

Ace Computer Education Vs. Cce

Ace Computer Education Vs. Cce

SooperKanoon Citation : sooperkanoon.com/44276

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-2006

Reported in : (2007)10STT102

Judge : M Ravindran

Appellant : Ace Computer Education

Respondent : Cce

Judgement :

1. These two appeals are directed against the order in appeal dated 19.4.2006. Since the order in appeal disposes of two orders in original and issue being the same, both the appeals are disposed off by a common order.

2. The issue involved in this case is regarding the service tax liability on the appellants for providing the service of commercial training or coaching. The appellants did not get themselves registered as service provider of commercial training or coaching, despite the said services being brought into service tax net w.e.f. 1.7.03. The appellants admitted their service tax liability subsequent to the visit of the officers to their coaching centre and discharged the service tax liability as indicated in the show cause notice partly prior to issue of show cause notice and partly after the issue of show cause notice.

The adjudicating authority confirmed the demand and imposed penalty under the provisions of Sections 76, 77 and 78 of the Finance Act, 1994. On an appeal, the

learned Commissioner (Appeals) also upheld the order in original for the imposition of penalties under Finance Act, 1994. Hence these appeals.

3. The learned authorised representative appearing on behalf of the appellants, submits that they are not challenging the tax liability nor they are challenging the interest thereon or penalties under Section 77 but are challenging the penalties under Section 76 and 78. It is his submission that the service tax liability on the commercial training or coaching centres were introduced from 1.7.03 were exempt upto 30.6.04.

It is his submission that the said exemption notification was not extended but they were under the bonafide impression that their services would not get covered under services of commercial training or coaching. It is submission that bonafide error was that they did not take the registration and discharge the service tax liability. They had installed 7 computers. However, the amount received by them was recorded in the books of account which would indicate that they had no intention as such to evade the service tax. He submitted that penalty should be set aside.

4. The learned DR on the other hand, submits that the appellants did not come forward to get themselves registered and discharge the service tax liability. The service tax liability on the appellants was worked out by the officers after their visit on 2.6.05. He submits that the appellants were aware that they are under the service tax net.

5. Considered the submissions made by both the sides and perused the record. It is a fact that the services rendered by commercial training and coaching centres were exempt. The said exemption notification was not extended by the Revenue. Hence the service rendered by the commercial and coaching centres had to discharge the service tax from 1.7.04. To my mind the appellants may have been misguided or mis-informed about the extension of the notification, which granted exemption to commercial training and coaching centres. The bonafide belief of possible extension of notification could not be a ground for imposition of such a heavy penalty under the provisions of Section 76 and 78 of the Finance Act. Further, it is seen from the record that the appellants had in fact recorded all the

receipts in their books of account. The Division Bench in the case of CCE Bangalore v. Impress Ad-Aids and Displays reported in 2004 (173) ELT 137 has held as under: We notice from the judgement of this Bench in the case of Smitha Shetty v. CCE Bangalaoe that the Bench has examined this very issue in the light of the several judgments of the Tribunal and the Apex Court has come to the conclusion that when there is technical or judicial breach of the provisions of the Act or where the Breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute then in such circumstance, in the light of the Apex Court judgments, penalty was not imposable. It also set aside the enhanced penalty imposed by the reviewing authority. The Tribunal noted that the discretion to impose penalty to be exercised judicially after considering the relevant circumstances. The ruling of the Apex Court rendered in the case of Hindustan Steel v. State of Orissa considered wherein it was held that an order imposing penalty for failure to carry out the statutory obligation is the result of quasi-criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contentions or dishonest or acted in conscious disregard of its obligation. It also held that penalty will not also be imposed for failure to perform the statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of the relevant circumstances. We find that the Commissioner (Appeals) has noted that the service tax was a new levy and the assessee did not know about the promulgation of the levy. They had deposited the service tax along with interest and in view of this fact, the Commissioner found the action of the assessee to be bona fide and in that circumstance felt that exorbitant penalty of Rs. 1,03,200/-for a service tax of Rs. 13,731/- was imposable. We have examined the issue and find that the Commissioner was justified in setting aside such an exorbitant penalty and the same is in light of the law laid down by the Tribunal in the case of Smitha Shetty v. CCE supra which examined the rulings of the Tribunal, High Court and Supreme Court judgments. We do not find any merit in the appeal and the same is rejected.

Accordingly, I find that the appellants have shown sufficient cause under Section 80 so far as setting aside of penalties is concerned. In view of the facts and circumstances as mentioned, the penalties imposed on the appellants are liable to

be set aside and I do so. The appeals of the appellants are allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com