

Cce Vs. Thyrocare Services

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-18-2006

Reported in : (2006)(108)ECC366

Judge : M Ravindran

Appellant : Cce

Respondent : Thyrocare Services

Judgement :

1. This appeal is filed by the Revenue against order-in-appeal dt.23.12.04 wherein the Commissioner (Appeals) has set aside the penalties imposed on the respondents.

2. The brief facts that arise for consideration are the respondents are engaged in providing Business Auxillary Services to the Principal M/s.

Thyrocare Technologies, Mumbai. The respondents failed to take any Service Tax Registration and did not file any returns. A SCN was issued to the respondent and demand of service tax was raised for the period 1.7.03 to 31.3.04 alongwith interest and various penalties as provided under law. On adjudication, the adjudicating authority confirmed the demand of Service Tax and also imposed penalties alongwith interest of the Service Tax which was confirmed. On an appeal, the Commissioner (Appeals) upheld the demand of Service Tax and interest thereof but set aside the penalties imposed on the respondent. Hence this

appeal.

3. None appeared for the respondent but there is a request for adjourning the case as appeal filed by the respondent has been transferred to the Division Bench.

4. Heard Ld. DR. Since the adjournment note of the respondent is regarding the appeal filed by them in respect of the classification of the services, the disposal of this appeal by me will not in any way affect their appeal, as the Deptt.'s appeal is directed against the waiver of penalties by the Commissioner (Appeals).

5. Considered the submissions made by Ld. DR and perused the records. I find that the Commissioner (Appeals) in his order-in-appeal has come to the conclusion that there was a genuine interpretational dilemma in respect of the services covered under Section 65(19) and Section 64(47). Since the services rendered by the respondent could have been possibly fallen under any of the Section mentioned above, I find that the respondent might have been misguided or could not have come to the correct conclusion as to under which category their services fall. Ld.

Commissioner (Appeals) in his order-in-appeal at para v has held as follows: v. In the facts and circumstances of the case, a very thin line apparently existed as regards treating the services performed by the party under Section 65(19) or under Section 64(47) till the department was made aware of the genuine interpretational dilemma through the modus operandi circular issued as late as on 1.3.04, as mentioned in the Order-in-Original, leading the revenue to issue the impugned show cause notice only on 12.7.04. Hence, I do not find any justification for imposition of various penalties under the different sections of the Act, as the party had a justifiable reason to believe that they were not covered under the Service Tax.

Therefore, I am inclined to waive the said penalties under Sections 75A, 76, 77 & 78.

6. I find that there was a problem in classifying the services of the appellant and hence the Board vide its letter dt.1.3.04, issued clarification. The Commissioner

(Appeals) has correctly held that there is no justification in imposition of penalties on the respondents.

7. In view of the facts and circumstances, I do not find any reason to interfere in the order-in-appeal which set aside the penalties. The appeal of the Deptt. is dismissed to the extent it challenges the order-in-appeal in respect of setting aside of the penalties by the adjudicating authority. The appeal is disposed of in the above terms.

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