IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:01.08.2018
Date of Decision:01.02.2019

Service Tax Appeal No.52021/2014 (DB)

[Arising out of Order-in-Appeal No.319(OPD) ST/JPR-II/2013 dated 27.11.2013 passed by Commissioner (Appeals), Central Excise, Jaipur-II]

M/s.Star Security Services Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Rep. by Shri Bipin Garg, Advocate for the appellant & Ms.Rinki Arora, Advocate for the appellant.
Rep. by Shri G.R. Singh, DR for the respondent.

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No.50143/2019

Per Anil Choudhary:

The appellants were engaged in providing security agency services to his clients as per their requirement. Besides this the appellant was also providing other services of personnel such as gardeners, peons, drivers, helpers and machine operators as per the requirement of their client. The appellants did not pay service tax on other services provided by them as it was not taxable under the Act. But the appellants were paying service tax on security agency services rendered by him. The appellants was also maintaining all statutory records and returns as prescribed under the Act. A SCN dt.07.05.2004 for the period Oct 1998 to Sept 2003 demanding service tax of Rs.5,27,452/- alongwith interest and penalty was issued to the appellants alleging that the party have escaped assessment and payment of service tax. The matter was adjudicated by Assistant Commissioner who vide OIO dt.28.12.2004 upheld the show cause notice and confirmed leviability of service tax on the appellants amounting to Rs.5,27,452/- alongwith interest and penalty.

2. Aggrieved with the said OIO dt.28.12.2004 the appellant filed appeal before the Commissioner (Appeals) who vide OIA dt.03.02.2006 set aside the OIO dt.28.12.2004 and remanded the matter to the adjudicating authority to decide the matter afresh and verify the certificates obtained by the appellants from their customers drawing a distinction between taxable security agency service and non taxable/ Exempted other services rendered by the appellant. In the de-novo proceeding the Deputy Commissioner vide OIO dt.28.02.2011 reduced the demand of service tax to Rs.4,64,916/- alongwith interest and equal penalty. Being aggrieved with the said OIO the appellant filed appeal before the Commissioner (Appeals) who vide OIA dt.27.11.2013 upheld the said OIO dt.28.02.2011.

3. Aggrieved by the said order the Appellant is before this Tribunal.

4. With this background we heard Ms. Rinki Arora (Ld. Advocate) for the appellant and Shri G.R. Singh learned AR for revenue.

5. The learned councel for the appellant assailed the impugned order on the ground of limitation. In this regard it is the submission that in as much as the show cause notice has been issued on 07.05.2004 for the period Oct 1998 to Sept 2003. The demand in the present case is fully barred by limitation, since service tax law was involving, was not free from doubt and a lot of litigation was going on, specially in respect security agency service. The appellants were under the bonafide belief that no service tax liability gets fastened upon them in respect of the other services provided by them. As such in absence of any positive evidence, extended period is not invokable. In support of her contention the learned Advocate relied upon the decision of this Tribunal in the case of **M/s Dwivedi**

Security Services Final Order No. 7139/2018 dt.28.06.2018. On merits she has submitted that the non taxable other services provided by the appellants need to be excluded while calculating the taxable value. In support of their contention the appellants has submitted certificates from the customers, the authenticity of which should have been verified by the department.

6. The learned AR relied upon the finding of the learned Commissioner (Appeals).

7. After hearing both sides we find there are merits in the appellants contention as regards time bar. Service tax law having been issued in 1994, was expanded recently, not free from doubt and a lot of litigation was going on, specially in respect of security agency services. The appellants were providing other services in the nature of supply of personnel gardeners, peons, helpers and machine operators, which are not taxable under the head – Security Services. As such in absence any positive evidence to reflect upon malafide on the part of the appellant, we are of the view that the extended period is not invokable. As we have already held that there is no malafide on part of the appellant, we find not justifiable reason to impose penalty. In view of above we set aside the impugned order and allow the appeal in favor of the appellant on the ground of limitation itself.

[Order pronounced on 01.02.2019.]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Ckp.