Bharosa Colour Lab Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-2006

Judge : M Ravindran

Appellant : Bharosa Colour Lab

Respondent : Cce

Judgement :
1. All these 4 appeals are arising out of Order-in-Review issued by the Commissioner of Central Excise, Jaipur which enhanced the penalty imposed under Section 76 of the Finance Act on the appellant.

2. The relevant facts that arise for consideration are that the appellant registered himself as a service provider under the category of photography service provider in 2001. After getting himself registered the appellants did not file return nor did he deposit the service tax. The appellants discharged the service tax liability for the whole period in dispute on their own on 9th May, 2003 and 13th May, 2003 along with interest. Show cause notices were issued on 13th May, and 14th May, 2003 for imposition of penalty on them under Section 76 and 77 of Finance Act, 1994. The said show cause notices were adjudicated by the Asst. Commissioner and he imposed penalty of Rs. 1000/- each against each show cause notice and also penalties as under:--- Appeal No. Penalty imposed--- 196/05 4500 76. The Commissioner under the power vested with him under Section 84 of the Finance Act, 1944 reviewed the orders of the Asst. Commissioner and came to the

conclusion that the penalty imposable on the appellant under Section 76 should be as under: -- Appeal No. Penalty amount -- 196/05 22175 3. Learned Advocate appearing for the appellants submits that since the amount of service tax and interest payable thereon was already discharged by them before the issue of show cause notice the case is covered by the decision of the Larger Bench of the Tribunal in the case of CCE, Delhi-III, Gurgaon v. Machine Montell (I) Ltd. as reported at and no penalty can be imposed. Further, he submits that under the Extra-ordinary Tax Payer Friendly Scheme Circular dated 23.9.2004 no penal action should be taken against any assessee who voluntarily paid the service tax and got himself registered up to 30.10.2004. He relies upon the decision in the case of CCE, Bhopal v.Bharat Security Services & Worker's Cont., as reported at 2005 (188) 454 (Tri.-Del). He concedes that the amount of penalty as imposed by the adjudicating authority under Section 76 has attained finality as the appellants have not filed any appeal against it.

4. Learned D.R. on the other hand submits that the Commissioner by power vested on him under Section 84 and has correctly reviewd the order and enhanced the penalty that is imposable under Section 76, as the penalty imposable under Section 76 is the minimum penalty and it is not the maximum penalty. It is the submission that the appellants cannot be granted the benefit of Extra Ordinary Tax Payer Friendly Scheme as introduced by the Government, as that scheme was for the people who were not registered and want to pay the service tax voluntarily.

5. Considered the submissions made by both sides. I find that the appellants paid the entire amount of service tax and interest thereon on 9.5.2003 and 13.5.2003. Subsequently on adjudication they have also paid all the penalties imposed by the adjudicating authority. The appellants have rightly relied upon Extra Ordinary Tax Payer Friendly Scheme announced by the Government on 23.9.2004. The decision of the Tribunal in the case of Bharat Security Services & Worker's Cont.

(supra) squarely applies in this case. The Tribunal in that case in Para 4 as held as under: Revenue filed these appeals against the orders-in-appeal whereby the penalties imposed on the respondents were set aside as the respondents paid

Service tax along with interest prior to 23.9.2004.

The Commissioner (Appeals) in the impugned order held that a Voluntary Disclosure Schemes known as Extra Ordinary Tax Payer Friendly Scheme was circulated vide letter dated 23.9.2004. Under this scheme any service provider who got registered up to 30.10.2004, are not liable for any penal action. The Commissioner (Appeals) held that in view of the immunity from penalty action under this Extra Ordinary Tax Payer Friendly Scheme, no penalty is imposable on the respondents, as they have paid service tax prior to 30.10.2004.

6. To my mind the appellants' case is covered by the order of the Tribunal in the case of Bharat Security Services & Worker's Cont. and enhancement of penalties as ordered by the Commissioner (Appeals) in his Review Order dated 5.8.2005 is liable to be set aside. Accordingly, I set aside the impugned order and allow all the appeals.