

Commissioner of Central Excise Vs. P.M. Pol

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-08-2007

Reported in : (2007)8STR303

Judge : T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : P.M. Pol

Judgement :

1. Heard both sides. The department is in appeal aggrieved by the order passed by the Commissioner (Appeals), Central Excise & Customs, Nasik, for having set aside the penalty amount as imposed in the order in original.

2. The respondents herein Shri P.M. Pol is providing services of C&F Agent to Manikgadh cement under an agreement dated 5.7.1999. The assessee was entitled for commission ranging from Rs. 3 to Rs. 5 during relevant periods. In case of C&F Agent Commission Service 'the person responsible for payment of service tax' has been changed from September 1999 and accordingly from September 1999 assessee was liable for registration, payment of service tax and filing returns there of. The assessee failed to comply with the provisions of Finance Act, 1994 relating to payment of service tax and filing of returns up to 20.7.2003. On coming to know about the same, the assessee got registered under Section 69 of Finance Act, 1994 on 21.7.2003. The assessee assessed his own value of service tax as C&F Agent and paid service tax pertaining to September, 1999 to

March 2003 amounting to Rs. 43,428/- on 22.7.2003 and filed return for all the periods on the same day. The service tax was paid along with interest. The assessee could not comply with the provisions of service tax right from registration up to the filing of the returns since they were not aware that the activity is covered by the service tax and Manikgadh Cement has also did not inform about the same. The other reason is that the clause 'rate of service charges inclusive of service tax' was inserted on 6.8.2003. In the earlier agreements there was no clause on service tax.

3. The assessee denied the findings of the authorities concerned on the ground that they have paid service tax in part and upon insistence of the department as per their own convenience. According to them these conclusions are wrong. Therefore, it is vehemently argued that the department's appeal is not maintainable and the Commissioner (Appeals) has rightly dropped the penalty amount since service tax has been paid along with interest prior to the introduction of Extraordinary Taxpayer Friendly Scheme, 2004. The views expressed by the Commissioner (Appeals) applying the provisions of Section 80 has also been fully supported by the respondent/assessee. This apart they claimed immunity from the penalty under the above referred scheme.

4. Whereas the Id. DR contends that the contraventions in the instant case relates to the period prior to the introduction of the scheme and the service tax has been paid along with interest prior to the introduction of the scheme as such the benefit of the scheme cannot be retrospectively extended.

5. In view of rival submissions, the point for determination is that whether the respondent/assessee can claim immunity from the penalty amount. Id. Commissioner (Appeals) wile relying upon the decision in the case of CCE, Bhopal v. Bharat Security Services and Workers Cont.

gave benefit to the respondent / assessee and dropped the penalty amount. In the above cited decision, service tax along with interest was paid prior to 30.10.2004 as in this case. What is observed from the facts of the present case is that the show cause notice was issued to the assessee on 20.10.2004 when the above referred scheme was under force. This goes to show that the department has

initiated the action vide show cause notice 20.10.2004 when the above referred scheme was in operation. It is pertinent to note that the assessee has already paid service tax along with interest even prior to the issue of show cause notice and prior to the introduction of the scheme. As the action has been initiated by the department vide the above show cause notice during the period when the scheme was in force. I am of the view that it gave rise a cause of action for the respondents / assessee to claim the benefit of the scheme. Therefore, the respondents are right in their contention in seeking the benefit of the scheme in respect of penalty amount and the same cannot be denied. Therefore I find no merits in the appeal filed by the department. Accordingly appeal is rejected. CO is disposed of accordingly.

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