Commissioner of Central Excise Vs. Sunitha Shetty

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SooperKanoon Citation : sooperkanoon.com/386256

Court : Karnataka

Decided On : Sep-14-2004

Reported in : 2004(174)ELT313(Kar); 2006[3]STR404

Judge : P. Vishwanatha Shetty and ;K. Bhakthavatsala, JJ.

Acts : Finance Act, 1994 - Sections 76, 77 and 80

Appeal No. : Civil Petition Nos. 1934 and 1992-1994 of 2003

Appellant : Commissioner of Central Excise

Respondent : Sunitha Shetty

Advocate for Def. : N. Anand, ;K.S. Ravishankar, ;G.K.V. Murthy and ;Gox Mandal and Associates, Advs.

Advocate for Pet/Ap. : R. Veerendra Sharma, Addl. CGSC

Disposition : Petition dismissed

Judgement :
ORDER

1. It is the case of the Petitioners in all these Civil Petitions that out of an order dated 27th of June 2003 made in ST Nos. 4/2002, 6/2002, 10/2002 and 15/2002, the questions of law set out herein-below would arise for consideration:

1. Whether the reviewing authority's interpretation of provisions of Section 76 of the Finance Act, 1994 in Order-in-Review No. 8/2002, dated 29.1.2002/1.2.2002 that minimum penalty imposable under the said Section is Rs. 100/- per day is saved by law?

2. Whether the Final Order No. 843 to 846/2003, dated 27.6.2003 of CEGAT [2003 (156) E.L.T. 84 (Tribunal)] setting aside the Order-in-Review No. 8/2002, dated 29.1.2002/1.2.2002 wherein it was interpreted that the minimum penalty imposable under Section 76 of the Finance Act, 1994 is Rs. 100/- only and not Rs. 100/- per day is maintainable in law?

2. Therefore, it is the contention of Shri Veerendra Sharma, Additional Central Government Standing Counsel, appearing for the Petitioner, that a direction may be issued to the Tribunal to refer the said questions to this Court for decision.

3. We have heard Shri R. Veerendra Sharma, Addl. Central Government Standing Counsel, for the Petitioner, Shri N. Anand, Counsel for Respondent Nos. 1 and 4 and Shri G.K.V. Murthy, Counsel for Respondent No. 2, in these Petitions.

4. No doubt it is the contention of Shri Veerendra Sharma that the Tribunal has mis-directed itself by proceeding on the basis that minimum of Rs. 100/- per day is not prescribed under Section 76 of the Finance Act, 1994, and therefore the questions formulated above are required to be referred to this Court for consideration. We are of the view that there is no basis for the said submission made by the learned Counsel appearing for the Petitioner, as it can be seen from the order dated 14th of May 2001, a copy of which has been produced as Annexure-B passed by the Deputy Commissioner, the Deputy Commissioner, having regard to the facts and circumstances of the case, has exercised his discretion and levied penalty of Rs. 250/ under Section 76 of the Finance Act, 1994 for non-payment of Service Tax and penalty of Rs. 200/- under Section 77 of the Finance Act, 1994 for failure to furnish the ST-3 returns in time in the proceedings arising in C. No. IV/16/886/98/ST/BG-II/2292.

5. Sri Sharma is unable to dispute that notwithstanding Section 76 of the Act, which prescribes for the levy of minimum penalty of Rs. 100/- per day, the

Authority has the discretion under Section 80 of the Act to waive the penalty.

6. Having regard to the facts and circumstances of each case, we do not find in the order Annexure-B, the Commissioner proceeded to levy the penalty referred to above on an erroneous impression that he is not required to levy penalty of Rs. 100/- per day, A reading of the order Annexure 'B' indicates to us that he has exercised the power conferred on him under Section 80 of the Act having regard to the facts and circumstances of the case. However, the said order was reviewed by the Commissioner on the basis that the minimum of Rs. 100/- per day was required to be levied for delay in filing the returns and paying service tax. The Tribunal, in the order from which this Civil Petition arises, has taken the view that the Commissioner was not justified in reviewing the order passed by the Deputy Commissioner as the Deputy Commissioner has exercised the discretion conferred on him. Under these circumstances, we are view that the questions formulated in these Review Petitions would not arise out of the order passed by the Commissioner. As noticed by us earlier, the Deputy Commissioner has proceeded to levy the penalty in exercise of the discretion conferred on him under Section 80 of the Act and not on an interpretation of Section 76 of the Act, which mandates the levying of penalty of Rs. 100/- per every day of delay in filing the returns as contended by Sri Veerendra Sharma, learned Counsel appearing for the Petitioner.

7. In the light as of what is stated above, these Petitions are rejected. However, no order is made as to costs.