

Messengers Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-19-2006

Reported in : (2007)7STT174

Judge : K T P.

Appellant : Messengers

Respondent : Commissioner of C. Ex.

Judgement :

1. In this case, the appellants M/s. Messengers, Pondicherry have filed a stay application against the Order-in-Appeal No. 45/2006 (P)(ST) dated 31-3-2006 . In the original order the Deputy Commissioner had demanded Service Tax amounting to Rs. 12,85,764/- due from the appellants for the period January, 2003 to September, 2003 and appropriated the same against the amount already paid by them before adjudication. He also confirmed the interest amount paid by the appellants as demanded in the show cause notice. The Commissioner (Appeals) affirmed the order of the lower authority. The appeal is against the penalty amount of Rs. 90,300/- imposed on the assessee in terms of Section 76 of the Finance Act, 1994.

2. The undisputed facts of the case are that the assessee engaged in rendering courier service paid the Service Tax due for various quarters in the year 2002 and 2003 with delay ranging from 182 days to 275 days.

The learned Consultant appearing for the assessee admits that tax due had been paid in respect of every quarter with a delay ranging from 182 days to 275 days and except in one case where there was the maximum delay, the tax was paid before issue of Show Cause Notice. In all other cases tax was paid after issue of Show Cause Notice. In all cases they had paid tax and interest. He also admits that the penalty imposed was correct in terms of Section 76 and that the same was at the rate of Rs. 100/- per day which was the minimum prescribed in the Section. However, the Consultant expresses a view that the penalty could be imposed only in cases where there was a failure to file the returns in time. The learned SDR justifies the reasoning followed by the lower appellate authority and submits that there were separate provisions for imposing penalty for delay in filing returns and as admitted by the Consultant, the penalty had been correctly imposed under Section 76 in this case.

The Consultant for the appellants also pleads financial hardships and submits that even during the pendency of the proceedings, the assessee had difficulty in paying the tax in time. Their establishment remained closed. He submits that their financial hardships may be taken into account and the pre-deposit to hear the appeal waived.

3. On a careful consideration of the facts of the case and the submissions made by both the parties, I do not find that the appellants have made out a prima facie case against the penalty as per the impugned order. However, in a lenient approach, I order the appellants to deposit an amount of Rs. 20,000/- (Rupees Twenty thousands only) in terms of Section 35F(2) of the Central Excise Act within a period of 4 weeks, whereupon there will be waiver of pre-deposit of balance amount of penalty and stay of recovery of the entire penalty. Report compliance on 17-11-06.

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