CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH BANGALORE

Appeal(s) Involved:

ST/21568/2017-SM

[Arising out of No. MYS-EXCUS-000-APP-058-17-18 dated 31/07/2017 passed by Commissioner Of Central GST & Central Excise, MYSORE (APPEALS)]

The Assistant Commandant
CISF Unit, KIOCL
MANGALORE – 575 010
KARNATAKA

Appellant(s)

Versus

The Commissioner of Customs, Central Excise and Service Tax
S1-S2, VINAYA MARGA,
SIDDHARTHA NAGAR,
MYSORE – 570 011.
KARNATAKA

Respondent(s)

Appearance:

Mr. T. Rajkumar, CTGD
Authorised Rep. of the appellant — For the Appellant

Mr. N. Jagadish, AR — For the Respondent

Date of Hearing: 04.04.2018
Date of Decision: 10.04.2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20539 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 31.7.2017 passed by the Commissioner (A), whereby the Commissioner (A) has upheld the Order-in-Original and rejected the appeal.

2. Briefly the facts of the present case are that the appellant was providing security services to M/s. Kudremukh Iron Ore Company Ltd. (KIOCL) and were paying service tax on amounts received as consideration i.e., on the deployment charges from KIOCL. It was informed by the Directorate General of Audit, New Delhi that establishments availing security services from CISF are providing additional facilities and the appellant is not discharging the service tax on such expenses. It was noticed that the appellant is not discharging the service tax on the facilities such as medical expenses, vehicle, telephone, free accommodation provided, stationery expenses, etc., for the period from April 2009 to June 2012 as required under Section 67 of the Finance Act, 1994 i.e., on the gross value of all the consideration received. They have also not declared this in their periodical returns submitted to the Department. A show-cause notice was issued to them demanding service tax of Rs.16,41,233/- on the differential value of Rs.1,54,53,773/-, interest under Section 75 of the Finance Act, 1994 and proposing to impose penalty under Section 76 and 78 of the Finance Act, 1994. The lower authority after following the due process of law has confirmed the demand of service tax, interest and imposed equivalent penalty under Section 78 of the Finance Act. Aggrieved

by the said order, appellant filed appeal before the Commissioner (A) who rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. On behalf of the appellant, Shri T. Rajkumar, CTGD (Authorised Representative) appeared and submitted that the appellant after receiving the copy of the Order-in-Original passed by the Joint Commissioner of Central Excise, Mysore paid the entire service tax amounting to Rs.16,41,233/- towards the payment of service tax and informed the department vide letter dated 23.5.2016. He further submitted that the appellants were not aware of the service tax liability and they were under a *bona fide* belief that they are not liable to pay service tax being the Government of India entity. He further submitted that since they have paid the service tax and has no intention to evade, they should not be burdened with liability of interest and penalty. In support of his submission, he relied upon the following decisions:

- *CCE & C vs. Port Officer: 2010 (257) ELT 37 (Guj.)*
- *CCE, Kanpur vs. Kanpur Development Authroity: 2009 (16) STR 760 (Tri.-Del.)*
- *Surat Municipal Corpn. Vs. CCE, Surant: 2006 (4) STR 44 (Tri.-Del.)*
- *CST, Bangalore vs. Fruition Informatics (P) Ltd.: 2012 (282) ELT 30 (Kar.)*
- *Central Industrial Security Force vs. CCE, Vadodara-I: 2014 (35) STR 845 (Tri.-Ahmd.)*
- *Central Industrial Security Force vs. Commissioner of CE & ST, Surat: 2015 (39) STR 994 (Tri.-Ahmd.)*
- *Central Industrial Security Force vs. CST, Visakhapatnam: 2014 (35)*

STR 961 (Tri.-Bang.)

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant is a Government of India entity engaged in providing security agency services to various PSUs. Further, I find that there is no profit motive and business objective of the appellant is rendering the security agency service and they have paid the service tax after the adjudication order was passed and the prayer in the present appeal in only for dropping the demand of interest and penalty imposed under various provisions of the Finance Act. Further, I find that the various decisions relied upon by the appellant have given the benefit under Section 80 of the Finance Act and dropped the penalty. In the case of *CISF vs. CCE reported in 2014 (35) STR 845*, the Division Bench of this Tribunal in para 5 – 6 has held as under:

> ***"5.*** *It is evident from the above observations that deliberations were going on between the MHA and the Finance Ministry about the duty liability on Security Agency Services provided by the appellant and an ad-hoc exemption order No. 1-1-2011 dated 1-7-2011 was issued by the Finance Ministry for the period 16-10-1998 to 31-3-2009. Further appellant has also paid the duty and interest pertaining to the period April, 2009 to May, 2009. As the CISF is working under the MHA, therefore, there cannot be a situation of non-payment of the service tax with intention to evade the duty. Accordingly it is held that penalty under Section 78 of the Finance Act, 1994 is not imposable upon the appellant. Further as per Section 80 of the Finance Act, 1994, as claimed by the appellant and looking to the fact that appellant has paid the entire service tax along with interest, penalties*

under Sections 77 & 78 are also not imposable upon the appellant.

6. *Based on the above observation O-I-O dated 15-2-2013 is upheld to the extent of service tax liability paid by the appellant along with interest. However, appellant's appeal with respect to imposition of penalties under Sections 77 & 78 of the Finance Act, 1994 is allowed."*

7. By following the ratio of the above said decision, I am also of the view that the penalty imposed vide the impugned order is not sustainable in law and therefore, by resorting to Section 80, I waive the penalty imposed by the impugned order as there was no intention to evade payment of service tax by the appellant. As far as liability to pay interest is concerned, I hold that the appellants are liable to pay the interest as held by the Commissioner (A) for the delay caused in payment of service tax. The original authority will quantify the amount of interest which the appellant is liable to pay for this purpose. The matter is remanded back to the original authority. Consequently, the appeal is partly allowed. The interest demand is upheld and all the penalties are dropped.

(Order was pronounced in Open Court on **10/04/2018.)**

S.S GARG
JUDICIAL MEMBER

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