

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Appeal No. ST/199/2009 - CU[DB]

[Arising out of Order-In-Appeal No. 06/COMM/STR/2008 dated 12.12.2008 passed by Commissioner of Customs & Service Tax, Bhopal]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Rakesh Kumar, Member (Technical)

1 Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? No

2 Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? No

3 Whether Their Lordships wish to see the fair copy of the Order? Seen

4 Whether Order is to be circulated to the Departmental authorities? Yes

M/s Designing Cell Appellant

(Prop. Sh. Ashish Bhattacharya).

Vs.

C.C.E. Bhopal Respondent

Appearance:

Sh. Sandeep Mukherjee, CA for the Appellants

Sh. Govind Dixit (AR) for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing /decision: 25.09.2014

Final ORDER NO. 54673 /2014

Per Archana Wadhwa (for the Bench):

The appellant is a proprietor of a firm called M/s Designing Cell and is basically a sculptor and an artist. He does not have any formal training as an architect.

2. The dispute in the present appeal is as to whether the appellant has provided any architect services, to its clients, so as to make him liable to pay the Service Tax.

3. It is seen that a Show Cause Notice dated 19.10.2004 was issued to the appellant proposing recovery of service tax of Rs. 1,38,020/- on the alleged architect services rendered by him during the period April 1999 to March 2003 along with the proposal to confirm interest and to impose penalties under Section 76, 77 and 78 of the Finance Act, 1994.

4. On adjudication, the Deputy Commissioner Central Excise, Bhopal vide his order in original dated 09.01.2007, dropped the proceedings against the appellants and vacated the Show Cause Notice by holding that the appellant is not covered under the definition of architect services, inasmuch as he has no degree of architect and his name is not entered in the register of architect maintained under the Architects Act.

5. The said order of the original Adjudicating Authority was reviewed and an appeal was filed by the Revenue before the Commissioner (Appeals), who reversed the said order of the original Adjudicating Authority and confirmed the demand along with imposition of penalties.

Hence the Present appeal.

After hearing both the sides, we find that admittedly the appellant is neither an architect nor is he registered under the Architects Act. This fact also stands admitted by Commissioner (Appeals). For better appreciation of the definition of the concerned service, we reproduce the relevant sections.

“U/s 65(105) (P) as:

Taxable service means any service provided to any person by an architect in his professional capacity in any manner.

As per Section 65(6) the Architect means:

Architect means any person whose name is, for the time being entered in the register of Architects Act, 1972 (20 of 1972), and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture.

As is seen from above, architect services cover the services provided by a person, whose name is entered in the register of architects maintained under Section 23 of the Architects Act, 1972. The original Adjudicating Authority, while dropping the demand, has observed as under:

On perusal of the record of court proceeding before the Hon'ble Court of Xth Civil Judge Class-II in the Hon'ble Court of District Judge, Bhopal (MP) it was revealed that Designing Cell (Proprietary concern) is not the concern which is engaged in the activity of architect in valid form. In this suit before the court plaintiff (chairman, Indian Institute of Architect) had declared that:-

- M/s Designing Cell is a proprietary concern fraudulently purporting and portraying to be an Architectural Consultancy Firm or Architect.
- Respondent No. 3 (i.e. M/s Designing Cell) has promised to undertake the scope of the work for which neither he is educationally qualified nor legally competent.
- Respondent No. 3 (i.e. M/s Designing Cell) has concealed the fact that he is not an architect, therefore does not legally qualify to enter into agreement as Architect.
- Architect is a person whose name is for the time being entered in the register of Architects. A person possessing minimum standards of Architectural Education required for granting qualifications by institutions in India can be enrolled as an architect in the said register maintained under the architects Act 1972.
- Respondent No. 3 (i.e. M/s Designing Cell) has used the title on violations of the Section 37 of the Architect Act, 1972.
- Respondent No. 3 (i.e. M/s Designing Cell) has not done this mischievous act first time but he is engaged in fraudulently misleading the public servants. Government Official Print Media through misrepresentation that he is an “Architect”.

In the light of above submission made by Chairman, Indian Institute of Architects, it is clear that the Institute of Architects does not recognize Designing Cell or Shri Ashish Bhattacharya as Member of the Institute and consequently an architect professionally.

Accordingly the original Adjudicating Authority has observed that all evidences produced by the noticee reveal that Shri Ashish Bhattacharya did not have professional competence to provide their service as architect. Any effort made on their part was stopped by the Indian Institute of Architects, MP Chapter, Bhopal. MP Housing board also cancelled the order placed by them due to lack of professional clarifications.

6. On the other hand Commissioner (Appeals) has observed that inasmuch as it was M/s Designing Cell, which was a separate Commercial concern, who was providing the services, the fact whether the same was entered in the register of architects or not, is of no avail. Accordingly, he confirmed that demand.

7. We do not agree with the above reasoning of Commissioner (Appeals). As is seen form the definition of Architect, the same refers to "any person" whose name is entered in the register of Architects. The definition is further expanded, by using the expression "includes". This means that any person also includes a commercial concern. However, the condition of the same being entered in the register of Architect will not get diluted. If the expression commercial concern is read along with the expression "any person", the condition of being entered in the register of architects would equally apply to commercial concern. As such, we are of the view that the interpretation of the said definition by Commissioner (Appeals) is not proper.

8. Otherwise also, we find that M/s Designing Cell is a proprietary unit under the proprietorship of Shri Ashish Bhattacharya. The proprietary unit and the proprietor are required to be treated as one and the same. In that scenario also if M/s Ashish Bhattacharya is not an architect, his proprietary unit cannot be considered to be an architect.

9. In any case and in any view of the matter, we find that the demand is barred by limitation, having been raised beyond the normal period of limitation. In view of the complex nature of the issue, no suppression can be attributed to the appellant so as to invoke the longer period of limitation. Further, the original Adjudicating Authority has also held in favour of the assessee, which fact shows that the issue is capable of two different interpretations, in which case no malafide can be attributed to the appellants. Accordingly, we hold that the demand is also barred by limitation.

10. In view of foregoing, we set aside that impugned order and allow the appeal with consequential relief, by restoring the order-in-original.

(Pronounced in Court)

(ArchanaWadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)