

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

Appeal(s) Involved:

ST/28/2007-DB

[Arising out of OIA No.105/2006-CE dated 25/10/2006
passed by CCE(Appeals-I), Bangalore]

PRIVATE EYE PRIVATE LIMITED

#30/9, 80 FEET ROAD, INDIRANAGAR,
BANGALORE

Appellant(s)

Versus

**C.C.E & C.S.T.-BANGALORE
SERVICE TAX- I**

1ST TO 5TH FLOOR,
TTMC BUILDING,above BMTC BUS
STAND,DOMLUR
BANGALORE,
KARNATAKA
560071

Respondent(s)

Appearance:

Shri Rajesh Kumar, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp.Bank) 26th
Main, 4th T Block, Jayanagar,
BANGALORE
KARNATAKA
560041

For the Appellant

Smt. Kavita Podwal, Superintendent(AR)

For the Respondent

Date of Hearing: 02/07/2018
Date of Decision:_____

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. _____ / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dt.
25/10/2006 passed by the Commissioner(Appeals) whereby the
Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are registered under Service Tax and paying service tax under the category of Security Agency Service and they were regularly paying service tax on the Security Agency Service. The appellants have neither collected nor paid service tax on Investigation Service as per the instruction of the officer in charge and on other reimbursement expenses like travel expenses, telephone expenses, incidental charges etc. However, the appellant paid entire amount of service tax along with interest on the investigation service before issuance of show-cause notice and the same is appropriated in the adjudication order. Thereafter a show-cause notice was issued for demanding service tax on the investigation service as well as on reimbursement of expenses on the ground that the appellant has misdeclared the value of the services provided by them. After due process, the demand was confirmed by the adjudicating authority and the adjudicating authority also appropriated the service tax paid on investigation service along with interest. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who rejected the same.

3. Heard both sides and perused records.

4.1. Learned consultant for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the provisions of act and the law as decided by various courts. He further

submitted that during the period in dispute, in terms of Section 67 of the Finance Act, 1994, the amount charged for taxable service alone chargeable to service tax and not the reimbursement of expenses. He further submitted that Section 67 got amended only in Finance Act, 2015 to include the reimbursement of expenses and there was no provision to levy of service tax on reimbursement of expenses till Finance Act, 2015. He further submitted that the period involved in the present case pertains to 01/07/1999 to 30/09/2003. Therefore his prayer is that there was no service tax applicable on reimbursement of expenses till 14/05/2015. In support of his submission, he relied upon the decision of the Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. UOI [2013(29) STR 9 (Del.)] wherein it was held that the service tax liability on reimbursement of expenses is ultra vires to Section 67 of the Finance Act, 1994.

4.2. He further submitted that the Revenue has wrongly invoked the extended period of limitation and imposed penalty as there is no suppression on the part of the appellant and the appellant was regularly paying service tax on Security Agency Service and filing the returns. The appellants were in a bona fide belief that they were not liable to pay service tax on the Investigation Service and also for the reimbursement of expenses and on being pointed out, the appellant paid the entire amount of service tax on Investigation Service along with interest which comes to Rs.4,25,048/-. Therefore as per Section 73(3), the Revenue should not

have issued the show-cause notice and the entire proceedings should be deemed to be concluded once the tax along with interest is paid before the issuance of notice. He further submitted that penalty under Sections 76 and 78 cannot be imposed simultaneously.

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

6.1. After considering the submissions of both sides and perusal of material on record, we find that appellants have been regularly charging and paying service tax on the Security Agency Service but they were not paying the service tax for investigation service and as per the appellant, they had a bona fide belief that they are not liable to pay service tax on investigation service. But as soon as the Department pointed out that the appellants are liable to pay service tax on Investigation Service, the appellant paid the service on investigation along with interest much before the issuance of the show-cause notice and therefore the case of the appellant is covered under Section 73(3) of the Finance Act, 1994 in respect demand on investigation service is concerned. We also find that the demand of service tax on reimbursement of expenses has been held to be *ultra vires* by the Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. cited supra which has further been upheld by the Hon'ble Supreme Court which is reported in 2018-TIOL-76-SC-ST.

6.2. We also find that Section 67 was amended by Finance Act, 2015 to include the reimbursement of expenses for charging the service tax but the period involved in the present case is prior to the amendment and therefore during the relevant period, the appellant was not liable to pay service tax on reimbursement of expenses. Therefore by following the ratio of the decision in the case of Intercontinental Consultants & Technocrats Pvt. Ltd., we are of the view that the appellants are not liable to pay service tax on reimbursement of expenses.

6.3. As far as service tax on investigation service is concerned, since the appellant has paid the service tax along with interest before the issuance of the show-cause notice, the proceedings against the appellants stand concluded and no show-cause notice was required to be issued and no penalty was imposable. We find that Hon'ble Karnataka High Court in the case of Adecco Flexione Workforce Pvt. Ltd. [2012(26) STR 3 (Kar.)] held that no notice is required if the tax paid with interest before issue of show-cause notice and imposition of penalty is also not warranted.

7. In view of our discussion above, we set aside the impugned order and allow the appeal.

(Order was pronounced and dictated
in Open Court on)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...

