

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4814 OF 2009

C.S.T. DELHI

APPELLANT

VERSUS

M/S. SOJITZ CORPORATION

RESPONDENT

WITH

CIVIL APPEAL NOS. 3680-3681 OF 2012

O R D E R

As all the three appeals are with respect to the same Assessee and with respect to the same period but with respect to the service tax liability and the penalty on such service tax liability, all the three appeals are decided and disposed of together by this common judgment and order.

CIVIL APPEAL NO. 4814 OF 2009

The present appeal arises out of the impugned judgment and order dated 21.10.2008 passed by the Customs, Excise and Service Tax Appellate Tribunal (for short, 'the Tribunal') passed in Service Tax Appeal No.672/2007 by which the learned Tribunal has allowed the said appeal preferred by the respondent/Assessee and has set aside the levy of service tax.

CIVIL APPEAL NOS. 3680-3681 OF 2012

These appeals are preferred against the judgment and order passed by the learned Tribunal dismissing the appeals

contd..

preferred by the Revenue and confirming the order passed by the Commissioner not imposing the penalty on the service tax liability, which is the subject matter of Civil Appeal No.4841/2009. It is to be noted that the Commissioner did not impose/levy the penalty leviabale under Sections 75-A and 78 of the Finance Act, 1994, against which the Revenue preferred the appeals before the Tribunal and the Tribunal has dismissed the appeals preferred by the Revenue which has given rise to Civil Appeal Nos. 3680-3681 of 2012.

The issue involved in the present appeals is in a very narrow compass. It is not in dispute that the service tax was sought to be levied for the transaction which has taken place outside India for the period between November, 1999 and March, 2002. The show cause notice was issued on 20.04.2005. It is not in dispute that the service tax on a taxable service received in India, when provided by non-resident/person located outside India would be applicable on reverse charge basis w.e.f. 01.01.2005 and the service tax on such services is leviabale only w.e.f. 18.04.2006. Therefore, for any services received in India, when provided by non-resident/person located outside India prior to 18.04.2006, there shall not be any service tax liability under the Finance Act, 1994. Even the Central Board of Excise and Customs (CBEC) has issued Circular dated 26.09.2011 to the aforesaid effect, which reads as under -.

"Circular: 276/8/2009-CX. 8A dated 26-Sep-2011  
Taxable Services - Service tax by non - resident  
cond..

to a recipient in India

Instruction F.No. 276/8/2009-CX.  
8A, Dated 26-9-2011

Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi

Subject: Applicability of Service tax on taxable services provided by a non-resident or a person located outside India to a recipient in India - Regarding.

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 judgment in M/s. Indian National Shipowners Association (INSA) case [2009 (13) S.T.R. 235 (Bom.)] 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 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 v. Bhandari Hosiery Exports Ltd. [2010 (20) S.T.R. (J99) (S.C.)]
- (ii) SLP (C) No. 18160 of 2010 in CST v. Unitech Ltd.
- (iii) SLP (C) No. 34208/09 of 2010 in UOI v. S.R. Batliboi & Co.
- (iv) SLP (C) No. 328/332 of 2011 in UOI v. Ernst & Young.
- (v) SLP (C) No. 25687-25688/2011 in CCE v. Needle Industries.
- (vi) SLP (C) No. 25689-25690/2011 in UOI v. SKM Engg. Products.

Further, Review Petition NO. 1686 of 2011 filed in the  
contd..

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."

In view of the above and as observed hereinabove, in the present case, the taxable service received by the respondent/Assessee received in India, when provided by non-resident/person located outside India was for the period between November, 1999 and March, 2002, i.e., prior to 18.04.2006, the Tribunal has rightly set aside the the levy of service tax on the aforesaid. Once there is no service tax liability by the respondent/Assessee for the services received during the period between November, 1999 and March, 2022, there is no question of levy of any penalty. Therefore, the Tribunal has rightly held that the Assessee is not liable to pay any penalty, as sought to be levied by the Department.

In view of the above and for the reasons stated hereinabove, all the three Appeals fail and the same deserve to be dismissed and are accordingly dismissed. No costs.

.....J.  
[M.R. SHAH]

.....J.  
[KRISHNA MURARI]

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No. 4814/2009

C.S.T. DELHI

Appellant(s)

VERSUS

M/S. SOJITZ CORPORATION

Respondent(s)

WITH

C.A. Nos. 3680-3681/2012 (XVII-A)

C.A. No. 11400-11401/2018 (XVII-A)  
( IA No.164624/2018-CONDONATION OF DELAY IN FILING and IA  
No.164625/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT  
and IA No.165113/2018-STAY APPLICATION)

Date : 13-09-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH  
HON'BLE MR. JUSTICE KRISHNA MURARI

For Appellant(s) Mr. N. Venkatraman, ASG  
Mr. Rupesh Kumar Adv  
Mr. M.K.Maroria AOR  
Mr. V.C. Bharathi Adv  
Ms Priyanka Das Adv  
Mrs. Anil Katiyar, AOR  
Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Mr. V. Sridharan, Sr. Adv.  
Mr. Aditya Bhattacharya, Adv.  
Ms.Apeksha Mehta, Adv.  
Mr. Vinay Kumar Jain, Adv.  
Ms. Monica Kasturi, Adv.  
Mr. Sahil Parghi, adv.  
Mr. Pranav Mundra, Adv.  
Ms. Charanya Lakshmikumaran, AOR

Mr. Kamal Sawhney, Adv.  
Mr. Deepak Thackur, Adv.  
Ms. Anishka Gupta, Adv.  
Mr. Krishna Rao, Adv.  
Ms. Aakansha Wadhvani, Adv.  
Mr. R. Chandrachud, AOR  
Mr. Vinayak Mathur, Adv.  
Mr. V. N. Raghupathy, AOR

Mr. Aaditya A. Pande, AOR.  
Mr. Siddharath Dharmadhikari, Adv.  
Mr. Bharat Bagla, Adv.

contd..

UPON hearing the counsel the Court made the following  
O R D E R

Civil Appeal Nos.4814/2009 and 3680-3681/2012

The appeals are dismissed in terms of the signed order.  
Pending application(s) shall stand disposed of.

C.A. Nos. 11400-11401/2018

Heard in part.

Put up on 14.09.2022 as part heard.

(NEETU SACHDEVA)  
ASTT. REGISTRAR-cum-PS

(signed order is placed on the file)

(NISHA TRIPATHI)  
ASSISTANT REGISTRAR