Safeguard Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-2007

Reported in : (2007)8STR592

Judge : R Abichandani, S T T.V.

Appellant : Safeguard

Respondent : Cce

Judgement :

1. The applicant has filed this application alongwith an appeal challenging the order of the Commissioner (Appeals) dated 5^th October 2006. In the impugned order the Commissioner has concluded as under: I have gone through the grounds of appeal written submission made, record of personal hearing and other evidence on record. The appellant as a provider of Security Services got registered with the department on 28.6.01. The service tax on security services became leviable with effect from 16.10.98. During investigation by the department, it was found that the appellant had, in fact, been providing security services right from 1994. Hence, the appellant was liable to pay the service tax from 16.10.98 i.e. from the date the service tax was leviable. At the time of taking out the registration, the appellant failed to pay service tax on his past liability. Not only that, he also did not disclose the full value of the taxable services received for the period subsequent to taking of the registration till 31.12.02. There is no doubt that the appellant suppressed the value of taxable services and other relevant facts from the department. Hence, not only they are liable to pay the full service tax liability, they are also liable for penal

action under Section 78 of the Finance Act, 1994. The appellant has contended that they had not been able to pay full amount of service tax as they had not received the service tax amount from some of their customers. However, this does not provide any legal cover to the appellant not to pay his full tax liability. As per Rule 6 of the Service Tax Rules, 1994 the liability to pay service tax starts the moment the value of the taxable service with or without service tax, is received from the customers. Therefore, non-receipt of service tax amount, for the services provided by the appellant, from his customer could only be a mitigating circumstance for the purpose of imposition of penalties under Section 76, 75A and 77 of the Finance Act, 1944. Since under Section 78, the minimum penalty of an amount equivalent to the service tax has been imposed, the same is upheld. However, under Section 76, the appellant has been imposed the maximum penalty of Rs. 200/- per day which 1 reduce to Rs. 100/-per day. The penalty of Rs. 1000/- imposed under Section 77 seems to be reasonable and the same is upheld. The appellant is also liable to pay the interest amount under Section 75 ibid.

But for the reduction in the amount of penalty, the order of the lower authority is upheld and the appeal is disposed of accordingly.

2. The learned Counsel for the applicant states that 75% of the amount of tax has since been paid by them. In this context, the learned authorized representative (DR) brings to the notice that the appellant has never disputed the levy and rather it had promised to pay "as and when the payment of service tax due from M.P. Rajya Krishak Vipnan Board (a semi govt. body) is received by them". The grounds of appeal filed by the appellant under para 10(i) reflects this stand.

3 Having regard to the facts and circumstances of the case, we direct the applicant to pay the remaining amount of tax due from them as detailed in the impugned order within six weeks from today, failing which the appeal shall stand dismissed. On depositing the same, the remaining amount of penalty shall stand waived till the matter is finally heard. To report compliance on 23.8.2007.