(2009) 11 AHC CK 0060

In the Allahabad High Court

Introspective Detective Private Limited and Another APPELLANT

Vs

General Manager, B.S.N.L. and Others RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:
Finance Act, 1994 — Section 69

Citation : (2010) 18 STR 3 : (2010) 27 VST 321

Hon'ble Judges : Subhash Chandra Nigam, J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. By means of the present writ petition, the petitioner who is providing service by way of security guards to BSNL, Gorakhpur, has sought a direction to the respondents to pay entire service tax along with 18 per cent interest and penalty to the petitioners, which is payable to the Central Excise, Division, Gorakhpur as demanded by the Central Excise Department through notice dated October 8, 2004 (annexure 4 to the writ petition).

2. The facts of the case lie in a narrow compass and are almost undisputed. The petitioner as an assessee is a registered agency u/s 69 of the Finance Act, 1994 with the office of the Superintendent of Central Excise, Urban II, Gorakhpur being registration No. 38/DA/IDA/RUII/GKP/2002. The said agency is already registered with the office of the District Labour Officer, Gorakhpur. The petitioner claims that it is a registered firm with the Registrar of Society Registration (Chit and Fund Office), Gorakhpur since 1990. It entered into an agreement with respondent Nos. 1, 2 and 4 on August 12, 1998 for providing security guards initially for a period of August 16, 1998 to August 12, 1999. The said period was extended up to June 30, 2000.

3. The petitioner was served with a notice issued by the Assistant Commissioner, Central Excise and Service Tax Board, Gorakhpur to appear in person, if so desired, and pay the service tax for the period of April, 1999 to June, 2000 amounting to Rs. 93,510 as service tax. The petitioner asked the BSNL authorities to pay the said amount to it so that the service tax as demanded by

the Excise Department may be deposited. However, the BSNL authorities asked the petitioner first to deposit the amount and then the said amount dues shall be released to the petitioner.

4. Being aggrieved by the said action of the BSNL authorities, the present writ petition has been filed.

5. When the writ petition was taken up earlier, the following order was passed on April 27, 2006:

Sri N. P. Shukla represents respondent Nos. 1, 2 and 4. Respondent Nos. 3 and 5 are represented by Sri R. K. Mishra. They may file their counter-affidavit within a month. List thereafter.

From the letter dated April 7, 2005, enclosed as annexure 6 to this writ petition, it appears that respondent Nos. 1, 2 and 4 are not disputing their liability to pay service tax to the petitioner. However, respondent Nos. 1, 2 and 4 are insisting by that letter that first service tax should be deposited by the petitioner with the Central Excise Department and, only thereafter the amount of service tax will be paid by the BSNL to the petitioner, who is providing security service to the BSNL.

This kind of a precondition does not appear to be justified. Therefore, as interim direction is issued to respondent Nos. 1, 2 and 4 to make payment of the service tax at the prescribed rate to the petitioner without insisting upon the condition that the petitioner must first deposit the same with the Central Excise Department.

6. A counter-affidavit has been filed on behalf of the BSNL sworn by Shri Babu Lal, wherein the BSNL has not denied its liability to pay the service tax. On the other hand, they have expressed their willingness to pay service tax.

7. Heard Sri M. N. Singh, learned Counsel for the petitioner and Shri Sambhu Chopra, learned Senior Standing Counsel for the Excise Department.

8. The learned Counsel for the petitioner submits that in view of the stand taken by the BSNL in paragraph 12 of the counter-affidavit, the BSNL be directed to pay service tax to the petitioner.

9. For ready reference, paragraph 12 of the counter-affidavit is reproduced below:

12. That the contents of para 14 of the writ petition are not correct as stated, hence denied. It is stated that though the respondents are liable to pay the service tax and are always ready to pay it but it could not be paid directly to the petitioner due to the reason as stated in above para. In fact the actions of the petitioners are totally illegal and arbitrary whereas the actions of the respondents are totally correct.

10. We have given a careful consideration to the submissions made by learned Counsel for the petitioner and we find sufficient force therein.

11. The BSNL is not disputing its liability to pay the service tax. This being so, it

was required to pay the service tax amount to the petitioner so that the petitioner may deposit the same with the Excise Department.

12. In the result, the writ petition succeeds and is allowed.

13. A writ of mandamus is issued commanding the BSNL, namely, respondent Nos. 1, 2 and 4 to pay the service tax amount to the petitioners and also pay the interest for late payment at the rate of 18 per cent. The petitioner is directed to deposit the service tax amount with the Central Excise Department.

14. So far as penalty notice issued by the Central Excise Department is concerned, we find that the petitioner was prevented by sufficient cause in not depositing the service tax in time.

15. In view of the above, we set aside the penalty notice issued to the petitioner. Consequently, the penalty proceedings are quashed.