Deepak M. Mehta Vs. Commissioner of Central Excise

Deepak M. Mehta Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/17354

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-22-1999

Reported in : (2006)3STR163

Judge : G Srinivasan

Appellant : Deepak M. Mehta

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application for waiver of pre-deposit for a sum of Rs. 1,33,500/- the penalty levied under Section 77 of Finance Act (2) of 1994, for failing to file return of service tax within the time prescribed therein.

2. Shri A.R. Krishnan appearing on behalf of the assessee pleaded that the appellant being stock broker left the matter to the accountant who undertook to file the return under the provisions of Finance Act, 1994.

It would appear that the accountant who had been entrusted with the task of filing the return had heart-attack and had By pass surgery and thereafter he also died. Shri Krishnan therefore says that by mistake the appellant thought that the provisions of the service tax are similar to the provisions of Income Tax. Therefore he filed the returns belatedly but he argues that the service tax payable to the department has been paid regularly.

3. As against this the ld. DR. Shri Deepak Kumar argues that even assuming that the return has been wrongly taken to be filed as similar to that of Income Tax in this case there has been delay of more than 400 days therefore the plea of the assessee, therefore he says this case is not a bona fide one. The petitioner has also brought before me the judgment of the Tribunal in the case of Ashwani & Associates v.Collector of Customs wherein two member Bench of the Tribunal has granted waiver of pre-deposit of service tax because it was in a nascent stage.

4. I have considered the rival submissions. While I sympathize with the assessee that he had relied on who is a qualified person and who died because of certain heart-ailment that cannot give a person an excuse for non-compliance. The provisions of the act even if the arguments of the assessee had been accepted namely that he treated the service tax similar as that of Income Tax how he could have filed the returns belatedly of 400 days beyond 365 days as applicable to Income Tax. Even in income tax matters certain people have to file quantity returns in respect of advance tax. As far as the judgment of the Tribunal cited by the applicants is concerned the facts of that case are not identical with that of the instant case. In that case the question of filing the returns belatedly of 400 days delay and that treatment of service tax similar to that of Income Tax did not arise. Moreover judgment in stay petition is not a final determination of the matter. It will have presidential value only if it is determined finally in respect of the question posed before the Tribunal. Hence I direct the assessee to pay a sum of Rs. 20,000/- towards pre-deposit of the amount demanded. The said amount should be paid within 1 month of receipt of this order. On such payment being made there will be a waiver of payment remaining amount demanded under the impugned order and stay the recovery thereof.