(2023) 12 CESTAT CK 0057

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.89 Of 2010

M/S. Panther Security Service — APPELLANT

Vs

Commissioner Of Service Tax, Kolkata — RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:

Citation : (2023) 12 CESTAT CK 0057

Hon'ble Judges : R. Muralidhar, Member (J);K. Anpazhakan, Member (T)

Bench : Division Bench

Advocate : Saurabh Chowdhury, S.Mukhopadhyay

Final Decision : Disposed Of

Judgement

K. Anpazhakan, Member(T)

1. The instant appeal has been filed against the Order-in-Appeal No.56/ST/09 dated 22.12.2009 passed by Commissioner of Central Excise (Appeal-I), Kolkata, wherein he upheld the Service Tax demand of Rs.13,53,077/- along with interest and penalty confirmed by the adjudicating authority.

2. The Appellant, M/s Panther Security Service is a Proprietorship firm carrying on the business of providing security guards to various organizations. Based on the investigation conducted by Anti-Evasion wing of Kolkata III Central Excise Commissionerate, a show cause notice dated 11.11.2005 was issued to the Appellant demanding service tax of Rs.15,57,212/- towards service tax not paid for the period 2001-02 to 2003-04. On adjudication, the Joint Commissioner confirmed the demand of service tax of Rs.13,53,077/- along with interest and equal amount of tax as penalty. On appeal, the Commissioner (Appeals) upheld the demands confirmed. Aggrieved against the impugned order, the Appellant filed this appeal.

3. In their grounds of appeal the Appellant submits that they have been registered with Service Tax department w.e.f. 14.09.2000 and regularly paying

service tax. They have been filing returns regularly on the taxable value received by them. They have been providing security agency service mainly to Government agencies. During the relevant period, some of the agencies to whom they provided security agency service refused to pay service tax. Whatever service tax collected by them have been promptly deposited in the Government account. After the search by the department, they have again raised separate invoices demanding service tax from the organizations who have not paid service tax, but they declined to pay service tax. Thus, they have no intention to evade payment of service tax. As they have not suppressed any information from the department, the Appellant submits that extended period cannot be invoked to demand service tax. The show cause notice in this case was issued on 11.11.2005 for the period 2001-02 to 2003-04, Thus, the entire demand is barred by limitation. Accordingly, they contended that the demands confirmed in the impugned order is not sustainable on the ground of limitation.

3. The Ld. D.R. reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that Appellant have been registered with Service Tax department w.e.f.14.09.2000 and regularly paying service tax and filing returns. The Appellant submits that they have been providing security agency service mainly to Government agencies and some of the agencies to whom they provided security agency service declined to pay service tax. We observe that the explanation offered by the Appellant for non payment of service tax is not acceptable. It is the responsibility of the Appellant to collect service tax from their clients on the invoices raised towards rendering of security services. There is no specific exemption available to security services rendered by the Appellant to Government Agencies. Thus, we hold that the appellant is liable to pay service tax on the taxable services rendered by them during the period under dispute.

6. However, we find that observe that Appellant have been registered with Service Tax department w.e.f.14.09.2000 and regularly paying service tax and filing returns. The department raised the demand based on the service tax paid by the Appellant which have been reflected in the service tax returns. Thus, we observe that the returns filed by the Appellant indicate the taxable value of the services rendered by them and the actual service tax paid by them. After the search by the department, they have again raised separate invoices demanding service tax from the organizations who have not paid service tax, but they declined to pay service tax This clearly indicate that the Appellant has not suppressed any information from the department with an intent to evade payment of service tax. Accordingly, we hold that the Appellant has not suppressed any information from the department and hence extended period cannot be invoked in this case to demand service tax. We find that the show cause notice in this case was issued on 11.11.2005, demanding service tax for the period 2001-02 to 2003-04, The Appellant submits that the entire demand is barred by limitation. Accordingly, we hold that the demands confirmed in the

impugned order by invoking the extended period is not sustainable on the ground of limitation. The Appellant is liable to pay service tax, if any, along with interest, for the normal period of limitation. As suppression with intent to evade payment of tax has not been established, no penalty imposable on the Appellant.

7. In view of the above discussion, we hold that the demands confirmed in the impugned order by invoking the extended period is not sustainable. The Appellant is liable to pay service tax, if any, along with interest, for the normal period of limitation. No penalty imposable on the Appellant. The appeal is disposed of on the above terms.