(2010) 11 P&H CK 0339

In the Punjab And Haryana At Chandigarh

Case No : CEA No. 54 of 2004

Commissioner, Central Excise — APPELLANT

Vs

Haryana Industrial Security Services — RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:
Finance Act, 1994 — Section 78

Citation : (2011) 183 ECR 208 : (2011) 21 STR 210 : (2010) 29 STT 444 : (2011) 39 VST 516

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This appeal was admitted on 7.2.2005 to consider following question of law:

Whether the penalty imposed equivalent to Service Tax short paid by the party u/s 78 of the Finance Act, 1994 is the maximum statutory limit or the minimum mandatory limit?

2. The Assessee is a Security Agency and for the period from 16.10.1998 to 31.3.1999 and 1.4.1999 to 30.9.1999, the Assessee filed its return and instead of making payment of service tax on the gross amount charged from the customers, the service tax was paid only on the service charges received by the Assessee. Show cause notice was served on the Assessee. Thereafter, demand of service tax was confirmed in addition penalty of the like amount vide order-in-original which was affirmed by the appellate authority. On further appeal, the Tribunal reduced the quantum of penalty to Rs. 1.5 lacs from about Rs. 6.5 lacs.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the revenue submits that penalty equal to the amount of service tax was minimum u/s 78 of the Finance Act, 1994 and the Tribunal erroneously reduced the same.

5. Learned Counsel for the Assessee could not dispute the above position in view of clear language of Section 78. The said provision is as under:

78. If the Central Excise Officer in the course of any proceedings under this Chapter is satisfied that any person has, with intent to evade payment of service tax, suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service, he may direct that such person shall pay by way of penalty, in addition to service tax and interest, if any, payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of service tax sought to be evaded by reason of suppression or concealment of the value of taxable service or the furnishing of inaccurate value of such taxable service:

Provided that if the value of taxable service (as determined by the Central Excise Officer on assessment) in respect of which value has been suppressed or concealed or inaccurate value has been furnished exceeds a sum of twenty-five thousand rupees, the Central Excise Officer shall not issue any direction for payment by way of penalty without the previous approval of the Commissioner of Central Excise.

6. He, however, submits that there is no suppression or concealment to evade payment of tax. Reason for non-payment was bonafide dispute about manner of computation of service tax. All facts were duly disclosed in the return. He submits that in these circumstances, quantum of penalty imposed by the Tribunal be not interfered with.

7. The finding recorded in the order-in-original is as under:

In this particular case, the party was fully aware that under the existing law, the duty liability is to be discharged on the gross value of the services provided and not on the service charges alone. This is borne out by the party''s contention that payment on the gross value imposes a discriminatory regime on the security agencies and the fact that the party is a Petitioner in the writ at the Hon''ble P&H High Court on this issue. The party has deliberately withheld the true value of the taxable services furnished by it from the department. I therefore impose a penalty of Rs. 318073/- u/s 78 of Finance Act, 1994.

The facts and circumstances of the case do lead me to believe that the intent was not to disclose deliberately the correct value of such taxable service by providing an inaccurate figure. One cannot abrogate to oneself the privilege of not adhering to the word of law on the presumption that one need not do so is one is agitating against it in the Hon''ble High court. This does not give one the prerogative of following the law as laid down in statute books to the extent one willing wants to accept. If such position were allowed to prevail it would result in a very chaotic state of affairs. The correct position would have been to apply/ obtain a stay against the operation of the law.

8. The above finding was affirmed by the appellate authority and the Tribunal.

The finding recorded by the Tribunal is as under:

In so far as the penalties are concerned, I note that the Assessee was well aware of the provisions of the Finance Act, 1994 during the period of dispute. That is why they could challenge the constitutional validity of the provisions before the High Court. It appears from the record that in the writ petition filed by the Assessee before the High Court the challenge is against service tax on components other than services charges. The writ petition was filed in 1999. However, it appears from the records that the Assessee in their ST-3 returns furnished only the figures of service charges. It was only later on that the Assessee furnished the gross values of service for the purpose of levy of service tax for the relevant periods. It is also pertinent to note that they had with them no order from the High Court enabling them to pay service tax on service charges only during the pendency of the writ petition. In the circumstances non payment of service tax on components other than service charges, of the statutory gross value of services should be held to be deliberate. The finding of deliberate concealment of gross value of service recorded by the lower authorities appears to be well founded.

9. The Assessee has not challenged the above finding by filing an appeal nor the said finding is shown to be perverse. Liability of the Assessee to pay service tax on the turnover of value of service rendered was patent. There being no confusion for tax liability, the adjudicating authority, the appellate authority and the Tribunal cannot be held to have committed any error in holding that the value of taxable service mentioned by the Assessee in its return was to evade payment of service tax attracting levy of penalty u/s 78. Plea raised on behalf of the Assessee cannot be accepted.

10. In these circumstances, we answer the question in favour of the revenue and hold that penalty u/s 78 equivalent to the amount of service tax was the minimum and set aside the impugned order to this extent. The appeal is allowed.