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New Industrial Security Force Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-2005

Reported in : (2006)2STR66

Judge : R Abichandani, M T K.C.

Appellant : New Industrial Security Force

Respondent : Cce

Judgement :

1. The appellant has challenged the order of the Commissioner (appeals) by which demand of Rs. 1,12,856/- made under Section 73 of Chapter-V of Finance Act, 1994, was confirmed along with imposition of penalty and Payment of interest.

2. There is no dispute about the fact that the amount of service tax sought to be recovered includes salary of the security personnel.

Section 67(V) of the Finance Act 1994, defines the value of taxable service in relation to service provided by a security agency to a client as under: - "Gross amount charged by such agency from the client for services rendered in connection with the security of any property or person, and includes services of investigation, detection or verification of any fact or activity including services of providing security personnel." The Commissioner (appeals) observed that it was clear from this definition that gross amount means the total amount billed to the client. According to him, "the total service tax was chargeable on the entire amount charged by the security agency from its client to whom services have been provided as bulk of the charges represent salary to their employees, ESI, EPF, Income tax deducted at source, payment made towards professional tax, labour welfare funds and other non-statutory charges such as bonus, leave uniform and other expenses." It was held that "no abatement in respect of such levies was admissible for the purpose of computation of service tax liability." It was held that service tax was liable to be paid on the gross billed amount.

3. It appears from the definition of value of the taxable service under Section 67(V) that is the gross amount which is charged by the agency from a client for the services rendered which is required to be taxed.

As regard security personnel, the nature of the service is of only making provision for arranging the security personnel. It is activity of providing security personnel which would be services. Therefore, prima-facie, salary payable to the security personnel would stand on a different footing than the services provided by the security agency to procure the security personnel for the client. The impugned order is, therefore, stayed during the pendency of the appeal and there shall be waiver of pre-deposit of the amount payable under the impugned order.

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