

Commissioner of Central Excise Vs. Jayashree Suraksha Rankshak

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-29-2007

Reported in : (2007)7STR147

Judge : V T M.

Appellant : Commissioner of Central Excise

Respondent : Jayashree Suraksha Rankshak

Judgement :

1. These appeals by the Department are on a common issue and therefore being disposed of by this common order.

The appellants provide the taxable services under heading Security Agency and Manpower Recruitment Agency In addition, they also render services of cleaning & gardening etc. which are not taxable services. In respect of their taxable services, there has been demand of service tax, interest and imposition of penalty. The same is not in dispute. The dispute relates to certain amount collected by the appellants in respect of non taxable services representing service tax and the department seeks to recover the same in terms of Section 11D of the C.E. Act, 1944 which are made applicable to Service Tax matters with effect from 16-8-2002.

3. The learned DR submits that in respect of the non taxable services also the appellants have shown, in certain cases, the Service Tax components in the

invoice and in other cases though they have not mentioned the amount separately in the invoices given to the Services receiver, they have letter/work sheet annexed to the invoices kept in their offices which indicated certain amounts as the service tax. In addition, the Balance Sheets of the firms also clearly indicated the amount collected as Service Tax. The learned DR also relies the judgment in the case of P.T. Steel Industries v. CCE Ahmedabad in 2004 (177) SLT 1117 (Tri-Mumbai).

4. The learned advocate representing the Respondents, interalia, submitted the following: Section 11D is attracted only the case of the person who is liable to pay duty and only when amounts have been collected as representing duty. In respect of non taxable services the appellants can not be treated as persons liable to pay duty of service tax and it is also not correct to say that they have collected the amounts as representing service tax. The worksheet found in the records in their office cannot show that they have collected the amounts as Service Tax or got it recovered as Service Tax from the service receivers. He relies on the following judgments: Bharat Petroleum Corporation Ltd. v. CCE Meerut in 5. I have carefully considered the rival submissions. It is not in dispute that services of cleaning and gardening are not liable for service tax. In respect of these services it cannot be held that these appellants are liable to pay any duty. It is also admitted fact that in most of the cases, the Invoices raised by the appellants to the service receivers do not indicate any amount as representing duty of service tax. Therefore, it is not proper to hold that they have collected amounts as representing Service Tax, from this the service receivers.

6. The Commissioner's (A) reasoning in holding that Section 11D is not applicable in these cases are on the following lines: I find that in Para 14 of the impugned Order-in-original, it has been stated that in case of providing of non taxable service in most of the cases appellants have mentioned total amount payable on the invoice including service tax which is though not mentioned separately on the invoices, the same is shown separately on letter/worksheet attached to the invoice and therefore it was evident that the value of taxable service shown on the invoices was inclusive of Service Tax and appellants have received the payment of said billed amount including Service Tax on worksheets. I find that mere mention in worksheets/letters is not enough to prove that the appellants have

recovered the amounts towards Service Tax.

Specifically when the same is not shown separately in invoices. As per provisions of Section 12A the assessee is lawfully required to show the tax amount separately. Further the present proceedings are said to be outcome of the case booked against the appellants and on the basis of records seized. I find that no enquiries have been made at their customer's end as to whether the appellants have charged Service Tax on non-taxable Services. No Purchase Orders/agreement or other documents have been relied to show that customers have agreed to pay Service Tax on these Services. The Charge of 11D is not proved.

I find that even otherwise the provisions of Section 11D are applicable to only those persons who are liable to pay duty under the Central Excise Act or the Rules made there under. Other requirements mentioned in Section 11D is that the persons who have collected an amount in excess of the duty assessed or determined and paid on any excisable goods under the Act or the Rules, from the buyers representing in any as duty of Excise, are required to pay the said amount to the credit of the Central Government. Both the requirements for attracting the provisions of Section 11D are not satisfied in case of the Appellants. Firstly they are not liable to pay Service Tax on the said non taxable services under the Act, as the services provided by them do not fall under the category of taxable services. Once these are not under the garret of Service Tax the question of satisfying requirement of Section 11D does not arise, as it cannot be said that they have collected any amount in excess of the tax assessed and paid.

7. The wordings of Section 11D are clear and the same cannot be applied unless both the conditions mentioned therein as satisfied as held by the Commissioner (A). Therefore, there is no reason to interfere with the orders of the Commissioner (A).

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