Commissioner of Central Excise Vs. Video Time

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-2005

Judge : M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Video Time

Judgement :

1. Revenue has filed this appeal against the order of the Commissioner (Appeals) dropping penalties imposed on the respondents under Sections 75A, 76 and 77 of the Finance Act, 1994.

2. The respondents are cable operator and they have failed to file return within time prescribed and did not pay the service tax for the period 16-8-02 to 31-3-2003, Accordingly, show cause notice was issued for recovery of service tax and imposition of penalty. The original authority confirmed the service tax of Rs. 5310/- and imposed penalties of Rs. 500/- under Section 75A, Rs. 500/- under Section 77 and at the rate of Rs. 100/- per day for everyday's late payment of service tax under Section 76 of the Act. On appeal, the Commissioner (Appeals) dropped the penalty on the ground that under the Tax Payer Friendly Scheme declared under Board's F. No. 137/39/2004-Cx.4 dated 23-9-2004 in case of assessees who had not complied with the provisions of service tax law, were given immunity from the provisions of Sections 75A, 76 and 77 provided they pay service tax along with appropriate rate of interest. Revenue has however filed appeal on the ground that the penalty dropped by the Commissioner (Appeals) was not correct as under

Section 75A of the Finance Act, the respondents were required to take registration within one month from the date of imposition of tax i.e. 16-8-2002 They obtained registration only in February, 2003. The respondents were registered in February, 2003 but failed to pay service tax for the period 16-8-2002 to 31-3-2003. Tax Payer Friendly Scheme declared by the Board on 23-9-2004 is in respect of those assessees who had not got registered and complied with the provisions of service tax law. It is operational up to 31-10-2004. It is applicable to the assessees who came forward during the validity of the Scheme and it is not applicable for the violation of the earlier period. Therefore, the penalties were imposable.

3. The respondents in their submissions sent to the Tribunal stated that they cannot appear and arrange counsel, so the appeal may be decided on merits. It was pleaded that the Act was new and was not known to the general public. The customers were not paying the tax and respondents had borne the tax. This resulted in late payment due to week financial condition and not by deliberate attempt.

4. I have considered the submissions made by both sides. I find that in this case, the registration was taken by the respondents in February, 2003 although they were required to take registration within 30 days of the date of the imposition of the service tax. Therefore, the penalty under Section 75A of the Finance Act, 1994 is imposable on them. In respect of the penalty imposed under Sections 76 & 77, I find that sufficient cause has been shown for non imposition of penalty on them.

Therefore, waiver of these penalties covered under Section 80 of the Finance Act is in order. The order of the Commissioner (Appeals) is modified to the extent that penalty is imposable on the respondents under Section 75A which cannot be waived under Section 80. The order of original authority imposing penalty of Rs. 500/- on the respondents under Section 75A of Finance Act, 1994 is revived. The appeal of the Revenue is allowed to this extent.