

Cce Vs. Industrial Army

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-2006

Reported in : (2006)(107)ECC592

Judge : M Ravindran

Appellant : Cce

Respondent : industrial Army

Judgement :

1. The issue involved in this case is regarding escapement of service tax, on services provided by the respondent under the category of security services. The respondents did not file service tax return, did not take registration and delayed the payment of service tax to the Government. Show cause notice was issued to the respondents demanding service tax and on adjudication the demand was confirmed and penalty was imposed under different sections. On appeal the Commissioner (Appeals) came to the conclusion that the respondents' case squarely falls under the Extra-ordinary Tax Payer Friendly Scheme as declared by the C.B.E.C. vide their Circular letter No. 137/39/2004-Cx.4 dated 20.9.2004, he allowed the appeal in respect of penalties imposed on the respondents, recalculated the service tax amount and directed the respondents to pay the same along with appropriate interest.

2. None appeared for the respondents despite notice. Learned D.R.submits that their appeal is directed against the waiver of the total penalty imposed on the

respondents. He submits that if waiver is granted to this kind of act done by the service provider, it would be improper and law of land will not prevail.

3. Considered the submissions. I find that the appellants were not registered for the period of service provided by them from 16.10.98 to 31.10.2001 and have also not filed service tax returns. Show cause notice dated 4.9.2002 was issued to service tax liability. It is not in dispute that the respondents had not got registered and has not paid the service tax. The Central Board of Excise & Customs letter dated 20.9.2004 covers this kind of infractions on the part of the service providers and in the said letter at Para 3 & 4 it is directed by the C.B.E.C. what should be done. To my mind learned Commissioner (Appeals) order in setting aside the penalty, relying upon the Board's Circular, is correct application of law and the intention of the Government.

4. The Commissioner (Appeals) in his findings at Para 2(i) has held as follows: I find that there are a catena of decisions of various appellate fora to the effect that in the initial stages of introduction of this public oriented wide spread new levy, many of new assesseees being ignorant, such procedural delays in taking up of registration and consequent filing of the returns etc. a lenient view can be taken. This was precisely the reason as to why many new Voluntary Disclosure schemes for voluntary compliance like Extra Ordinary Tax Payer Friendly Scheme declared under Board's F. No. 137/39/2004-Cx.4 dtd. 23.9.04 to be operational upto 30.10.04 in respect of the assesseees who had not at all complied with the provisions of Service tax Law had been launched waiving the various penalties under the aforesaid Sections 75A, 76 & 77 etc. When the assesseees who did not at all comply with the Service Tax Law can be given immunity provided they pay the Service Tax along with appropriate rate of interest, there is no tangible and logical reason as to why the law abiding assessee who had got himself registered more or less in time and had also started paying the Service Tax along with interest, much before the new scheme became operational, should be denied the benefit of waiver of the penal provisions referred to above for late registration, delay in filing of relevant returns etc. all of which are procedural in nature. In view of the aforesaid findings, I am inclined to waive the various penalties imposed on the said party.

In view of the above I find that the department's appeal is liable to be dismissed and no interference is called for against Order-in-Appeal.

Accordingly appeal is dismissed.

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