Commissioner of Central Excise Vs. A.B. International

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-28-2007

Reported in : (2007)8STR81

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : A.B. International

Judgement :

1. This appeal is directed against Order-in-Original dt. 4.5.2006 which upheld the order-in-original confirming the amount of Service Tax but set aside the amount of penalties imposed on the respondent.

2. None appeared for the respondents despite notice. Since the issue in this case is in a narrow compass, the appeal is taken in the absence of the respondents.

3. Heard the Ld. JDR and perused the records. It is seen from the records that the Ld. Commissioner (Appeals) has set aside the penalties, by coming to the following finding in paragraphs 7 & 8: I have carefully gone through the records of the case and the submissions, both written and oral, made by both sides. My observations are as under: (1) There was some delay in paying the service tax, which was paid before the issue of the SCN. Penalty has been imposed under Section 76 and Section 77 of the Finance Act, 1994.

(2) The appellant says that there was delay in receipt of the amount from the client. In some of the cases they have not yet received the payment so much so that an amount of Rs. 1.5. lacs is still outstanding. It appears that ST-3 return was filed on the basis of the service rendered. In terms of Rule 6 of Service Tax Rules, 1994, service tax is payable on receipt of payments. I find that the SCN did not work out the delay with references to Rule 6 ibid.

(3) The appellant refers to the scheme of Nov./Dec.04 i.e.

Extra-ordinary Tax Payer Friendly Scheme under F.137/39/2004-CX.4 dtd. 29.09.04 under which the persons who were not registered and who did not pay the tax till then were entitled to take the registration, pay the tax with interest without any liability to penalty. Such scheme is devised at a particular time for a particular class of persons and for a particular period. The appellant had taken registration prior to the introduction of the scheme and, therefore, they are not entitled to the benefit of the scheme, howsoever inequitable it may appear to them.

(4) The appellant submits that they were small and new assessee, not at all aware about their liability to lake registration and pay service tax. However, they cooperated with the department once the default was pointed out and the demand of service tax alongwith interest was paid before the issue of the SCN. Decision of Hon'ble CESTAT Mumbai in the case of CCE, Mumbai v. Top Detective & Security Pvt. Ltd. 2004-TIOL-1064-CESTAT-MUM refers. It has also not been alleged that the appellant had been collecting the service tax from the service receivers during the material period but did not pay the service tax. Under the circumstances, I with reference to Section 80 ibid, dispense with the penalty imposed under Section 76 & 77 ibid.

In the result, the appeal succeeds and the OIO No. 104/ST/2005 dt.

16.12.2005, in so far as it relates to imposition of penalty, is set aside". It can be noticed from the above-reproduced findings that the Ld. Commissioner (Appeals) has correctly applied the law as was settled, during the relevant period. To my mind, the order in appeal is a well-reasoned ore and does not require any interference. Accordingly, the appeal filed by the Revenue is rejected.