

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.40791 of 2015

(Arising out of Order-in-Appeal No. 115/2014 dated 11.9.2014 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy)

Senior Quality Assurance Officer

Senior Quality Assurance Establishment (Armaments)
Ordnance Factory Trichy Premises
Trichy – 620 016.

Appellant

Vs.

Commissioner of GST & Central Excise

No. 1, Williams Road
Cantonment, Trichy – 620 001.

Respondent

APPEARANCE:

Shri H.S. Manoharan, Consultant for the Appellant
Shri Anoop Singh, JC (AR) for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40785/2024

Date of Hearing : 04.04.2024

Date of Decision: 02.07.2024

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal No. 115/2014 dated 11.9.2014 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy.

2. Brief facts of the case are that the appellants are registered with the Service Tax Department for providing "Technical Inspection and Certification Service" and were paying the applicable service tax for the period from 2008 – 09 onwards. Further, the Senior Quality Assurance Officer vide his letter dated 17.6.2010 informed the Service Tax Department that as per their HQDGQA, New Delhi directive, they had

to pay service tax since 1.7.2003 to 31.3.2010 along with interest after necessary sanction of funds from Head Quarters, New Delhi. However, the appellant did not make any payments towards their service tax liability for the period prior to their registration and did not file any return till 2010 - 11. During scrutiny of records of the appellant, the officers of Central Excise noticed that the appellant did not make any payments for the period from 2006 - 07 to 2009 - 2010, towards Quality Assurance Charges for testing rifles, though they obtained registration and started complying with the said provisions for the subsequent period. Therefore, it appeared that the appellant had willfully contravened the provisions of Finance Act, 1994 with an intent to evade payment of service tax. After due process of law, the adjudicating authority demanded service tax of Rs.41,16,723/- along with interest and imposed penalties under sec. 77, 77(2) and 78 of the Finance Act, 1994. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who vide the order impugned herein upheld the order of the lower adjudication authority and rejected the appeal. Hence the appellant is now before the Tribunal.

3. Shri H.S.Manoharan, learned consultant appeared for the appellant and Shri Anoop Singh, learned authorized representative appeared for the respondent.

4. The learned consultant for the appellant submitted that they are part of the Directorate General of Quality Assurance (DGQA), Ministry of Defence, Government of India, entrusted with the responsibility of providing quality assurance of armament stores in respect of

armaments meant for Army, Navy and Air Force. The dispute in the present case relates to the alleged service tax liability of the appellant in respect of consideration received under the heading 'technical inspection and certification agency' service as defined under section 65(109) of the Finance Act 1994. The learned consultant submitted that the appellant is engaged in an activity which is purely in public interest and are undertaken as per mandatory and statutory functions. He drew attention to Rule 22 of **The Arms Rules, 1962**, which states that proof testing of firearms manufactured by a licensed dealer shall be carried out only in accordance with the regulations which may be framed by the central government or framed by such authority as a Government may specify in this behalf and approved by that Government, no dealer shall sell a firearm which is not been duly proof tested. Hence the amounts collected towards quality assurance charges for testing the rifles are fees prescribed for conducting the quality checks and are not liable to service tax. He relied upon the **judgment of the Hon'ble Jammu and Kashmir High Court** in WP number 1391/2010 filed by various manufacturers of Guns challenging the levy of service tax on such charges and the judgement of a Coordinate Bench of this tribunal in the case of **M/s Commandant, QA and Proof Vs CCE, Bhopal**, [2017 (7) TMI 299 – CESTAT New Delhi].

5. The learned AR Shri Anoop Singh reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records. We find that the legal issue has been examined in detail by the Hon'ble Jammu and

Kashmir High Court and reproduced at para 4 and 5 of the judgment in M/s Commandant, QA and Proof (supra), which is given below:

"4. We have heard both the sides and perused the appeal records. We note that the very same issue regarding the Service Tax liability of such charges has been examined, in detail by the Hon'ble J & K High Court, in the abovementioned case. The Hon'ble High Court observed that the appellants are not liable to Service Tax on the testing fee paid to them by the licensed manufacturers of Guns. The relevant portion of the judgement is reproduced below:-

"On facts the 5th respondent is a Government of India establishment assigned with the job of proof tasting of fire arms. The proof testing is required as per the statute to manufacture of fire arms for public safety. Under Rule 22 of the Arms Rule, 1962 testing fee alone is collected. The said clarification issued by the Revenue will bind the subordinate assessing authorities and one cannot expect a different order from respondents 6 and 7. A similar issue was already considered by Commissioner of Central Excise Bhopal against CESTAT final order No.ST/26/2010 (PB) in Appeal No.ST/346/2007 dated 26.04.2010 by holding that periodical testing of gas cylinder is a statutory requirement under Indian Explosives Act 1884 and therefore, it is not an activity covered for service tax either under maintenance and repair services or technical inspection and certification services and having aggrieved about the said order, Civil appeal filed before Hon'ble Supreme Court was dismissed on 05.01.2011.

10. Based on the said order, the office of Commissioner of Customs, Central Excise and Service Tax, Bhopal issued circulation 21.02.2012 by providing as under:-

"..... Activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account. The testing of shot guns is similar to testing of gas cylinders, boilers, and certificate given is similar to those given by RTO and electrical inspectorate. Hence on the same lines. I hold that the activity carried out by the notice pertaining to safety and health of the public which is mandated by the statutory requirement under the Indian Law.

"Therefore, such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. As it involves the safety of the public and it is bounden duty of the State to protect its citizens. Therefore, such activities assigned to and performed by a sovereign/ public authority under the provisions of any law, do not constitute taxable services. Any amount/fee collected in such cases is not to be treated as consideration or the purpose of levy of service tax

11. From the above order of CESTAT, affirmed by Hon'ble the Supreme Court, and Circular No.96 issued by Government of India, Ministry of Finance, Department of Revenue, Tax Resource Unit, New Delhi in Circular No.96/7/2007-ST dated 23.08.2007 as well as the clarification issued by Commissioner of Customs, Central Excise & Service Tax, Bhopal dated 21.02.2012, the operative portions of which are extracted above, and having regard to the fact that the Senior Quality Assurance Officer, being authorised office for testing, and the petitioners having paid only testing fee for fire arms, which is a statutory requirement under Rule 22 of the Arms Rules, 1962, no service tax can be levied on the petitioners who are granted license under Section 5 of the Arms Act, 1950 even if the service provider i.e. the Senior Quality Assurance Officer is in Kanpur where Section 64 of the Finance Act, 1994 is applicable."

5. In view of the ratio as laid down by the Hon'ble High Court and considering the nature of work attended to by the appellant, we find that there can be no service tax liability on the charges collected by the appellant. Hence, there is no question of interest payable by them. The impugned order is set aside and the appeal is allowed."

7. It is a well-accepted norm of judicial discipline that a Bench of co-equal strength must follow the earlier decision of another Bench of co-equal strength, more so when it is based on the judgment of a superior court. We hence have no hesitation in setting aside the impugned order and allowing the appeal. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Pronounced in open court on 02.07.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)