IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/932/2011-EX[DB]

(Arising out of Order-in-Original No. 59/COMMR./LKO/ST/2010-11 dated 28/02/2011 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s King Security Guard Services Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant 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 : 10/01/2019
Date of Decision : 10/01/2019

FINAL ORDER NO-**70090 / 2019**

Per: Archana Wadhwa

After hearing both the sides duly represented by learned Chartered Accountant Shri Dharmendra Srivastava for appellant and learned A.R. Shri Mohammad Altaf, Assistant Commissioner for revenue we find that service tax of Rs.1,09,81,378/- stands confirmed against the appellant for the period from 2007-08 to 18.02.2010 under the category of 'Security Services'.

2. The appellant were registered with the Service Tax Department under the said category and was duly filing their returns and discharging service tax on the same. However, as per the investigations made by revenue, the value of the services were suppressed along with suppressing of rendering of certain services, leading to nonpayment of service tax to the tune of Rs.1.09 crores.

It is seen that immediately after search operation the appellant filed a revised ST-3 return and paid an amount of around Rs.35 lakhs. Thereafter, based upon the result of the investigations, proceedings were initiated against the appellant for confirmation of demand of Rs.1.09 crores by way of issuance of show cause notice, which stands culminated into the impugned order passed by the Commissioner along with imposition of penalty of identical amount in terms of provisions of Section 77 of the Finance Act, 1994 along with imposition of penalty under Section 70 and 77 of the Act. Hence, the present appeal.

3. Learned Chartered Accountant appearing for the appellant fairly concedes that there was suppression of the value of the services and also the facts of rendering of services, which were not disclosed in the returns. However, he submits that while calculating the demand of service tax, benefit of cum duty is required to be extended to them, in terms of the settled position of law. He submits that the said

plea was raised before the Commissioner, who has not found favour with the same by observing that there is no evidence on record to show as to whether the appellant has recovered service tax from their clients or not.

4. Considering the said submissions of the appellant and the settled position of law, we are of the view that benefit of cum duty is required to be extended to the appellant. The demand has been raised for the full consideration received by the appellant from their customers. This fact itself establishes that there was no service tax recovered by them from the service recipient. If the appellant was recovering service tax separately from the service recipient, the demand would have been raised in terms of the provisions of Section 73 A of the Finance Act. The fact that it has not been raised under the said section itself leads to inevitable conclusion that no service tax was being recovered by the appellant from their clients. In such a scenario, we agree with the learned Chartered Accountant that cum duty benefit has to be extended. For this purpose, we set aside the impugned order and remand the matter to Commissioner for re-quantification of the demand of service tax, after extending the benefit of cum duty.

5. As regards penalty of identical amount imposed under Section 78 of the Finance Act, 1994, the contention of the learned Advocate is that as they have deposited a part of

amount of the tax i.e. to the extent of Rs.65 lakhs prior to the issuance of show cause notice or prior to the passing of order, the imposition of equal penalty to that extent is not justified and they should be given liberty to pay penalty of 25% of the said deposited amount. For the above proposition, he relies upon the Tribunal's decision in the case of Perfect Security & Placement Services Final Order No.72231/2018 dated 14.09.2018.

6. However, we find that in the said decision of the Tribunal penalty has been reduced to 25%, inasmuch as, no option was extended by the adjudicating authority to the assessee. As such by taking note of the Hon'ble Supreme Court's decision in the case of Commissioner of Central Excise and Customs Vs R.A. Shaikh Paper Mills Pvt. Ltd. reported at 2016 (335) ELT 203 (SC) the penalty was reduced. However, the ratio of the said decision is not applicable to the facts of the present case, inasmuch as, we note that the Commissioner, in his impugned order, has extended the option to the assessee to pay all the dues within a period of 30 days of communication of the order in which case penalty payable would get reduced to 25% of the total tax confirmed against them. The appellant has not exercised the option given by the Commissioner and as such, at this point of time, they cannot claim the benefit of the said provision of law. As such, we find no reason to interfere in the penalty amount.

However, as the matter is being remanded for the re-quantification of the tax amount the penalty amount would also get reduced to the tax confirmed against them.

7. Appeal is disposed of in above manner.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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