IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/187/2012-CU[DB]

(Arising out of Order-in-Appeal No. 163/ST/ALLD/2011 dated 15/11/2011 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

M/s Dwivedi Security Services, **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Ms Rinki Arora, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/06/2018
Date of Decision : 28/06/2018

FINAL ORDER NO- **71319 / 2018**

Per: Archana Wadhwa

After hearing the learned Advocate Ms Rinki Arora for appellant and learned A.R. Shri Sandeep Kumar Singh, for revenue, we find that the demand of duty to the extent of Rs.3,79,529/- and of Rs.1,16,694/- stands confirmed against the appellant for the period from 16.10.1998 to 30.06.2003 and from 01.07.2003 to 31.12.2004, on the finding that during the relevant period, they provided Security Agent Services to M/s TGL, M/s General Industrial Machinery and M/s Recron Synthetics Ltd., which were required to discharge service tax liability.

2. It is seen that though the appellant had taken a stand that the security guards provided to M/s TGL, Allahabad was used for security of the Lockers and Movable property and has produced a certificate from the Deputy Manager of M/s TGL, Allahabad which would be exempted in terms of Notification No.56/98-ST dated 07.10.1998, the lower authorities have observed that apart from the said certificate, there is no other evidence to show that the said services were provided for security to Strong Room and Lockers. The demand also stands assailed on the ground of limitation, inasmuch as the show cause notice dated 23.10.2003 covered the period from 16.10.1998 to 30.06.2003, though subsequent show cause notice dated 02.02.2004, raising a demand of Rs.1.16 lakhs was within the period from 01.07.2003 to 31.12.2004. The appellants have also claimed that the entire consideration received by them should be treated as cum-duty.

3. Admittedly, the appellants had provided the Security Agent Service to the appellant and have also not been able to establish about that part of the said services in respect of security of lockers and strong room etc. so as earn the exemption. However, we find that there are merits in appellant's contention as regards time bar. Service tax law having been issued recently, was not free from doubt and a lot of litigation was going on specially in respect of the

Security Agent Service. The appellant being an illiterate person, may have been under a bonafide belief that no tax liability gets fastened upon him. As such in the absence of any positive evidence to reflect upon the malafide of the appellant, we are of the view that the extended period would not be available to the appellant. Accordingly, we uphold the demand falling within the limitation period.

4. As regards cum-duty benefit, we find that the issue is no more res-integra and it stands held in many decisions that the cum-duty benefit has to be extended. As the matter is being remanded for re-quantification of the demand falling within the limitation period, we direct the Original Adjudicating Authority to extend the benefit of cum-duty also and re-quantify the demand accordingly.

5. As we have already held that there is no malafide on the part of the appellant, we find no justifiable reason to impose penalty upon him. Accordingly, the same is set aside.

6. Appeal gets disposed of in above terms.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

akp