Tele Tech Communications Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/45615

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-04-2007

Judge : N T C.N.B.

Appellant : Tele Tech Communications

Respondent : Commissioner of C. Ex.

Judgement :

2. The appellant provides services relating to marketing, sale and promotion of prepaid cellular connections. They also undertake recharge of SIM cards and providing of customer care services. The appellant had not taken registration or paid the service tax on the services provided. Therefore, Central Excise Authorities issued notice to the appellant. While so, the Central Government announced a scheme for registration of service tax providers and payment of tax in arrears, without penalty. The features of the scheme were published. A copy of the Trade Notice No. 2 of 2004, dated 22-9-2004 of Chennai, Commissionerate may be read for understanding the scheme: Subject: Extraordinary taxpayer friendly schemes for instant registration of service providers - Regarding 1. Hon'ble Finance Minister has launched an Extraordinary Taxpayer Friendly Scheme for registration of those service providers who have not got themselves registered so far. The details of the scheme are enclosed as annexures. This scheme aims to register all service providers on the basis of their declaration and who had earlier failed to register themselves with the department due to ignorance or any other reason with full waiver of penalty. This scheme is effective with immediate effect.

2. As per the scheme any service provider can make a declaration to the department with regards to his past liabilities towards the service tax and interest payable. Without any inquiry or questions, the departmental authorities will accept the declaration and on the spot give a registration to the service provider. Penal proceedings against the person approaching under this scheme will be completely waived off.

3. This scheme commences with immediate effect and will be operational only upto 30th October, 2004 and no extension will be allowed.

4. All the Trade associations are requested to bring the contents of the Trade Notice to the notice of their member, in particular, and the trade and all other concerned in general.

3. In terms of the scheme, the appellant took registration and deposited the tax arrears. Despite this, penalty was imposed on the appellant, for delay in taking registration and non-payment of tax on time. The appellant's contention before the lower authorities was that it was covered by the special scheme and therefore penalty was not attracted. This contention was rejected by the adjudicating and 1st Appellant Authority. The finding of the Commissioner Appeals) may be read: On the contrary, the adjudicating authority has observed that the party cannot be given benefit of immunity from penalty under the Extra Ordinary Tax Payer Friendly Scheme as the department has already started enquiry against them and only on asking by the department, they had submitted the detail of commissions received from RIL, as they have not approached the department on their own under Extra Ordinary Tax Payer Friendly Scheme, it only shows intent to evade payment of service tax.

In this regard, I too observe that neither the party approached the department on their own under the said scheme nor deposited the service tax under said scheme". The appellants took registration when they were caught by the department. Even then, they are still not convinced that the services provided by them are covered under Business Auxiliary Service. I observe that neither the payment has been made under the said scheme nor the party has accepted the levy of service tax, which shows that the payments made by them were involuntary. Therefore, I am in agreement with the Adjudicating Authority in rejecting the benefit of said scheme. I also observe that all the case laws cited by the appellants are distinguishable on the ground that in none of the cases, the parties were caught by the department evading service tax. As such, I hold that the appellants are not entitled for benefit of said extra ordinary tax payer friendly scheme. Moreover, I observe that even after taking registration, the party did not choose to file the returns on flimsy grounds. It is beyond comprehension that an employee of the appellants took the signed forms of service tax returns and forgot to submit the same. This shows the casual approach of the appellants and their apathy towards the levy of service tax imposed by the Government of India. In the circumstances, I hold that the appellants are liable to pay the penalties adjudged by the Adjudicating Authority which have been imposed as per law and thus require no interference at this level.

In light of the foregoing discussions & findings, I uphold the impugned order and reject the instant appeal.

4. The submission of the learned Counsel for the appellant is that the lower authorities were in error in imposing the penalty inasmuch as the scheme made no distinction between parties who sought registration on their own and the parties who took registration in the light of pending proceedings.

5. The scheme has been extracted under Paragraph '2'. A perusal of the scheme makes it clear that service providers were welcome to avail of the scheme irrespective of whether proceedings have been initiated or not. In this view of the matter, the lower authorities were clearly in error in denying the appellant the benefit of exemption from penalties.

The impugned order is not sustainable. It is set aside and the appeals are allowed with consequential relief, if any, to the appellant.