Om Construction Vs. Commissioner of Customs and

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Court : Authority for Advance Rulings

Decided On : Jan-06-2005

Reported in : (2005)(185)ELT31AAR

Judge : S S Quadri, S Pal, B Agrawal

Appellant : Om Construction

Respondent : Commissioner of Customs and

Judgement :
Syed Shah Mohammed Quadri, J. (Chairman), Somnath Pal and B.A. Agrawal, Members 1. M/s Om Construction filed this application under section 96C (1) of the Finance Act, 1994 (for short, "the Act"). It is a resident of India. It is engaged in erection of transmission lines for State Electricity Boards. It seeks an advance ruling on the following question:- "erection of Transmission Lines for State Electricity Boards,etc.

Transmission Line is not covered under Plant & Machinery and Equipments as such Service Tax not applicable ".

2. On receipt of the application, noticing that prima facie it does not satisfy the requirements of the definition of the term "applicant", contained in Clause (b) of section 96A of the Act, a notice was issued to it to show cause as to why the application should not be rejected in view of the said provision. The application was listed for hearing on 14th December 2004. On that date none appeared for it.

To provide further opportunity to M/s Om Construction, the case was adjourned and it is taken up today. Even today none appears.

3. Having regard to the contents of the notice referred to above, it would be necessary to refer to the definition of 'applicant' in Clause (b) of section 96A of Finance Act, 1994 which reads as follows - Section 96A. Definitions - In this chapter, unless the context otherwise requires:- (iv) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or (v) a resident setting up a joint venture in India in collaboration with a non-resident; or (vi) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who proposes to undertake any business activity in India and makes application for advance ruling".

M/s Om Construction is admittedly a resident of India, therefore sub-clause (ii) of Clause (b) quoted above will be attracted. Under the said sub-clause a resident may apply to the Authority to seek an advance ruling if it is setting up a joint venture in India in collaboration with a non-resident. However, it did not furnish any evidence to show that it is setting up a joint venture in India in collaboration with a non-resident, as such it does not fulfil the requirements of the definition of the "applicant" under the Act.

4. In view of this position, it cannot be treated as an "applicant" within the meaning of the said term. The application is therefore, not maintainable and it is accordingly rejected.