

Royal Security Force Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-27-2005

Judge : A Wadhwa

Appellant : Royal Security Force

Respondent : Commissioner of Central Excise

Judgement :

1. After dispensing with the condition of pre-deposit of penalty of Rs. 1,24,700/- and of Rs. 2,000/- under the provision of Section 76 and 77 of Finance Act, 1994, I take up the appeal itself for final disposal.
2. The appellants are engaged in providing security service and liable to service tax. During the period April 2001 to March 2002, service tax to the extent of Rs. 5,03,554/- was not deposited by them. It is the appellants' contention that their accountant, who was responsible for depositing the service tax was withdrawing the amount from the company's account for the said purpose but instead of depositing, was utilizing the amount for his own personal gains. The said fraud committed by the employee was detected by the appellants themselves and a F.I.R. was also registered on 30/07/2002. Subsequently they deposited the entire amount of service tax alongwith interest in October, 2002.
3. On the above basis proceedings for imposition of penalty were initiated against them which culminated into the impugned orders.

Appellants are taking shelter under the provision of Section 80 of the Finance Act, 1994, which is to the effect that notwithstanding anything contained in the provision of Sections 76, 77 and 78 or 79, no penalty shall be imposable for any failure if the assessee proves that there was reasonable cause for the said failure. Learned Advocate's contention is that the fraud committed upon the company by their employee without their knowledge and the subsequent detection by the appellants on their own account, and deposit of service tax alongwith interest is a reasonable cause for setting aside penalty upon the appellants. Reference has also been made the Larger Bench decision of the Tribunal in the case of ETA Engineering Ltd. v. Commissioner of Central Excise, Chennai - wherein after taking into consideration the bonafide of the assess and their co-operation with the investigating Officer, it was held that benefit of Section 80 should be extended. In the present case also I find that the appellants were releasing funds at proper time to their employee to deposit but the same was being fraudulently diverted by the employee for his personal cause for which a F.I.R. was also registered by them. The amount of service tax was subsequent deposited by them on their own without any detection by the Central Excise Officer. In this circumstances, I am of the view that there was a reasonable cause for the appellants' failure to deposit the amount in question in time. As such, in terms of provision of Section 80, I set aside the quantum of personal penalty imposed upon the appellants under the provision of Section 76 and 77 of the Finance Act. Appeal is disposed of in above terms, stay petition also stands disposed off.

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