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Ar. Bhalchandra Chaware Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-05-2006

Reported in : (2007)9STT245

Judge : T Anjaneyulu

Appellant : Ar. Bhalchandra Chaware

Respondent : Commissioner of Central Excise

Judgement :

1. In the instant appeal, assessee has failed to pay the service tax and to file Return for the period October 1998 to March 2003 on or before stipulated period. The Assistant Commissioner, Service Tax, Central Excise and Customs, Nashik-IV Division issued the Show Cause Notice and adjudicated the same confirming the service tax and interest amount thereon and appropriated the same since the assessee has paid said amount prior to issuance of show cause notice. Further he has imposed penalty of Rs. 1500/- under Section 76 and Rs. 1000/- under Section 77 of the service tax Act. The assessee had also paid these penalties.

2. The aforesaid order has been passed under Section 84 of the Finance Act by the Commissioner, Central Excise and Customs, Nashik and enhanced the penalty amount imposed under Section 76 of the Act to the tune of Rs. 18,438/- under his revisional power. Hence this appeal filed by the assessee disputing the enhanced penalty amount.

3. Main contention of the appeal is that it is a small entrepreneur and paid service tax out of his own pocket without collecting from his customer. Further contention is that there was no deliberate intention in delaying the payment but under the bonafide belief that they are not covered by the Service Tax net work. Even otherwise, it is claimed that the Finance Ministry has announced the Amnesty Scheme during the year 2004 inviting tax payers to pay the same on or before 31^st October 2004 with interest amount if any, so that they can avail exemption of the penalty amount. In this context the ld. Counsel has relied upon the following cases:Sital Subhashchand Shah v. CCE Nasik (2006) 7 STJ 138 (CESTAT Mumbai).

ii) Ar Sandeep C Sikchi v. CCE Nasik [2006] 7 STJ 137 (CRSTAT Mumbai)Commr. of C.Ex. Bhopal v. Bharat Security Services and Workers Cont.

4. Having gone through the above referred decisions and further giving due credence to the payments made, even before issuing show case notice and after adjudication of the matter, payment of original penalty imposed and further applying the scheme of amnesty to the case relating to the period prior to introduction of this scheme as laid down in the aforesaid decisions. I hereby set aside the impugned order passed by the ld. Commissioner, Nashik and allow the appeal with consequential relief to the appellants.

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