Commissioner of Central Excise Vs. J.S. Architect Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-28-2005

Reported in : (2005)(188)ELT455TriDel

Judge : A T V.K.

Appellant : Commissioner of Central Excise

Respondent : J.S. Architect Pvt. Ltd.

Judgement :

1. Revenue has filed this Appeal against Order-in-Appeal No. 500/03, dated 8-12-2003 by which the Commissioner (Appeals) has set aside the penalty imposed on M/s. J.S. Architect Pvt. Ltd. for depositing the service tax late and for late filing of half yearly return.

2. Shri R. Santhanam, learned Advocate, submitted that due to serious illness of close relative of the Director, the Service Tax could not be deposited in time; that the entire service tax has been deposited along with the interest; that there was no intention on the part of the respondents not to deposit the service tax; that the serious sickness of close relative and subsequently the Director's own sickness prevented them to deposit tax. Learned Advocate has relied upon the decision of the Larger Bench of the Tribunal in the case of M/s. ETA Engineering Ltd. v. CCE, Chennai (Tri.)] wherein the Larger Bench of the Tribunal has held that notwithstanding anything contained in Sections 76 and 77 of the Finance Act, 1994, penalty is not imposable if there was a reasonable cause for not depositing

the Service Tax.

3. Shri P.M. Rao, learned Departmental Representative, on the other hand; submitted that as the Service Tax has been paid after almost six months, penalty is imposable on the respondents.

4. I have considered the submissions of both the sides. Sections 76 and 77 of the Finance Act, 1994 provide for imposition of penalty if any person fails to pay Service Tax and fails to furnish in due time, the return which he is required to furnish. However, Section 80 of the Finance Act, 1994 provides that no penalty shall be imposable on the assessee for any failure referred to in Sections 76 to 79, if the assessee proves that there was reasonable cause for the said failure.

In the present matter, the Commissioner (Appeals) has set aside the penally after examining the documents furnished by the respondents regarding the treatment of close relative of the Director for cancer in Mumbai and Delhi during the period the default was made in the payment of service tax. In view of the fact that the Appellants subsequently has paid the entire service tax along with the interest, I am of the view that this is a fit case where the provisions of Section 80 of Finance Act, 1994 are attracted. Accordingly, I do not find any reason to interfere with the finding of the Commissioner (Appeals). The Appeal filed by the Revenue is rejected.