
(2015) 39 STR 787

Madras High Court

Case No: Civil Miscellaneous Appeal No. 1444 of 2007

The Commissioner of
Service Tax

APPELLANT

Vs

Lumax Samlip
Industries Ltd.

RESPONDENT

Date of Decision: Nov. 21, 2014

Acts Referred:

- Finance Act, 1994 - Section 65(25), 65(31), 66A, 68

Citation: (2015) 39 STR 787

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

Bench: Division Bench

Judgement

R. Sudhakar, J.

1. This appeal is filed by the Department challenging the Final Order No. 1309 of 2006, dated 18.12.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, by raising the following questions of law:

1. Whether the relevant date for payment of service tax is the date of agreement or the date of payment when the service rendered is continuous in nature and which are provided for a period of time?

2. Whether the Tribunal is right in ignoring the factual matrix of the case to examine whether the service would fall within the ambit of consulting engineering services^{1/2} as defined in Section 65(31) of the Finance Act, 1994 as amended with effect from 7.7.1997 and the effective date of such liability?

3. Whether the order passed by the Tribunal is contrary to the statutory provisions contained in Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994?

2. It is the case of the department that the first respondent, based on a Technical Assistance Agreement dated 6.5.1997 with Samlip Industrial Company Limited, a foreign collaborator, made certain payments on which service tax was demanded in terms of Section 65(25) of the Finance Act, 1994 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994. According to the department, where taxable service is provided by a person who is a non- resident or is from outside India and does not have an office in India, the person receiving taxable service is liable to pay service tax.

3. This issue was clarified by the Ministry of Finance, Department of Revenue, Government of India by issuing Circular F.No. 276/8/2009-CX8A, dated 26.9.2011 to the effect that such claim of service tax would arise only with effect from 18.4.2006, namely, the date of enactment of Section 66A of the Finance Act, 1994. The said circular reads as under:

"F. No. 276/8/2009-CX8A
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

New Delhi, dated the 26th September, 2011

To,

1. All the Chief Commissioner of Central Excise/LTU

2. All Commissioner of Central Excise/Service Tax

Sir/Madam,

Sub:: Applicability of service tax on taxable services provided by a non-resident or a person located outside India to a recipient in India-reg.

Kind attention is invited to instruction F No. 275/7/2010- CX8A, dated 30.6.2010, wherein the Board had communicated its view that services tax on a taxable service received in India, when provided by a non-resident/person located outside India, would be applicable on reverse charge basis with effect from 1.1.2005, and that the ratio of judgement in [Indian National Shipowners Association Vs. Union of India \(UOI\)](#), would not apply to such cases. Further, direction was issued to field formations to defend the levy of service tax on such services for the period on or after 1.1.2005, as post INSA judgment, it has been held by the High Courts/Tribunal in a large number of cases, applying ratio thereof, that service tax on such services is leviable only w.e.f. 18.4.2006. However, the appeals filed by the department before the Hon"ble Supreme Court, for defending the levy of service

tax on such services w.e.f. 1.1.2005, have been dismissed recently (subsequent to the issuance of said instruction dated 30.6.2010) in the following cases.

(i) SLP (C) No. 29539 of 2010 in CCE Vs. Bhandari Hosiery Exports Ltd

(ii) SLP (C) No. 18160 of 2010 in CST Vs. Unitech Ltd

(iii) SLP (C) No. 34208/09 of 2010 in UOI Vs. S R Batliboi & Co.

(iv) SLP (C) No. 328/332 of 2011 in UOI Vs. Ernst & Young

(v) SLP (C) No. 25687-25688/2011 in CCE Vs. Needle Industries

(vi) SLP (C) No. 25689-25690/2011 in UOI Vs. SKM Engg Products

Further, Review Petition No. 1686 of 2011 filed in the case of Bhandari Hosiery has also been dismissed by the Hon"ble Supreme Court vide order dated 18/8/2011.

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.

3. Appropriate action may please be taken accordingly in the pending disputes.

Yours faithfully,

(G. D. Lohani)

Director (Legal)

Copy for information to:

(i) Member (Budget)/Member (ST)

(ii) Joint Secretary (TRU-II)/Commissioner (ST)-CBEC

(emphasis supplied)

4. In the case on hand, admittedly, the demand of service tax is in relation to services received prior to 18.4.2006 and, therefore, by virtue of the above said circular, there will be no liability.

In view of the Circular F.No. 276/8/2009-CX8A, dated 26.9.2011, nothing survives for consideration in this appeal. Accordingly, this appeal is dismissed without going into the merits of the questions of law. No costs.