Commr. of C. Ex. Vs. Shi

Commr. of C. Ex. Vs. Shi

SooperKanoon Citation : sooperkanoon.com/37807

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jan-19-2005

Judge : J Balasundaram, Vice-, S T 3S.

Appellant : Commr. of C. Ex.

Respondent : Shi

Judgement :
1. The respondent company herein is a Goods Transport Operator, who is required to pay service tax. They failed to submit a ST-3 Return for the period from 16-11-97 to 1-6-98, as required under Section 70 of Chapter V of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994. Show Cause Notice was issued proposing levy of interest and imposition of penalty as per Sections 75 to 77 of the Service Tax Act, subsequent to validation of levy and collection of service tax on Goods Transport Operator Service vide Section 117 of the Finance Act, 2000.

The jurisdictional Deputy Commissioner directed that the assessees were liable to pay service tax together with interest and also imposed a penalty of Rs. 2000.00 upon them. However, the Commissioner (Appeals) allowed the appeal of the assessees on the grounds, inter alia, that there was no specific demand of any quantum of service tax by the show cause notice and on the ground that the Order was passed without providing the assessees an adequate opportunity of being heard. Hence this appeal by the Revenue.

2. On hearing both sides and noting the submissions of the Revenue that no specific demand for any quantum of service tax, could be raised due to failure of the assessees to file a ST-3 Return, and also noting the assessees' accepted liability for paying the service tax, and also noting that they had paid the tax for the period in question, we hold that they are liable to pay the interest on the delayed payment of service tax. However, this is not a case calling for imposition of any penalty, as we find that the service tax on Goods Transport Operator Service was introduced with effect from 16-11-97 and subsequently exempted with effect from 2-6-98, and the Hon'ble Apex Court vide its Judgment dated 27-7-1999 in the case of Laghu Udyog Bharati reported in 2006 (2) S.T.R. 276 (S.C.) : 1999 (112) E.L.T. 365 (S.C.), had struck down the provisions of Service Tax Rules making a person other than the Goods Transport Operators responsible for collecting the service tax, and it was only later that Section 117 of the Finance Act, 2000 validated levy and collection of service tax on Goods Transport Operator Service, retrospectively. We, therefore, do. not accede to the prayer of the Revenue in regard to the imposition of penalty on the respondents herein. The appeal is, thus, partly allowed by upholding the Order-in-Original relating to the interest liability only. Cross Objection filed by the respondent company also stands disposed of in above terms.