

Star India (P) Ltd. Vs. Cce

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Court : Supreme Court of India

Decided On : Mar-30-2005

Reported in : (2006)201CTR(SC)63; [2006]280ITR321(SC); (2005) 7 SCC 203

Appeal No. : Civil Appeal No. 5072 of 2004 with Civil Appeals Nos. 5276, 5399 and 5400 of 2004 30 March, 2005

Appellant : Star India (P) Ltd.

Respondent : Cce

Advocate for Pet/Ap. : V. Sridharan, K. Srikanth, Rajesh Kumar and Alok Yadav, Advocates, *for the Assessee* R. Mohan, Additional Solicitor-General of India (V.G. Pragasa

Judgement :

ORDER

By the Court

C.A. No. 5072 of 2004 and C.A. No. 5276 of 2004 :

The appellant does not press these appeals. The appeals are accordingly, dismissed for non-prosecution.

C.A. Nos. 5399 of 2004 and 5400 of 2004 :

2. The appellant is a company incorporated under the Companies Act, 1956, and carries on business in India. It is the agent of M/s. Satellite Television Asian Region Limited, Hong Kong (referred to as 'Star', Hong Kong). The business of Star is to telecast channels from satellites situated outside India. Some of the channels are available and enjoyed by the customers in India. According to the appellant, it does not broadcasting, but merely sells time slots for advertisement and obtain sponsors for the serials, programmes or live events, etc. Thus, when the service of broadcasting was introduced in the Finance Act, 1994 as a taxable service with effect from 16-7-2001, by the Finance Act, 2001, the appellant disputed its liability to make any payment of service tax on the ground that it did not, in fact, broadcast.

3. The Commissioner, however, held against the appellant. The appellant appealed before the Commissioner (Appeals). While the appeal was pending, the Finance Act, 2001, was amended by the Finance Act, 2002. The effect of the amendment, inter alia, was to make an agent, such as the appellant, liable to pay service tax as broadcaster. A validation section was introduced, in the Finance Act, 2002, which reads as follows (see (2002) 255 ITR 62) :

'Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under this Chapter at any time during the period commencing on and from the 16-7-2001, and ending with the day, on which the Finance Bill, 2002, receives the assent of the President, shall be deemed to be and always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree : or order of any court, Tribunal or other authority, recovery shall be made of all such service tax which have not been collected but which would have been collected, if subsection (1) had been in force at all material times, within a period of thirty days from the date on which the Finance Bill, 2002 receives the assent of the President, and in the event of non-payment of such service tax so recoverable, interest at the rate of fifteen per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days, till the date of payment.'

4. It may be mentioned here that the appellant's appeal pending before the CIT(A) was rejected by the CIT on the basis of the amendment brought about by the Finance Act, 2002. The further appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) also met with the same fate. The challenge to the order in the main appeal was the subject-matter of C.A. No. 5072 of 2004, which, as we have noted today, was not pressed by the appellant and has been dismissed for non-prosecution.

5. The subject-matter of the present appeal arises out of the refusal of the Tribunal to accede to the appellant's arguments that they were liable to pay interest on the amount which it was required to pay by reason of the 2002 amendment, only in terms of the validation section, i.e., after the expiry of 30 days from the date on which the Finance Act, 2002, received the assent of the President. The ground on which the Tribunal rejected the appellant's prayer was that the Tribunal had by its order in the main appeal (which is the subject-matter of C.A. No. 5072 of 2004) held that the appellant was liable qua broadcaster even before the amendment was brought about by the Finance Act, 2002.

6. Factually, this appears to be incorrect. From the decision of the Tribunal it is clear that the Tribunal had in fact held that the appellant was liable by reason of the amendment to the term 'broadcasting' effected by the Finance Act, 2002.

7. In any event, it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the Legislature to retrospectively legislate, such, retrospectivity is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of courts and Tribunals or other authorities, which required to be neutralised by the validation clause. We can only assume that the judgments, decree or orders, etc., had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the valuation section which says that no act or acts on the part of any person shall be punishable as an offence which would not have been so punishable if the section had not come into force.

8. The liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect.

9. It is also to be noted that the Tribunal itself deleted the imposition of penalty imposed by the Commissioner (Appeals) on the appellants on this ground.

10. Besides, if the liability has been created under the amended section by virtue of sub-section (2) of section 148 of the Finance Act, 2002, it must be given effect to wholly. The section expressly makes the assessee liable under the amended provision to pay the tax within the period of 30 days from the date of the Presidential Assent to the Finance Bill, 2002. It is admitted that the Finance Bill, 2002, was assented to on 11-5-2002, by the President. In the circumstances, the appellant was entitled to a period of thirty days thereafter to make payment of the tax. Needless to say, if it did not make payment within thirty days from 11-5-2002, it would be liable to pay interest at the rate specified after that date.

11. The appeals are, accordingly, allowed but without any order as to costs.