IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
ST/MISC/1095/2009 IN
APPEAL No.ST/996/2009-CU[DB]

(Arising out of Order-in-Appeal No.259-ST/APPL/KNP/2008 dated 17/09/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s Industrial Security Associates, **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Ms Shreya Dahiya, Advocate for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 02/08/2018
Date of Decision : 02/08/2018

FINAL ORDER NO-71740/2018

Per: Archana Wadhwa

After hearing both the sides, we note that the appellant was registered with the Service Tax Department for providing services under the category of "Security Agency Services". As a result of audit, proceedings were initiated against them on the ground that they have suppressed the value of the said services provided by them to their various clients, resulting in evasion of service tax. Accordingly, proceedings stand initiated against them culminating into present impugned order confirming the demand to the tune of Rs.8,03,457/- along with imposition of penalty of an identical amount.

2. Out of the said demand, the appellant accepted their liability to the extent of Rs.3.10 lakhs approximately on the ground of suppression of value of 'Security Agency Services'. The rest demand was challenged by them on the ground that as per the agreement with their customers, the services provided by them were not 'Security Agency Services' but the same fell under the category of 'Man Power Supply Service' which were includable to the service tax net w.e.f. 16.06.2005. As such they contended that no tax liability can be adjudged against them for the period prior to said date, inasmuch as Man Power Supply Service was not taxable.

3. While dealing with the said plea of the appellant, Commissioner (Appeals) examined the contracts entered by the appellant with their customers and found that the same were for Manpower Supply. However, he observed that in respect of certain clients, the Manpower supplied by the appellant were used as Security Guards and as such the said services have to be held as Security Agency Services. Accordingly, he held that the demand in respect of the same is liable to be confirmed. For the above proposition, Commissioner (Appeals) also relied upon the ledgers maintained by the service recipients wherein the services, so obtained by them were described as Security Services.

4. The learned Advocate appearing for the appellant submits that there is no dispute that they have supplied Man Power to their clients and if such Manpower, in some of the cases, have been used as security personnel's by their clients, the same would not fall under the category of Security Agency Services. She also draws our attention to the fact that their customers have produced certificate to the extent that ledgers are being maintained by them as per requirement of Inacom Tax and all payments made to the labours other than civil construction were known as supply of labours. There is no head of security, care taker etc. and the personnel maintaining ledgers are not masters of Income Tax or Central Excise law and out of ignorance they have shown the payment towards security services, which is not correct, inasmuch as these payments were for supply of manpower. She submits that the lower authorities have failed to consider the said certificates and in the absence of any rebuttal to the same, the certificates are required to be held as correct reflection of factual position.

5. After hearing the learned A.R., we find that the Appellate Authority have, on examination of the contracts, come to a finding that the contract was for supply of manpower. Once the personnels are supplied by the appellant to their clients, the utilization of their services as security persons or otherwise will not turn the service provided by the

appellant into the security agency services. Not only that, the service recipient have also clarified that the mention of the same as security services in their ledgers is out of ignorance on the part of the person responsible for maintaining such records. In any case we note that the agreement being of manpower supply, the services have to be considered as falling under the said category of manpower supply services, which was introduced in the statute w.e.f. 16.06.2005. Inasmuch as the period involved in the present appeal is prior to 16.06.2005, no tax liability would arise against the assessee on the said count.

6. However, we note that the appellant have accepted their liability to the extent of Rs.3.10 lakhs which is on account of suppression of the value of Security Agency Service. As such, we uphold the confirmation of the same along with imposition of penalty of identical amount. Except for the confirmation of the said amount of tax and penalty, the balance amount confirmed against them including penalty imposed on the said count is set aside and appeal is allowed to that extent.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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