

2023 LiveLaw (SC) 561

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.V. NAGARATHNA; J., UJJAL BHUYAN; J.
JULY 18, 2023

CIVIL APPEAL NO. 4529/2023 (@ CIVIL APPEAL Diary No(s). 23042/2023)

COMMISSIONER OF SERVICE TAX-IV *versus* PRIME FOCUS LTD.

Finance Act, 1994; Sections 65(105) (zi), 65(119), 65(120), 66 - Export of Service Rules, 2005 - Service Tax Rules, 1994 - The Supreme Court has upheld the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) that the 3D conversion services provided by the assessee, including services such as ‘imparting special effects’, ‘post production service’, ‘digital asset management and content service’ and ‘digital restoration service’, will not fall under the ambit of ‘video-tape production’ under Section 65(120) of Finance Act, 1994. While adjudicating the service tax demand raised on the assessee, the CESTAT found that there was no evidence that the material received by the respondent/ assessee, M/s Prime Focus Ltd, from its clients was recorded in video or that the assessee had, at any time, handled video as media. The Tribunal had thus held that the assessee was entitled for exemption as exports as it had exported services in accordance with Export of Service Rules, 2005 and Rule 6A of Service Tax Rules, 1994.

(Arising out of impugned final judgment and order dated 25-01-2023 in STA No. 87364/2016 passed by the Custom Excise Service Tax Appellate Tribunal, West Zonal Bench at Mumbai)

For Petitioner(s) Mr. Balbir Singh, A.S.G. Mr. Mukesh Kumar Maroria, AOR Ms. Rekha Pandey, Adv. Ms. Monica Benjamin, Adv. Mr. Pratyush Srivastava, Adv. Mr. Pushpinder Singh, Adv.

For Respondent(s) Mr. Vipin Jain, Adv. Mr. Vishal Agarwal, Adv. Mr. Rupesh Kumar, AOR Ms. Pankhuri Shrivastava, Adv. Ms. Tuhina Sinha, Adv. Ms. Shilpa Baloni, Adv. Mr. Girish Raman, Adv.

ORDER

Delay condoned.

We have heard Mr. Balbir Singh, learned ASG, who has drawn our attention to the definition of ‘Video Production Agency’ in Section 65(119) and the definition of ‘Video-Tape Production’ in Section 65(120) of the Finance Act, 1994 to contend that the analysis of the said definitions made by the Tribunal is incorrect. In that regard, it was pointed out that what is of importance is the nature of services rendered during the course of Video-Tape Production Agency and looked at from that prospective, the order of the Tribunal is incorrect.

Per contra, it was pointed out by learned counsel for the respondent that what is of significance in the definition of ‘Video-Tape Production’ is ‘the process of any recording of any programme, event or function on any device and services relating thereto’. In other words, if the process of recording is absent then, merely rendering any services would not arise as such. It was contended that the impugned order would not call for any interference.

On a conjoint reading of the definitions of the ‘Video Production Agency’ and ‘Video-Tape Production’, we find that the services such as editing, cutting, coloring etc. is only after recording is done of any programme, event or function on a magnetic tape or any other media or device. This is clear from the use of the words “*services relating thereto*” and such a Video-Tape Production when done by any professional videographer or any

commercial concern engaged in the business of rendering such services is a 'Video Production Agency'.

Having regard to the expressed words "*services relating thereto*" and the circular dated 09.07.2001, paragraph '2', we find that the Tribunal has rightly interpreted the said sections.

The Civil Appeal is, hence, dismissed.

It is needless to observe that the aforesaid definitions are relevant only till 01.07.2000.

Pending application(s), if any, shall stand disposed of.

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