

Cce Vs. Camera World

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Aug-25-2005

Reported in : (2006)4STR462

Judge : M Bohra

Appellant : Cce

Respondent : Camera World

Judgement :

2. Heard Shri J.R. Madhium, Ld. JDR for the Appellants-Revenue and None for the Respondent.

3. Shri Madhium submits that the decision of the Commissioner (Appeals) is based on the judgements rendered by the CESTAT/CEGAT under Central Excise Act and Rules which is not applicable on Service Tax matter. The penalty under Service Tax is imposible on delayed payment of Service Tax. He submits that the decisions rendered in the impugned order are not applicable on the present set of facts. He, therefore, submits that the appeal may kindly be allowed.

4. The Respondents have deposited the entire Service Tax and interest before issuance of show-cause notice and before adjudication. The instant case is similar to the case of Top Detective & Security Service Pvt. Ltd. .The Ld. Member (Technical) has "Service Tax - Delay in filing of returns-Penalty-Service Tax and part of interest accrued paid even before adjudication of case - Penalty under

Section 76 and 77 of Finance Act, 1994 not mandatory for late filing of returns - Plea of appellant that late receipt of payment from customers resulted in delayed payment of service tax, taken into consideration and penalty set aside by Commissioner (Appeals) - Order of Commissioner (Appeals) proper." In the present case also, the Service Tax and interest had been deposited prior to issuance of show-cause notice and adjudication order. The penalty under Sections 76 & 77 of Finance Act, 1994 is not mandatory. Their plea was that they had not received the payments from their customers in time and that resulted in delayed payment of Service Tax. The present case is squarely covered by the case of Top Detective & Security Services Pvt. Ltd. referred to above. I do not find any infirmity in the order of the Commissioner (Appeals). The appeal filed by the Revenue have no force. Consequently, it is dismissed. The appeal is disposed of in the above terms.

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