CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.: 75378/2017

(Arising out of the Order-in-Appeal No.285/ST-I/KOL/2016 Dated-14/12/2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata)

M/s. Bharat Security Agency

...APPELLANT(S)

VERSUS

CST-Service Tax-I, Kolkata

...RESPONDENT(S)

APPEARANCE

Sri Ezaz Khan, Advocate

FOR APPELLANT(S)

Sri D. Haldar, A.C. (A.R.)

FOR THE RESPONDENT(S)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING & DECISION: 19/03/2018

FINAL ORDER NO.:FO/75822/2018

Per SHRI P.K. CHOUDHARY

The appellant was a proprietorship concern, registered with the Service Tax under the Service Tax Registration No. AEKPC-7541-NST001. The proprietor Sri Kanak Chatterjee died on 29.02.2008. Service Tax Registration was subsequently surrendered on 31.05.2010. Nil half yearly returns for the period 1/4/2008 to 31/3/2008 was filed. The Commissioner (Appeals) in the impugned order observed as under:

> "4.5……*The only grounds of appeal based on which the present appeal was filed was that the proprietor, Late Kanak Chatterjee, expired and from such onwards the said concern was run as a partnership firm. For such unfortunate instance, the earlier registration certificate was surrendered and hence, filing of return is not obligatory. This forum expresses condolence to such heartrending incident. However, it appears that even after such sad mishap, the appellant continued business and earned consideration during the subject period. Further, from the version and verdict of the Order-in-Original, it appears that the adjudicating authority was sympathetic to the case of the appellant and waived any claim of penalization under Section 77 of Finance Act, 1994. I find such mindset of the adjudicator praiseworthy. It is of the opinion that unnecessary burden should not be borne by any taxpayer rather than what he is actually liable. As such, I find that imposition of late fee only and waiver of penalty is very appropriate. Furthermore, from the documents provided by the appellant, it is found that they only requested for surrender of registration certificate by a letter and not online. The appellant further contended that before the effect of the notification 43/2011-ST dated 25.08.2011, deposition of such surrender request was only manual and it was not mandatory to provide it online. However, I found that such notification makes the filing of the returns online an obligatory issue. Provision of issuance and surrender registration certificate was well system-supported by them. Hence, the appellant should have applied online for requesting surrender of registration certificate.Mere provision of a letter is not sufficient for such purpose. It is of the opinion that any tax payer need to follow the provision and procedures as laid down by the competent authority. Exemption of any kind must not be tolerated at any cost.*
>
> *5. In view of above discussions and case laws cited, I find that there is ample ground to uphold the findings of the adjudicator in the Orders-in-Original in as much as the claims of the appellant are found to be unjustified. Hence, I pass the following order:*
>
> > *"The appeal filed by Bharat Security Agency is rejected by upholding the Order-in-Original No. 48/ST/Div-I/Kol/13-14 dated 29.10.2013, passed by the Assistant Commissioner of Service Tax, Division-I, Service Tax Commissionerate, Kolkata(erstwhile)."*

On going through the impugned order, I find that the Commissioner (Appeals) has observed that the provision of issuance and surrender of Service Tax Registration was system- supported by then. Hence, the appellant should have applied on line for registration certificate.

2. The Ld. Advocate appearing on behalf of the appellants submitted that the Trade Notice No. 40/2013-ST dated-17/02/14 addressed the procedure of surrender and cancellation of Service Tax Registration wherein it has been mentioned at para 4 that :

> "***Assesses who wish to surrender their registration certificates shall file their application on-line using the ACES module on <u>www.aces.gov.in .</u> On successful filing of the online application, the assessee shall submit the copies of documents mentioned at para 5 alongwith signed copy of the printout of the application generated by the ACES System to the jurisdictional Group Superintendent or Superintendent(s) of the ' Registration Cell' in the concerned Divisional office. For, surrendering application, submitted by an assessee who had obtained registration prior to 01.04.2010 and not migrated to ACES, requirement of online filing of application has been done away with and for this purpose the procedure given in par 8.1 below may be referred to."***

It is further observed that the assessee who had obtained the registration prior to 1/4/10 and not migrated to ACES, requirement of on line filing of application has been done away with. For the sake of ready reference para 8.1 is reproduced below:

> ***"In case the applicant has taken Service Tax registration prior to 01.04.2010 and has not migrated to ACES system, it is not necessary for such assesses to migrate to ACES for surrendering their registration.They can apply for surrender of registration by a manual application, alongwith other documents as required, without filing the online surrender application. Instruction have been issued to liberally cancel the registration for assessee who had taken registration in the past when there was no threshold limit. Further, in those cases the intimation regarding the cancellation shall be sent by post."***

3. In my considered view, the appellant/assessee had complied with the procedures for surrender and cancellation of Service Tax registration

as laid down by the Trade Notice No. 40/2013-ST dated 17/2/14 and accordingly the impugned order is set aside and the appeal filed by the appellant is allowed.

(Dictated and pronounced in the Court on 19/03/2018)

Sd/- 18/04/2018

(P.K. CHOUDHARY)
JUDICIAL MEMBER

k.b./-