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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/716 /2007-SM[BR] Date 26/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S MARTIAL SECURITY & DETECTIVE SERVICE
PVT. LTD.
275, SHIVAM COMPLEX, ABULANE, MEERUT
CANTT.

M/S MARTIAL SECURITY & DETECTIVE SERVICE
PVT. LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1014 /2008 –SM[BR] dated 29.5.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
3. S.D.R.
4. ~~J.C.D.R~~.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal No. 716/07-SM

(Arising out of order in appeal No.180-CE/Appl/MRT.I/07 dated 3.9.07 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

No.

M/s Martial Security & Detective Service (P) Ltd — Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Meerut-I — Respondent
(Rep. by Shri Rajmal, DR)

Coram: **Hon'ble Mr P.K. Das, Member(Judicial)**

Date of Hearing: 29.5.08

Final Order No. 1014 /2008-SM(BR)

Per **P.K. Das**:

The relevant facts of the case, in brief, are that the Appellants were engaged in providing security services and registered with the Central Excise Authorities in 1998. They were under the impression that service tax has to be paid upon receipt of payment of the recipient of services. Accordingly, they deposited the tax in 2001 which was recovered from the recipient of services. In September, 2004, summons were issued to the Appellants by the Central Excise officers. They appeared before the authorities and at the instance of the officers, they deposited the entire amount of tax of Rs.19,56,000/- alongwith interest of Rs.6,06,690/-. The Adjudicating Authority confirmed the demand of tax and appropriated the amount as deposited by them. He also imposed penalty of equal amount under Sections 76 and 78 of the Finance Act, 1994 separately and penalty of Rs.1,000/- under Section 77 of the Act. The Commissioner (Appeals) modified the Adjudication Order to the extent that penalty under Section 78 was set aside and the penalty under Section 76 was reduced to Rs.2 lakhs.

2. The learned Advocate submits that the Appellant was registered in 1998. They were under the impression that tax is to be paid when the amount is received from the recipient of the services. He further submits that the Central Excise authorities issued summons in September, 2004 and the appellants immediately deposited the entire amount of tax alongwith interest long before issue of show cause notice. They acted under bonafide belief. So, Section 80 would be attracted and penalty is liable to be set aside. He relied upon the following decisions of the Tribunal:-

a) Meenu Manpower Associates Vs CCE Jaipur-I
2008 (9) STR 270 (Tri.-Del)

b) Warna Industries Ltd Vs CCE Pune
2006 (4) STR 535 (Tri.-Mumbai)

c) CCE Mumbai Vs Top Detective & Security Services Pvt Ltd
2006 (3) STR 443 (Tri.-Mumbai)

3. The learned DR reiterates the findings of the Commissioner (Appeals). He submits that the Appellants opted for registration in 1998 and they have not filed the return till 2004 and therefore, the imposition of penalty under Section 76 is justified. He further submits that the case laws cited by the learned Advocate are not applicable in the facts of the present case.

4. After hearing both the sides and on perusal of record, I find that the Appellants opted for registration in 1998. The appellants had paid tax in 2001 of certain amount recovered from the recipient of services. The Central Excise Authorities issued summons in 2004 for non-filing of return and non-payment of tax. The appellants at the instance of the officers immediately deposited the entire amount of tax in November, 2004 and interest was paid in May-September, 2005. Thereafter show cause notice dated 30.5.06was issued. The Tribunal in the case of Top Detective & Security Services Pvt Ltd (supra) on identical facts and circumstances, set aide the penalty. The relevant portion of the said decision is reproduced below:-

"*A penalty under Sections 76 and 77 for late filing of returns is not mandatory. In the present case, the respondent paid the tax and a part of interest accrued even before the case is adjudicated. His plea was that he was not receiving payment from his customers in time and that resulted in delayed payment of service tax. The Commissioner (Appeals) considered this plea before he set side the penalty. I do not see any infirmity in that finding.*"

The Tribunal in the case of Meenu Manpower Associates (supra) held that the assessee was under the bonafide belief that Security Agency is not liable to pay tax. It has been held that interest compensating for delay in payment of tax and therefore, separate penalty is not imposable in such case.

5. In the facts and circumstances of the case, I find that non-filing of ST return was caused due to the bonafide belief of the appellants and the appellant was registered in 1998. However, they paid the tax alongwith interest long before issue of Show Cause Notice. So, the imposition of penalty is not warranted. Accordingly, penalties are set aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*