Orient Crafts Ltd. Vs. Union of India (Uoi) and anr.

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SooperKanoon Citation : sooperkanoon.com/715718

Court : Delhi

Decided On : Sep-11-2006

Reported in : (2006)206CTR(Del)262; (2007)9VST43(Delhi)

Judge : Madan B. Lokur and; Vipin Sanghi, JJ.

Acts : Finance Act, 1994 - Sections 65, 65(105), 66A, 93 and 94; Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 - Rule 3, ;Finance Act, 2006

Appeal No. : Writ Petn. No. 14263 of 2006

Appellant : Orient Crafts Ltd.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Arijeet Ganguly and ; Rajeev Mehra, Advs.

Advocate for Pet/Ap. : J.K. Mittal and; Sunil Upadhyaya, Advs

Disposition : Petition dismissed

Judgement :
ORDER

1. The challenge in this writ petition is to the constitutional validity of Section 66A of the Finance Act, 1994.

2. Section 66A of the Finance Act, 1994 as amended by Finance Act, 2006 reads as follows:

(1) Where any service specified in Clause (105) of Section 65 is,-

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1.-A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2.-Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

3. Pursuant to the powers granted by Sections 93 and 94 r/w Section 66A of the Act, the Central Government has issued notification bearing No. 11 of 2006-Service-tax thereby notifying the Taxation of Services (Provided from Outside India and Received in India) Rules, (2006) 202 CTR (St) 90.

4. The contention of the learned Counsel for the petitioner, based on the interpretation of Section 66A of the Act, is that any service that is obtained by a person who has a fixed place of business or fixed establishment or permanent address in India is liable to tax for services availed by him in a foreign country. By way of an example, learned Counsel for the petitioner has cited that if such a person in India goes abroad, and has a haircut, he would be liable to pay service-tax in India on the basis of Section 66A of the Act.

5. We are not at all convinced by this argument of learned Counsel for the petitioner. The rules that have been framed by the Central Government make it absolutely clear that taxable service provided from outside India and received in India is liable to service-tax. In the example given by the learned Counsel for the petitioner, there is no question on the service of a haircut having been received in India.

6. In the present case, the petitioner is an exporter and has availed the services of a commission agent situated in a foreign country for procuring business of export of goods from India to other foreign countries. It appears that according to the authorities the services of the commission agent are taxable in India, while according to the petitioner these services are not liable to service-tax.

7. Rule 3 of the Rules, insofar as it is material for our present purposes reads as follows:

Taxable services provided from outside India and received in India. -Subject to Section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services-

(i) xxxx

(ii) xxxx

(iii) specified in Clause (105) of Section 65 of the Act, but excluding,-

(a) Sub-clause(zzzo) and (zzzv);

(b) those specified in Clause (i) of this rule except when the provision of taxable services specified in Clauses (d), (zzzc), and (zzzr) does not relate to immovable property; and

(c) those specified in Clause (ii) of this rule,

be such services as are received by a recipient located in India for use in relation to business or commerce.

8. The services provided by commission agents are admittedly covered by Section 65(105)(zzb). Section 65(105)(zzb), insofar as it is relevant, reads as follows:

65. Definitions.-In this Chapter, unless the context otherwise requires,-

(1) to (104c) xxxx

(105) 'taxable service', means any service provided or to be provided

(a) to (zza) xxxx

(zzb) to a client, by any person in relation to business auxiliary service.

9. The issue whether the taxable service in the present case is 'received in India' is still live before the statutory authorities and thereforee we would not like to go into that issue at this stage.

We do not find anything unconstitutional in this scheme of things.

10. We would, however, make it clear that it is still open to the petitioner to contend that he has not received the services of the commission agent in India but that it is a matter on merits and that can only be decided by the AO or any

appellate authority in the event that petitioner is sought to be taxed on this aspect.

Dismissed.