Kanpur Security Services Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-04-2008

Reported in : (2008)10STR425

Judge : S T A.K.

Appellant : Kanpur Security Services

Respondent : Cce

Judgement :

2. The appellants are registered with Department as Security Agency for service tax purposes. They billed M/s. BHEL, Jhansi for the gross amount of Rs. 5,59,043/- for the services rendered by them as Security Agency during the period Oct'98 to March'99, on which service tax works out to Rs. 27,953/-. The contention of the appellants is that they have received a sum of Rs. 2,40,922/- from M/s. BHEL, on which the Service tax of Rs. 12,046/- has been paid by them. Although the amount of Rs. 2,40,922/- reimbursed by M/s. BHEL does not include the service tax, yet they have paid the service tax of Rs. 12,046/- from their own pocket on this amount. The balance amount, although billed, by them, has not yet been paid by M/s. BHEL, Jhansi. The appellants have filed a CM Writ Petition No. 44498 of 1999 before the Allahabad High Court for the balance amount and have undertaken to pay the service tax on the balance amount in case they succeed before the Allahabad High Court and the amount is paid to them by M/s. BHEL, Jhansi. They have contended that the service tax is not payable on the amount, the payment of which has not been received by them from the client and relied

upon the decision of the Tribunal in the case of BPL Ltd. v. Commissioner of Service tax, Bangalore reported in 2006 (4) STR 307 (Tri.-Bang.) and Tempast Advertising (P) Ltd. v. CCE, Hyderabad-II reported in 2006 (4) STR 463 (Tri.-Bang.) 3. I have gone through the above case laws. I find that in terms of the above case laws, service tax is leviable only on the amount received by the service provider and not on the amount still due from the parties.

Following the ratio of the above case laws, I hold that the service tax on the balance amount which works out to Rs. 15,907/- is not payable by the appellants. I order accordingly. Keeping in view the facts and circumstances of case, the imposition of penalty on the appellants is not justified. The same is set aside. The appellants are, however, liable to pay interest on Rs. 12,046/- as per the rate applicable under Section 75 of the Finance Act, 1944 for the delayed period (i.e. from the due date of payment and upto the date on which it was paid). I order accordingly. The appeal filed by the appellants is disposed of in the above terms.