

invincible Security Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-13-2006

Reported in : (2007)9STJ90CESTATNew(Delhi)

Judge : P Das

Appellant : invincible Security

Respondent : Cce

Judgement :

1. The applicants filed two stay applications for waiver of pre-deposit of service tax of Rs. 6,92,302/- and penalty to the extent of 50% of the amount of service tax.
2. The relevant facts of the case, in brief, are that the applicants are engaged in the business of providing security services and registered with the central excise department. The applicants provided security services to BSNL but they were reluctant to pay service tax on the invoices raised by the applicants. BSNL deducted service tax amount on the invoices raised by the applicants and deposited the same at their bank. BSNL has issued various certificates to the applicant evidencing the fact that the service tax of the said amount was deposited by them. Show cause notices were issued to the applicants demanding service tax as well as for non-filing of the return during the material period. The adjudicating authority confirmed the demand of service tax and also imposed penalty of equal amount along with interest. In the impugned order, the Commissioner (Appeals) upheld the order of the adjudicating authority in respect of the demand of service

tax and penalty amount was reduced to the extent of 50% of the amount of service tax.

4. In this case, the contention of the applicants is that BSNL deposited the entire amount of service tax on behalf of the applicants which is evident from the certificates issued by the BSNL. The learned DR submits that such deposit is totally invalid. It is contention of the learned D.R. that the liability of payment of service tax is on the applicants who failed to discharge the same and therefore, the demand of service tax is justified and the stay applications should be rejected. Prima-facie, I find force in the submissions of the learned D.R. However, considering the fact of the case that the entire amount of service tax was paid by the BSNL on behalf of the applicant and taking into account of the financial hardship, I direct the applicants to pre-deposit the amount of Rs. 2,00,000/- (Rupees two lacs) against two stay applications within 8 weeks from today. On deposit of the aforesaid amount, the remaining amount of service tax and penalty amount shall stand waived and recovery stayed till the disposal of the appeals. Compliance be reported on 19.2.07.

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