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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-06-2006

Judge : M Ravindran

Appellant : Sumnesh Tyagi

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal is directed against review order dt. 9.1.2006 passed by the Commissioner (Service tax).

2. The relevant facts that arise for consideration are that the appellant is a C&F Agent of Asian Paints. The appellant had taken the registeration as C&F agent service provider. The appellant had defaulted in paying the Service Tax and filed the returns belatedly for two quaerters i.e. quarter ending June, 2002. Quarter ending Sept, 2002, the number of days delay is 42 days and 17 days, respectively. A SCN Was issued to the appellant for imposing penalty under Section 76 of the Finance Act, 1994. The adjudicating authority had dropped the imposition of penalty for quarter ending Sept., 2002 but imposed a penalty of Rs. 100/- only in respect of quarter ending June, 2002. The Commissioner of Central Excise on review of the order came to conclusion that penalty has to be imposed on the appellant for both the quarters as he has not made out a strong justifiable case for non-imposition of penalty under Section 76. Hence this appeal.

3. The appellant is not present but he has filed written submission which is taken on record. Heard Id. DR and perused the records. The issue involved before me is regarding the imposition of penalty on the appellant under Section 76. I find from the records that for the quarter ending Sept., 2002, the appellant had given detailed reason in respect of delay in filing the returns and payment of service tax. The reason given by the appellant delay, being the peak season during the relevant period due to Deepawali and other festivals. The adjudicating authority has considered these reasons as substantial cause for waiving the penalty under provisions of Section 80 of the Finance Act, 1994. I am of the view that finding of the first adjudicating authority seems to be correct and there could be delay during the festival season, for filing the returns as well as paying the Service Tax. To my mind, the non-imposition of penalty under Section 76 for the quarter ending Sept., 2002, was the right approach which the lower adjudicating authority has taken. Hence the appeal filed by the appellant for non-imposition of penalty for quarter ending Sept., 2002 is upheld.4. As regards the imposition of penalty under Section 76, for the quarter ending June, 2002, I find that the appellant has not given any substantial cause to set aside the said penally. The review order "of the Commissioner is very clear on this point. There is no inteference called for on this issue and penalty imposed on the appellant under Section 76 for the quarter ending June, 2002 is upheld.5. In view of the facts and circumstances as mentioned above, the appeal of the appellant is allowed partly.