Auto Transport Services Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-2006

Reported in : (2006)(107)ECC84

Judge : M Ravindran

Appellant : Auto Transport Services

Respondent : Cce

Judgement :

1. This appeal is directed against the Order-in-Appeal dated 3.8.2005 wherein the appellate authority has upheld the Order-in-Original imposing penalty on the appellants.

2. The relevant facts that arise for consideration are that the appellants are providing services of transportation and loading of coal from rail yard to their client. The appellants vide their letter dated 28.11.2003 sought clarification from the department, whether such coal handling services provided by them would come under the purview of service tax. The office of the Suptd. of Central Excise vide their letter dated 22.12.2003 informed the appellants that services provided by them would get covered under the category of cargo handling agent service and they are liable to pay service tax. The appellants on their own calculated the service tax liability for the period 16.8.2002 to 31.12.2003 and discharged the duty liability on 31.1.2004 and interest payable thereon was also paid on 23.2.2004. The appellants were issued a show cause notice on 7.7.2004 directing them to

show cause as to why penalty should not be imposed on them under different sections of the Finance Act, 1994. On adjudication the adjudicating authority imposed penalty on the appellants under Sections 75A, 76, 77, and 78 of the Finance Act, 1994. On an appeal preferred by the appellants, the Commissioner (Appeals) concurred the view of the adjudicating authority and upheld the Order-in-Original. Hence, this appeal.

3. Learned Advocate appearing for the appellants submits that it was their bonafide that on receiving communication from their client they approached the department and sought clarification whether the services provided by them were covered under the purview of the service tax. On hearing from the department, they have on their own discharged the duty liability without even waiting for any communication from the department. He relied upon the decision of the Larger Bench of the Tribunal in the case of CCE, Delhi-III, Gurgaon v. Machino Montell (I) Ltd. which was upheld by the Supreme Court as reported in 2004 (163) ELT A53 (SC). Hence, he pleads that imposition of penalty be set aside.

4. Learned D.R. on the other hand submits that the whole initiation of writing letter started only when the audit department of the Central Excise queried from the appellants about the amount of service tax paid. On such query the appellants sought clarification from the department. Hence, penalty imposed on the appellants is correct and there is no reason for showing any leniency to the appellants.

5. Considered the submissions of both sides and perused the record. It is not in dispute that the appellants have discharged their service tax liability and the interest leviable thereon before the issuance of show cause notice. Sub-section (2)A of Section 73 of Finance Act, 1994 as it stood during the relevant period reads as under: (2A) Where any service tax has escaped assessment or has been under-assessed or service tax has not been paid or has been short-paid or erroneously refunded, the person chargeable with the service tax, may pay the amount of tax on the basis of his own ascertainment of such tax or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under Sub-section (1) in respect of service tax, and inform the Assistant Commissioner

of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise of such payment in writing, who, on receipt of such information shall not serve any notice under Sub-section (1) in respect of service tax so paid: From the above it is very clear that there need not be any show cause notice issued to the appellants even when the service tax has escaped assessment, and if the same has been paid by the appellants on his own ascertainment. In this case the appellants have ascertained the service tax liability on their own and paid it off which is admitted by the department in Order-in-Original. Further, the said provisions also state that even the service tax is ascertained by the Central Excise officers and if it is paid of by the assessee in that case also the appellants should not be served upon any notice under Sub-section (1).

Considering both the situations, the appellants case is covered under the provisions of Sub-section (2A) of Section 73 for non-issuance of show cause notice to the appellants. When the provisions themselves do not contemplate issuance of show cause notice when tax liability is discharged to my mind, the issuance of show cause notice in this case by the department is beyond the provisions of the Act.

6. In view of the above Order-in-Appeal deserves to be set aside. I set aside the Order-in-Appeal and allow the appeal of the appellants with consequential relief, if any. Appeal allowed.