

2014 (3) ECS (190) (Tri.-Del.)

Customs, Excise & Service Tax Appellate Tribunal,
West Block No.II, R.K. Puram, New Delhi-110066.

M/S. LIBERTY SALES

V/s.

C.C.E. & S.T., JAIPUR-I

Date of Hearing: 24.07.2014

Date of Decision: 24.07.2014

Service Tax Appeal No.ST/592/2013 -CUS [DB]
[Arising out of Order-in-Appeal No. 355(HKS)/ST/JPR-II/2007 dated
08.06.2007 passed by the Commissioner (Appeals), Central Excise,
Kanpur]

Appearance:

Ms. Sukriti Das, Advocate

For the Appellant

Sri Amresh Jain, DR

For the Respondent

CORAM:

Hon'ble Mr. Justice G. Raghuram, President

Hon'ble Mr. R.K. Singh, Member (Technical)

FINAL ORDER NO. 53026/2014

"In these circumstances, when there was no ambiguity or confusion, the contention of bonafide belief advanced by the appellants is totally hollow and untenable. The appellants have not given any basis/ground for entertaining such belief. They have not shown as to how such a belief on their part could arise. Merely uttering the words "bonafide belief" is not enough for its quasi judicial acceptance. The appellants have to show the basis/grounds for entertaining such belief. As is evident, the appellants have not given even a semblance of any basis/ground based on which such a "bonafide belief" could arise on their part." (Para 3)

Per: R.K. Singh

The appellants have filed this appeal against Order-in-Appeal No. 355(HKS)/ST/JPR-II/2007 dated 08/06/2007 in terms of which the Order-in-Original No. 01/SK/JP-II/2006/J.C. dated 24/02/2006 was up held. The said Order-in-Original confirmed the demand of Rs. 4,58,128/- along with interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994, invoking the extended period on account wilful misstatement/suppression of facts.

2. The facts, briefly stated, are that the appellants, a proprietary concern, were providing service as a sourcing agent of M/s. ICICI Home Finance Ltd. for the promotion and marketing of the latter's business in terms of a formal agreement signed between the two and were thus covered under Business Auxiliary Service liable to service tax during the period 01.07.2003 to 30.11.2004 involved in the present case. The appellants neither took the service tax registration nor paid the impugned service tax during the said period.
3. The appellants have contended that they were under a bonafide belief that they were not providing Business Auxiliary Service in-as-much as they had only provided space to the ICICI HFL and also, being a proprietary concern they were not covered under the scope of commercial concern.
3. It is seen that the scope of the activity covered under the agreement entered into by the appellants with the ICICI HFL clearly stated that they were appointed for "marketing of and sourcing customers, for ICICI HFL's products". This does not leave any scope for any ambiguity/confusion as regards its coverage under the Business Auxiliary Service which specifically includes such promotion and marketing in its definition. Similarly there could not have been any confusion regarding the appellants being a commercial concern as they were clearly engaged in commercial activity. In these circumstances, when there was no ambiguity or confusion, the contention of bonafide belief advanced by the appellants is totally hollow and untenable. The appellants have not given any basis/ground for entertaining such belief. They have not shown as to how such a belief on their part could arise. Merely uttering the words "bonafide belief" is not enough for its quasi judicial acceptance. The appellants have to show the basis/grounds for entertaining such belief. As is evident, the appellants have not given even a semblance of any basis/ground based on which such a "bonafide belief" could arise on their part.
4. In the light of the foregoing, we find that the appellants have totally failed to show as to how the findings contained in the Order-in-Original and affirmed in the impugned Order-in-Appeal suffer from any infirmity. In the facts and circumstances of this case, we also find no infirmity in the impugned order. Consequently, the appeal is rejected.

[Dictated & Pronounced in the open Court].