

Unique Security and Consultants Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-21-2005

Judge : R Abichandani, M T K.C.

Appellant : Unique Security and Consultants

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellants are providing security services to different customers. The service of security agency was brought under service tax with effect from 16-10-98. The department asked them to apply for registration under letter dated 17-6-1999 which was obtained by them on 21-6-2000 and they deposited the service tax of Rs. 40,500/- on 8-6-2000 for the period from July, 1999 to March, 2000. They also submitted some agreements made with their customers to the department.

After examining the agreements, the statement of Shri R.D. Panchori, proprietor of the appellant concern was recorded on 17-7-2001. He admitted that he has deposited Rs. 40,500/- and he is providing security to Coach Factory, Bhopal and M.P. Housing Board etc. besides to Gas Rahat Hospitals and Railway Running Room. Finally he gave the list of the various departments and hospitals to which services were being provided. On the basis of this information and investigation made, it was revealed that during the period from 16-10-1998 to March, 2002, they received Rs. 2,45,47,518/- for providing security services to these organizations. They had not disclosed the fact that they were providing security to Bal Bharti

School. After completing the investigation, it was found that they were required to pay the service tax of Rs. 11,86,876/-. They had not filed the returns and suppressed the value of services. Therefore, show cause notice was issued to them for demanding differential amount of service tax and for imposition of duty. The original authority confirmed the demand of service tax of Rs. 11,86,876/- for the period from 16-10-98 to March, 2002 and adjusted the amount of Rs. 2,54,758/- already paid by them and ordered recovery of Rs. 9,32,118/-. Penalties were also imposed on the appellants under the various sections of the Finance Act, 1994 relevant to service tax.

The Commissioner (Appeals) rejected the appeal filed by the appellants.

2. It is pleaded before us that the appellant was providing service to various charitable hospitals, Government Departments and they were not able to collect the service tax from them. Even the Central Government has issued a circular to the Chief Secretaries of the State Governments to pay the service tax to the security agencies. The State Government of Madhya Pradesh also issued such circulars to the hospitals but despite that, the appellants were not able to collect the service tax from the various hospitals to whom the security services were provided by them. They are still pursuing the matter with some hospitals for payment of service tax. In the circumstances, they were not able to pay the service tax due in time. It was also argued that besides the services of security personnel, they are also providing manpower to the customers like sweepers, helpers, lab assistance, drivers; Aayas, ward boys etc. The services for providing these types of persons are not covered under the service of security agency but in the demand these have been included. It was also argued that the penalties imposed on the appellants are very high. The service tax on security agency was imposed for the first time in 1998 and the appellants had not made any provisions for recovering the service tax from the agencies to which the services were provided. Due to that they could not file the returns in time and could not deposit the service tax in time. These should be taken as the mitigating factors while considering the penalty imposed on the appellants.

3. It was argued on behalf of Revenue that the appellants had taken the registration on 21-6-2000 although the department has brought to their notice on 17-6-99 that they were required to take the registration for payment of service tax and to file periodical returns. Despite that the appellants did not file the periodical returns or pay the service tax in time. Attention was drawn to the statement of Shri R.D. Panchori recorded on 17-7-2001 where in Question No. 5, he was asked to produce month-wise record of income from 16-10-98 to March, 2001 and make the details as the per the clients. He replied that he will produce the desired information up to 25-7-2001. When his statement was again recorded on 18-9-2002 then only he gave the details of the customers to whom he has provided these security guards and in that too he suppressed the services provided to Bal Bharti School. In his statement dated 18-9-2002, he admitted that he has not deposited any service tax on receipt of the amount from CRWS Bhopal Locoshed, Itarsi for the year 1998-99. For the period from 1999-2000 to 2001-2002, he has deposited the service tax on receipt of the amount. He has not deposited the service tax for the remaining parties nor ST-3 returns in relation to service tax were submitted by him. Thus, in view of this statement it is quite clear that the penalties imposed on the appellants are correct in law for the violation of the various provisions of the Finance Act, 1994 relating to service tax.

4. We have considered the submissions made by both sides. According to Section 68 of Finance Act, 1994 every person providing taxable service to any person is required to pay service tax. This liability does not depend upon whether the service provider is able to collect the tax from the person to whom the service was provided. Therefore, the contention that the appellants are not in a position to pay the tax because he is not able to realize it from the customers/clients is not to be countenanced. The tax liability has to be discharged by the service provider within the prescribed time irrespective of his ability to recover it or not. If he fails to deposit the tax in time then the penal provision will automatically follow and the interest liability will also arise. In the present case the appellants have not only suppressed name of certain customers to whom they were providing the service but also did not pay the service tax recovered from the customers in the Government account. They have also failed to file the service tax returns correctly to assess the service tax. Registration was also not obtained by them when the

service tax on security agency came into force although they were required to take out a licence within one month. Therefore, the appellants are liable for penalty as held by the lower authorities. They are also liable to pay the interest as held by the lower authorities. However, considering the difficulty in recovering the amount of service tax from various hospitals to whom the State Government and appellants have written letters, we find that a reasonable cause has been made out by appellants for failure to collect and pay service tax in time for invoking Section 80 of Finance Act, 1994 for not imposing penalty under Section 76 ibid. Therefore, we set aside the penalty imposed under Section 76 amounting to Rs. 1,76,800/-. However, the penalty imposed under Sections 77 and 78 cannot be waived under Section 80 as the appellant has failed to submit prescribed return and also failed to disclose value of service from certain customers from whom service tax was recovered and not deposited in the Government account. No reasonable cause has been shown for such failure. Therefore, taking into consideration the overall circumstances, we are inclined to reduce the penalty under Section 78 to Rs. 1,00,000/- (Rupees one lac only). The other penalties imposed are upheld. The order of Commissioner (Appeals) is modified to this extent. Accordingly, the appeal is partly allowed.

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