts Referred:

- Finance Act, 1990 - Section 67 (c), 69 (1)
- Insurance Act, 1938 - Section 3

Citation: (2012) 26 STR 521 : (2012) 34 STT 260 : (2012) 54 VST 226

Hon'ble Judges: Ravi Malimath, J; N. Kumar, J

Bench: Division Bench

Advocate: N. Manohar, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Kumar, J.

This petition is filed by the Karnataka Government Insurance Department for a declaration that they are not liable to pay service tax, to declare that the Government of India imposing levy of service tax inter alia on "General Insurance Business" with effect from 01.07.1994 in so far as the petitioner is concerned as ultra vires, arbitrary, unreasonable and to set aside the order dated 07.08.2007 passed by Customs, Excise and Service Tax Appellate Tribunal, Bangalore in Appeal No. ST/01/2003 confirming the order in appeal No. 647/2002 dated 24.10.2002 vide Annexure-B and the order dated 06.04.2009 passed by the Tribunal in Appeal No. ST/64/2006 confirming the order dated 29.12.2005 passed in No. 12/2005-ST(B-III) by the Commissioner of Central Excise (Appeals), Bangalore vide Annexure-E are ultra vires, violation of the principles of natural justice, illegal and liable to be

quashed.

2. The learned Counsel appearing for the petitioner relies on the circular issued by the Government of India bearing No. 89/7/2006-Service Tax, dated 18th December 2006, which reads as under:-

Circular No. 89/7/2006-Service Tax New Delhi, the 18th December 2006

F.No.255/1/2006-CX, 4

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Excise and Customs)

To

Chief Commissioners of Central Excise (All)

Chief Commissioners of Customs & Central Excise (All)

Commissioners of Service Tax (All)

Director General of Service Tax, Mumbai,

Director General, Central Excise Intelligence, New Delhi

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Sub: Applicability of service tax on fee collected by Public Authorities while performing statutory functions/duties under the provisions of a law - regarding

Sir/Madam,

A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Biolers inspects and issues certificate for boilers; or Explosive Department; inspects and issues certificate for petroleum storage tank; LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as ''provision of service'' for the purpose of levy of service tax.

2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory-activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service.

4. Trade and field formations may be advised accordingly.

5. Hindi version will follow.

(Gautam Bhattacharya)

Commissioner (Service Tax)

3. Relying on Paragraph No. 2, it is submitted that the nature of activity performed by the petitioner is fully in public interest and it is undertaken as a mandatory and statutory function and therefore, the fee collected by them for performing such activity is in the nature of compulsory levy as per the provisions of the relevant statute and therefore, it does not fall within the mischief of service tax and therefore, they are not liable to pay tax. This has been overruled by three authorities and committed a serious error in levying service tax.

4. The material on record discloses that the Motor Industries Branch of Karnataka Government Insurance Department are the holders of registration u/s 3 of the Insurance Act, 1938 carrying on General Insurance Business (non-life insurance) since 1st July 1946. The petitioner is engaged in Insurance Business in respect of the vehicles:

(i) owned by the Government Departments and commercial concerns

(ii) vehicles in which the Government has a financial interest and vehicles for the purpose of which the Government has advanced money.

5. The Government of India imposed levy of service tax inter alia on ''General Insurance'' with effect from 01.07.1994. The person carrying on General Insurance Business is the person liable to pay service tax.

6. Section 69(1) of the Finance Act, 1994 requires every person providing taxable service to make an application for registration to the Central Excise Officer. The tax chargeable at the relevant point of time was 5% of the value of taxable services provided to any person.

7. Section 67(c) of the Finance Act, 1994 stipulates that the value of taxable service in relation to services of General Insurance provided to the policy holders shall be the total premium amount realized from the policy holders.

8. In spite of the aforesaid law, the petitioner failed to make an application for registration as per Section 69 of the Finance Act and also failed to make the payment of service tax on the value of taxable service received during any calendar month, as applicable to the Central Government as per Section 68 read with Section 66 of the Act and also failed to furnish or caused to be furnished a return in the prescribed form as required u/s 70 of the Act. Therefore, a show cause notice came to be issued calling upon to show cause as to why tax should not be levied with interest and penalty. In reply filed, they contend that they are the Government Organisation and party of Government of Karnataka and carrying on the activity of insurance of only Government vehicles and therefore, they are not covered under the service tax and they sought for dropping of the proceedings. On consideration of the said objections, after taking note of the aforesaid provisions, the Assessing Authority held that they are involved in the business of insurance and are holding registration u/s 3 of the Insurance Act, 1938. Therefore, they become service providers as per Section 65 of the Finance Act. In terms of notification No. 2/94-ST dated 28.06.1994, petitioner was treated as liable to pay service tax under the category of general insurance. There is no exemption available for the petitioner or for the business under the State Government vehicles. Therefore, all the three authorities have concurrently held that the petitioner is liable to pay tax and levy of interest was upheld.

9. It is in this context, the learned Counsel for the petitioner contends that the said order is contrary to the aforesaid circular and seeks for setting aside of the same.

10. A careful perusal of the aforesaid circular shows that what is exempted in Paragraph 2 is the activities performed by sovereign/public authorities under the provision of law, which are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. It is in those cases, service tax is not leviable. Insurance business is not a sovereign act. No fee is collected for performing such statutory functions. Therefore, it is paragraph 3 of the said circular squarely applies which makes it very clear that if a government authority performs a service which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then

in such cases, service tax would be leviable and it falls within the ambit of taxable service. Therefore according to the circular on which reliance is placed, the activity carried on by the petitioner viz., the insurance activity falls within that paragraph 3 and falls within the mischief of service tax and tax is leviable. The three authorities have concurrently held so and we do not see any infirmity in the order which calls for interference. Accordingly, the petition is dismissed.