

Customs, Excise and Gold Tribunal - Bangalore

Om Sai Professional Detective And ... vs The Commissioner Of Central ... on 27 September, 2007

Equivalent citations: 2008 12 STJ 292 CESTAT Bangalore, 2008 10 S T R 59

Bench: S Peeran

ORDER S.L. Peeran, Member (J)

1. The appellant is required to pre-deposit Service Tax amount of Rs. 1,49,513/- and penalty of Rs. 25,000/-. The appellants were carrying on the services of Security Agency. They were covered under the said category and were discharging the service tax. There were certain taxable income which according to them is not taxable as the said amount collected by them has been shown in the Income Tax returns filed with the Income Tax Department. The Revenue proceeded against the appellants on the ground that they have suppressed the income shown in the Income Tax returns and hence the larger period was invoked. The appellant's contention is that the Income Tax returns were public documents and they have not suppressed the facts. The appellants relying on the following Apex Court judgments and the Tribunal judgment pleaded that they were in a bona fide belief that the declaration in the Income Tax returns itself is a fact of disclosure:

(i) Tamilnadu Housing Board v. CCE

(ii) Cosmic Dye Chemicals v. CCE

(iii) Dadha Pharmaceuticals v. CCE

(iv) M.K. Kotecha v. CCE

(v) CCE v. Jalani Enterprises

2. I have heard both the sides in the matter. The learned Counsel took me through the submissions made by them before the authority and produced the copy of the judgments relied on by them. He pleaded that once the declaration has been made with the Income Tax Department, there was no suppression of facts in the matter. He submits that when they came to know that service tax was payable on the gross amounts billed and received from their clients, they have voluntarily paid an amount of Rs. 8,63,308/- towards the differential tax for the period from April 2005 to march 2006.

3. The learned DR took me through the findings of the Commissioner who has not accepted the plea. On a specific query from the Bench as to whether the Commissioner has given any finding on the Apex Court judgments, the learned DR answered in the negative.

4. On a careful consideration of the matter, I notice that the Revenue has proceeded against the appellants on the basis of the Income Tax returns. The fact of the details has been disclosed in the Income Tax returns which indicates that there was no suppression of facts. Therefore prima facie, the judgments of the Apex Court cited above would have a bearing of this case. The Commissioner has also noted all the citations but has not given any finding in Para 18 of the impugned order. Prima facie, the appellants have strong case to succeed on time bar.

5. Hence the stay application is allowed by granting waiver of pre-deposit of the amounts and staying its recovery till the disposal of the appeal. The appeal to come up for final hearing in its turn.

(Pronounced and dictated in the open court)