

Aakar Communication and Aakar Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-14-2003

Reported in : (2007)8STT472

Judge : K Usha, N T C.N.B.

Appellant : Aakar Communication and Aakar

Respondent : Cce

Judgement :

1. This is an appeal at the instance of the assessee challenging the order passed by the Commissioner (Appeals) dated 27.9.2002. Appellate authority has affirmed the demand of service tax to the extent of Rs. 39, 250, interest thereon and penalty of an equal amount under section 76 of the Finance Act, 1994. He reduced the penalty under section 77 from Rs. 2400 to Rs. 2000 in the light of the decision of this Tribunal in West Minister International (P) Ltd. v. CCE, New Delhi 2002 (140) ELT 244. Challenge in this appeal is limited to imposition of penalty under section 76. This Tribunal has taken the view in CCE, Jaipur v. Milan Tent Palace 2001n(131) ELT 274 that a minimum penalty Rs. 100 per day is not mandatory. Taking into consideration the facts and circumstance of the case we are inclined to hold that the quantum of penalty imposed is on the higher side.

2. In this case, challenge at the instance of the assessee, is against the order passed by the Commissioner (Appeals) dated 19.6.2002.

Commissioner (Appeals) dismissed the appeal filed by the assessee for non-compliance with the interim order directing deposit of the entire amount of duty and penalty affirmed under the Order-in-Original. It is contended by the appellant that the Commissioner (Appeals) was not justified in directing deposit of the entire amount as a condition for entertaining the appeal. On going through the Memo. Of Appeal we find that the attack is directed against the imposition of penalty under section 76 and section 77.

3. In the Order-in-Original a demand of Rs. 89, 929 has been confirmed under section 75 of the Finance Act, 1994. Penalty of same amount has also been imposed under section 76. A further penalty of Rs. 11, 800 imposed under section 77 at the rate of Rs. 200 per week. The contention raised in this appeal is that the power to impose penalty under section 76 is discretionary and that penalty under section 77 could not have been more than Rs. 2, 000. In view of the decision of this Tribunal in West Minister International Private Ltd. v. CCE 2002 (140) ELT 244 we are inclined to accept the above contention of the appellant.

4. In the light of the above, we reduce the penalty under section 76 to 10% of the duty demand both in St 68/2002 and 69/2002. Penalty under section 7 is reduced to Rs. 2000 in ST 69/2002. The orders impugned are modified to the above extent and the appeals stand partly allowed.

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