Space Travels Vs. Commissioner of Central Excise

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SooperKanoon Citation : sooperkanoon.com/38539

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-18-2005

Reported in : (2005)(186)ELT91Tri(Mum.)bai

Judge : K Kumar

Appellant : Space Travels

Respondent : Commissioner of Central Excise

Judgement :

2. The appellant/applicant has filed the ROM application inter alia stating that the appellant has already paid the Service Tax along with the interest of Rs. 5 lakhs for the delayed payment. The appeal was filed against the imposition of penalty amount. The ld. Consultant appearing for the appellant submitted that the lower authorities have not considered the ground of ailment taken by the appellant and no finding has been given by them on the said explanation. He submitted that where the Service Tax has been deposited along with interest without collecting the same from the clients, no penalty is imposable, particularly in view of the fact that there was no mala fide intention on the part of the appellant. Delayed payment was only because of his serious ailment. He is the only person responsible for the affairs of the Company. He also contended that the Tribunal while disposing of the appeal has also not taken into consideration the ground of ailment. He emphatically submitted that in view of the fact that Service Tax was paid along with interest, it would be necessary that the matter may be remanded to the adjudicating authority for fresh adjudication and to pass a fresh adjudicating order

in the matter as the adjudicating authority has not considered the provision of Section 80 which clearly provides that no penalty is imposable on the assessee for any failure referred to in Section 76, 77 or 78 if the assessee proves that there was reasonable cause for the delayed payment. Therefore, his submission is that in view of the provisions of Section 80, the penalty could not have been imposed on the appellant. He also contended that the appellant/applicant has paid service tax based on the billings rather than actual realization from the clients. As per Rule 6(1) of the Service Tax Rules, Service Tax was required to be paid only on the amount received and not on the receivables. This ground also needs to be reconsidered.

3. After hearing both sides, I allow ROM application and remand the matter to the adjudicating authority for de novo adjudication and to pass a fresh speaking order in the matter.