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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-18-2006

Judge : R Abichandani

Appellant : Enbee Express

Respondent : Commissioner of C. Ex.

Judgement :

1. This appeal is directed against the order of the Commissioner (Appeals) made on 28-2-05, upholding the order-in-original, by which penalty of Rs. 35,425/- was imposed on the appellant under Section 76 of Chapter V of the Finance Act, 1994 and penalty of Rs. 1,000/- under Section 77 of the said Act.

2. There is no dispute over the fact the appellant was engaged in courier service which was taxable service. Admittedly, the assessee had contravened the provisions of Section 68 of the Act, on as many as 40 occasions up to March, 2000. It had also contravened the provisions of Section 70 by filing the ST 3 returns late. Therefore, show cause notice dated 9-10-2000 was issued to the assessee in respect of penalties imposable under Sections 76 and 77 of the Act, for contravention of the provisions of Sections 68 and 70, respectively.

3. The appellant in their reply dated 7-11-2000 to the show cause notice contended that they were rendering the courier service on a small scale and the contravention was due to their incomplete knowledge of regulations and they had understood that by paying the interest they will be exempted from any penalty.

During the course of personal hearing, they contended no further ground. The learned Deputy Commissioner after a detailed consideration of the grounds raised, found that the appellant had contravened the provisions of Sections 68 and 70 and were liable to penalty. However, taking a lenient view, the Deputy Commissioner refrained from imposing any penalty for delays up to 50 days in the deposit of service tax and ordered that for all the delays beyond 50 days, penalty was imposable on the appellant under Section 76 of the Act. Penalty was ordered to be imposed at Rs. 100/- per day and the amount was worked out at Rs. 35,425/-. For the default of filing late returns, penalty of Rs. 1,000/- was imposed under Section 77. This order came to be upheld in appeal by the Commissioner (Appeals), who found that the adjudicating officer has rightly imposed the penalties on the appellant for recurring nature of committing the same lapse. It appears from the grounds of appeal raised before the Commissioner (Appeals) that no ground was made out for any further leniency to the appellant.

4. In the present appeal, the appellant has sent written arguments with a request to decide the appeal in the light of those arguments. It is evident from these written arguments that the appellant has relied upon the sickness of the father of the partners as well sickness of one partner, which grounds were never raised either before the Deputy Commissioner or before the Commissioner (Appeals). It is clear that resort is being made to ailments only as an afterthought because if these were the real grounds, then the appellant surely would have mentioned them in reply to the show cause notice, during the personal hearing and before the Appellate Commissioner. The Deputy Commissioner has in the order-in-original categorically found that the assessee had deposited the service tax much later than the due dates on most occasions and that out of twenty deposits of service tax made by the assessee from the date of registration till 2000, service tax had been paid late, on as many as fourteen occasions. Therefore, the story which is now put up that delay was caused due to ailments of father of the partners and the partner is clearly is an afterthought because, it is evident that during the entire period the rendering of services by the appellant had continued and the service tax was paid on various occasions, though late.

5. On going through the material on record, there appears to be no warrant for interference with the impugned order on any of the grounds raised by the appellant in the appeal memo or in the written arguments.

The appeal is, therefore, dismissed.

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