Pushpak Publicity Vs. Commissioner of C. Ex. and Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-30-2006

Judge : R Abichandani

Appellant : Pushpak Publicity

Respondent : Commissioner of C. Ex. and Customs

Judgement :

1. This appeal is directed against the order of the Commissioner revising the order of the Assistant Commissioner and enhancing the penalty from Rs. 1,500/- to Rs. 30,627/- imposed under Section 76 of the Finance Act, 1994.

2. The only contention that was raised on behalf of the appellant was that the appellant had not filed the returns in time because the law was new at that time. He relied on the decision of the Bangalore Bench in S.J. Anthony v. C.C.E. 2006 (1) S.T.R. 154 (T) Final Order No.1168/2003 and Misc. Order No. 345/2003, dated 1-9-2003 in Appeal No.ST/9/2002 for contending that when the discretion was exercised by the adjudicating authority, the reviewing authority ought not to have enhanced the penalty. It was also contended that the provision of Section 76 was substituted w.e.f. 10-9-2004 to the effect that penalty shall not be less than Rs. 100/- for every day during which failure continued, but which may extend to Rs. 200/- per every day during which the failure continued, while the earlier wordings were indicative of the fact that minimum penalty was Rs. 100/- and not Rs. 100/- per day.

3. The question whether the penalty under Section 76 of the said Act was Rs. 100/- or Rs. 100/- per day had arisen for consideration by the Larger Bench in ETA Engineering Ltd. v. C.C.E. Chennai and the Tribunal construing the provisions of Section 76, as it stood at the relevant time, more particularly the phrase "penalty which shall not be less than Rs. 100/-, but which may extend to Rs. 200/- for every day during which such failure continues," in terms, held that intention of the legislature was quite clear that penalty of Rs. 100/- per day was required to be imposed in case of failure to pay the tax for every day after the due date. It is obvious that subsequent amendment was only clarificatory and even on the provision as it stood at the relevant time, the view taken by the Larger Bench was that the minimum penalty prescribed was not just Rs. 100/- but Rs. 100/- per day. There is, therefore no substance in the said contention. The impugned order is passed for valid reasons and warrants no interference. This appeal is, therefore, summarily dismissed.