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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-29-2007

Reported in : (2007)11STJ4CESTAT(Chennai)

Judge : K T P.

Appellant : Busy Bee

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Busy Bee, Sowripayalam, Coimbatore, the appellants herein, has filed this appeal along with stay application. M/s. Busy Bee had rendered "Business Auxiliary Service" by providing office assistants to M/s. BPL Cellular Ltd and M/s. ICICI Bank without registering themselves with the Department and without following the statutory formalities including payment of service tax. When the Department detected that the appellants had not paid the service tax due during the period 1.6.04 to 31.3.05 for the above service, proceedings were initiated against them which were concluded by the Deputy Commissioner of Central Excise, Coimbatore III Division passing an order demanding service tax due of Rs. 4,09,702/- and interest thereon of Rs. 51,713/-.

Penalties were imposed under Section 76, 77 and 78 of the Finance Act, 1994. Under Section 78, penalty of Rs. 4,09,702/- was imposed. Against the above order the assessee preferred an appeal before the Commissioner (Appeals), Coimbatore. The lower appellate authority found in the impugned order that violation had occurred owing to the ignorance of the appellants who had no mala fide intention to evade payment of service tax. Accordingly he modified the original order by setting aside the penalty imposed under Section 78 of the Finance Act, 1994 on the assessee. The present stay application is for waiving predeposit and staying recovery of the penal liabilities as per the impugned order.

2. After hearing both sides, I take up the appeal itself for disposal after dispensing with the requirement of predeposit.

3. Appearing for the appellants, ld. Counsel submitted that they had paid part of the tax not paid before the issue of Show Cause Notice and the balance tax and the interest before adjudication of the notice issued to them. They had got themselves registered earlier as a service tax assessee with the Department when they had undertaken the service of cleaning the premises of the same two customers during the period 1.7.03 to 30.6.04 and had paid service tax amounting to Rs. 3,86,217/- The appellants had surrendered the Registration when they came to know that the service they had been rendering were not liable to service tax. They had not claimed refund of the same nor got back the said amount of service tax paid to the Department. This indicated the bona fide conduct of the appellants. The lower appellate authority had found that the short payment of tax during the material period in the instant case had occurred not due to any intention to evade payment of service tax. The appellants deserved leniency as regards penal liabilities under Section 76 and 77 of Finance Act, 1994 in terms of Section 80 ibid.

4. I have carefully studied the case records and considered the submissions made by both sides. It is obvious from the findings of the lower appellate authority that the appellants had committed the transgressions owing to their ignorance of the legal provisions. I am satisfied that the assessee had satisfactorily established that there was reasonable cause for the failures found against them. The findings of the appellants' bona fide conduct is also fortified by the record of their conduct. They had registered themselves as an assessee in 2003 for an activity which was not liable to service tax and paid an amount of Rs. 3.86 lakhs, refund of which they had not claimed from the Department. Section 80 of the Finance Act 1994 reads

as follows: 80. Notwithstanding anything contained in the provision of Section 76, Section 77, Section 78 or Section 79, no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure.

I am inclined to waive the penalties against the appellants as provided in Section 80 of the Finance Act, 1994. In the circumstances, the impugned order is set aside. The appeal is allowed.

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