

Commissioner of Central Excise Vs. Shield Security Force

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-22-2007

Reported in : (2008)9STR215

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Shield Security Force

Judgement :

1. This appeal is filed by the Revenue against Order-in-Appeal dt.

29.7.05, which set aside the penalties imposed on the appellant under Section 78 of the Finance Act, 1994.

2. The issue involved in this case is that the respondents are providing security services. There the services provided by the respondents are liable to service tax. The respondents took the registration certificate and failed to pay the service tax for the period 16.10.1998 to 31.12.2001 and from 1.01.2002 to 31.10.2003. The adjudicating authority held that the respondents are liable to pay service tax and imposed penalties under Section 75A, 76, 77 & 78. On an appeal Ld. Commissioner (Appeals) has upheld the demand of the service tax, penalties under Section 75A, 76 & 77 but set aside the penalties imposed under Section 78 of the Finance Act, 1994. Hence Revenue is in appeal against such setting aside of the penalty by the Ld.

Commissioner (Appeals).

3. Considered the submissions made at length by both sides and perused the records. The Ld. Commissioner (Appeals) while setting aside the penalty imposed under Section 78 has not given any reason in his order for doing so. The Ld. Commissioner (Appeals) has held that there is no justification for imposing penalty under Section 78, as the maximum penalty had already been imposed under Section 76. To my mind this reason is insufficient and not according to the settled law. The Tribunal in series of judgment had held that imposition of penalty under Section 76 and Section 78 are mutually exclusive and has to be considered on the facts and circumstances of the case. In the current case before me, Ld. Commissioner (Appeals) has not considered the fact and has set aside the penalties imposed under Section 78 without any reasoning. As such, the said order setting aside penalties under Section 78 is a non speaking order. Since the Ld. Commissioner (Appeals) has not considered the provisions of Section 76 & 78 being mutually exclusive, to my mind the impugned order which sets aside the penalty under Section 78 has to be set aside and the matter is to be remanded back to the Ld. Commissioner (Appeals) to re-consider the limited issue penalty under Section 78, in light of the judgments of the Tribunal on the point and come to a conclusion afresh.

4. Accordingly, the impugned order, to the extent it sets aside the penalties imposed under Section 78 is quashed and the matter is remanded back for the limited purpose to the Ld. Commissioner (Appeals), to re-consider the issue after granting the opportunity of hearing to the respondents. Appeal allowed by way remand as indicated above.

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