Commissioner of Central Excise Vs. Jai Singh Kothari

Commissioner of Central Excise Vs. Jai Singh Kothari

SooperKanoon Citation : sooperkanoon.com/19128

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-2000

Reported in : (2006)STR160

Judge : R T Lajja, P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Jai Singh Kothari

Judgement :

1. The Revenue has come up in appeal against the impugned Order-in-Appeal dated 24-9-99 passed by the Commissioner (Appeals) by which he had reversed the orders of Assistant Collector imposing penalties on the respondents for the failure to file the quarterly returns in time in respect of service tax as required under Section 70 of Finance Act. The facts leading to the appeal are as under : The respondents are stock brokers registered with Central Excise Department for the purpose of Service Tax under Section 69 of the Finance Act. They failed to file the quarterly returns for the quarters April to July, 1995, October to December, 1995, April to June, 1996 and July to September, 1996. They were served with two show cause notices dated 10-1-97 and June, 1997 for having contravened the provisions of Section 70(1) of the Finance Act. They thereafter filed the returns but no plausible explanation was offered for not filing the returns in time. The Assistant Commissioner through the Order-in-Original dated 19-3-98 imposed penalty of Rs. 59,900/- at the rate of Rs. 100/- per day for the late submission of the quarterly returns for the quarters, April to June, 1995, April to June, 1996 and July to

September, 1996.

He also imposed penalty of Rs. 17,600/-, under Section 77 of the Finance Act, for late submission of the quarterly return for the quarter October to December, 96.

2. The respondents challenged the said order of the Assistant Commissioner in appeal before the Commissioner (Appeals) who set aside the same. The operative part of his impugned order reads as under : I find there is a lot of merit in the submissions made by the appellant and respectfully following the ratio of the decisions referred to above, set aside the impugned order to the extent that it imposes penalty, in view of the facts referred to above.

3. The Revenue has come in appeal against this impugned order of the Commissioner.

4. Ld. SDR has contended that the impugned order of the Commissioner is non-speaking, creptic as he has failed to record any reasons for reversing the Order-in-original of the Assistant Commissioner. He has also referred to the decision of the Bombay High Court in Cine Super 8 Pvt. Ltd. v. Union of India to further contend that the impugned order of the Commissioner is invalid and no order in the eyes of law and as such deserves to be set aside.

5. On the other hand, ld. Counsel for the respodents has mainly placed reliance on the judgment of the Tribunal in Ashok Rustogi v. CCE Kanpur 1997 (22) RLT 511 (CEGAT) to contend that since no tax liability was involved during the relevant quarters, for which the returns were filed late, no penalty could be legally imposed.

7. The facts are not much in dispute. Admittedly, the respondents were under legal obligation to file quarterly returns for the quarters in question (detailed above) being registered as stock brokers with the Central Excise Department, for the purpose of Service Tax under Section 69 of the Finance Act. It is also not disputed that they failed to file the returns for the quarters in question and they were served with two show cause notices. There had been delay of 345 days on their part in filing quarterly return for the quarter April to June, 1996, of 252 days for the quarter, July to September, 1996, of 176 days for the quarter October to

December, 1996 and of 2 days for the quarter April to June, 1995.

8. Section 70(1) of the Finance Act clearly mandates that every person liable to pay the Service Tax, shall furnish or cause to be furnished, to the Central Excise Office, in the prescribed manner, a quarterly return within fifteen days of the end of the preceding quarter. If he fails to do so he shall render himself liable for the penalty which shall not be less than Rs. 100/- or which may extend to Rs. 200/- for everyday during which the failure continue. The language of this Section is quite clear and leaves no doubt in one's mind and Assistant Commissioner had given detailed reasons for imposing the penalty on the respondents for having failed to file the returns in time for the quarters in question. But ld. Commissioner as the operative part of his order, referred to above, shows has not even applied his mind to the case and simply after recording the submissions of the respondents set aside the Order-in-Original. No specific finding has been given that the delay on the part of respondents was bona fide and for sufficient cause. Simply because the respondents pleaded no tax liability for the quarters in question, on the ground of having closed the business, could not be made the basis by the Commissioner for passing the impugned order. The respondents were duty bound to prove/substantiate their plea regarding the closure of their business during the quarters in question by placing on record some material. The ratio of the law laid down by the Tribunal in Ashok Rustogi case (supra) could be applied by the Commissioner only if he had recorded the findings that no tax liability pleaded by the respondents, was factually correct, for having not conducted the business during the quarters in question, but he has failed to do so. Therefore, the order of the Commissioner cannot be legally sustained and deserves to be set aside. We accordingly set aside the impugned order and sent back the case to the Commissioner (Appeals) for rehearing of the matter after affording opportunity to both the parties and to pass fresh speaking order as per law.

9. The appeal of the Revenue is accordingly disposed of by way of remand.