

Cce Vs. Top Detective and Security

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-28-2004

Reported in : (2005)(180)ELT363Tri(Mum.)bai

Judge : A M Moheb

Appellant : Cce

Respondent : Top Detective and Security

Judgement :

1. This appeal by Revenue is against the order of the Commissioner (Appeals). The matter pertains to payment of Service Tax. The Respondent runs a detective service agency. The service rendered by him falls under 'Security Service' and such service is liable to Service Tax.

2. The respondent did not file a return within the stipulated period and therefore it was held that he contravened the provisions of Section 70 of the Finance Act, 1994 and rendered himself liable to penal action under Section 77 of the said Act. A sum of Rs. 10,06,329/- towards interest on delayed payment of tax (the respondent paid Rs. 2,64,851/- towards interest even before the adjudication order was passed that is why the balance of Rs. 10,06,329/- was to be paid) was also held payable. In appeal, the Commissioner (Appeals) held that penalty under Section 76 & 77 is not imposable when the entire tax liability was discharged; that there is no deliberate contravention of law requiring stringent penal action and that interest may be properly calculated after taking into consideration the appellants'

please that interest should be calculated at different rates. He also directed the appellant before him to approach the authorities below to allow him to pay the interest in instalments.

3. The Revenue is aggrieved by this order. The main grounds of the Revenue are that the Commissioner (Appeals) should not have set aside the penalty and that he should not have directed the lower authority to examine the claim, of the appellant before him, that rates of interest were different for different period.

4. None appeared for the respondents. Heard the SDR and perused the records.

5. A penalty under Section 76 & 77 for late filing of returns is not mandatory. In the present case, the respondent paid the tax and a part of interest accrued even before the case is adjudicated. His plea was that he was not receiving payment from his customers in time and that resulted in delayed payment of Service Tax. The Commissioner (Appeals) considered this plea before he set aside the penalty. I do not see any infirmity in that finding.

6. Regarding the plea of the Revenue that the Commissioner (Appeals) should not have directed the lower authority to consider the plea of the respondent that different rates of interest are applicable to different period, I observe that the period involved in the dispute is only 16/10/98 to 10/5/2000 and during this period the rate of interest was 18% per annum. No harm was done in any case. The lower authority would have taken note of this while reconfirming the interest.

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