

Filco Tours Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-2005

Reported in : (2006)(104)ECC269

Judge : M T K.C.

Appellant : Filco Tours

Respondent : Cce

Judgement :

1. This appeal is filed against the order of the Commissioner (Appeals) challenging the imposition of penalty. The appellants have not challenged the levy and recovery of service tax and interest thereon.

2. It was pleaded that the appellants are a petty tour operator working at Agra. They had taken registration in December, 1997. However, they could not deposit the service tax, as they had to deposit the same after collecting from the customers. After depositing the tax, they were not aware that returns are also required to be filed. From 18th July, 1998, exemption was given from service tax to the tour operators, therefore, the appellants thought that they were not required to submit the ST-3 returns. The first return was filed by them on 31st August, 1998 for quarter ending December, 1997 and the return for quarter ending March, 1998, June, 1998 and for the month of July, 1998, was submitted on 25th November, 1998. Thus, there had been considerable delay in filing the returns and penalty @ Rs. 100 per day was imposed on them for late filing of the returns. It was pleaded

that the appellants were petty tour operators as their tax liability for each quarter comes between Rs. 422 to Rs. 487 as is evident from the Annexure-A to the show cause notice. Therefore, imposition of a heavy amount of penalty on the appellants may not be justified. Since, the appellants were not aware of the provisions of riling the returns and no notice was given to them by the department for non-filing of the returns in time, they could not file the returns in time. Reliance was placed on this Tribunal's decision in case of West Minister International (P) Ltd. v. CCE, New Delhi , where on the similar grounds for non-filing of the returns for the month of July, 1997 to March, 1998, penalty was reduced Page 271 to Rs. 2000 and in case of Sangam Palace v. CCE, Chandigarh [2004 (178) ELT 932 (Tribunal-Delhi)], penalty was reduced to Rs. 2,000 and in case of Flyingman Air Courier Pvt. Ltd. v. CE, Jaipur , penalty was found not sustainable. It was also pleaded that the Ministry has issued a scheme on 20th September, 2004 for registration of all service providers on the basis of their declarations and who had earlier failed to register themselves with the department due to ignorance or any other reasons with full waiver of penalty. It was, therefore, pleaded that in this case a penalty may be set aside.

3. It was pleaded for the Revenue that the appellants before the lower authorities have only contended that since they could collect the service tax late from their customers, therefore, there has been delay in filing the returns. It was also pleaded that since they had taken registration only in December, 1997, therefore, it cannot be said that they are not aware of the provisions of the Service Tax rules for filing of the returns. It was, therefore, pleaded that the order of the lower authorities may be upheld.4. I have carefully considered the submissions made by both the sides.

I find that there has been delay in filing the returns as the first return was filed on 31st August, 1998 and the subsequent returns for the months of March, June and July were filed on 25th November, 1998. I find that the appellants have paid the service tax with interest. I find that at the beginning of the imposition of service tax, the assesses were not fully aware of the provisions of the service tax as well as the manner of filing of the returns and due to that there has been delay of filing the returns. The departmental officers were no doubt trying to educate the assesseees

but the petty assessessee were not coming forward due to their ignorance and hesitation and these factors had led the delay in filing the returns. Therefore, considering the facts and circumstances of the case, the penalty for late filing of the service tax is reduced to Rs. 2,000 (Rupees Two Thousand only). The appeal is disposed of accordingly.

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