

Commissioner of C. Ex. Vs. Shield Security Force

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-2006

Reported in : (2007)8STJ382CESTAT(Mum.)bai

Judge : V T M.

Appellant : Commissioner of C. Ex.

Respondent : Shield Security Force

Judgement :

(a) The respondents, M/s. Shield Security Forces, were rendering security services which came under tax net from 16-10-1998 onwards and they have not registered themselves and observed the statutory formalities required under Service Tax laws.

(b) When the Central Excise authorities visited 21-11-2002 and commenced investigation it came to light that the respondents were aware, at least six months prior to the visit of the officers, that service tax was leviable but they have not chosen to fulfill their statutory obligations.

(c) In addition, from 15-1-2002 they have been collecting service tax from their clients but failed to deposit the same with the Central Excise authorities.

(d) The original adjudicating authority vide order dated 2-6-2004 confirmed demand of duty on Rs. 4,89,212/- and imposed penalties under various sections. In particular, he has imposed penalty of Rs. 4,89,212/- under Section 76 of the

Finance Act, 1994 and penalty of Rs. 4,89,212/- under Section 78 of the Finance Act, 1994.

(e) The Commissioner (Appeals) vide his order dated 28-3-2005 set aside the penalty imposed under Section 78.

3. The present appeal, by the department, is limited to the penalty imposed under Section 78. The advocate for the Respondents urges that during the relevant time of the visit of Central Excise authorities nothing was concealed or suppressed and the department ought to have taken this into account. Before imposition of penalty under Section 78 the concurrence of the Commissioner was mandatory and as there is no indication either in the show cause notice or in the order-in-original that such concurrence has been obtained.

4. Learned SDR felt that law provides for separate penalties both under Section 76 and Section 78 and hence order of the Commissioner Appeals in setting aside the penalty under Section 78 was not warranted.

5. I have carefully gone through the records and the submissions. I hold that in the given facts and circumstances of the case, imposition of penalty under Section 78 appears harsh and may not be justified.

Order of the Commissioner (Appeals) is reasonable.

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