

Agarwal Trading Co. Vs. the Commissioner of Central

Agarwal Trading Co. Vs. the Commissioner of Central

SooperKanoon Citation : sooperkanoon.com/44338

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-11-2006

Reported in : (2007)9STJ99CESTAT(Mum.)bai

Judge : A Wadhwa

Appellant : Agarwal Trading Co.

Respondent : The Commissioner of Central

Judgement :

1. The appellants in this case are rendering service of clearing and forwarding agent and were liable to service tax. However, there has been consistent delay in payment of the Service Tax and accordingly besides the amount of service tax, a penalty of Rs. 5,000/- under Section 76 and Rs. 1,000/- under Section 77 of the Finance Act, 1944 was imposed on the appellants by the Assistant Commissioner. This order was reviewed by the Commissioner, who enhanced the penalty from Rs. 5,000/- to Rs. 1,24,285/- on the ground that the appellants have not been able to show any justifiable reason for delay in payment of Service Tax.

2. Ld. Advocate appearing for the appellants submits that the Commissioner (Appeals) was not justified in enhancing the penalty. In any case, submits the Ld. Advocate that the delay has not been correctly calculated by the original adjudicating authority. Drawing my attention to the first entry in the table reproduced in the said letter, he submits that the duty date was 26/01/2000 and this was paid on 28/04/2000. As such, there was a delay of 94 days, whereas the

Assistant Commissioner has considered the said delay as four months. As such, he submits that the delays arrived at by the Assistant Commissioner are higher than the actual days of delay in depositing the Service Tax.

3. Ld. DR appearing for the revenue draws my attention to the Larger Bench's decision of the Tribunal in the case of ETA Engineering Ltd., v. CCE, Chennai minimum penalty under Section 16 of the Finance Act is Rs. 100/- per day. Inasmuch as Section 80 of the Finance Act is not attracted in the present case, minimum penalty of Rs. 100/- per day should have been imposed. He, however, seeks imposition of maximum penalty of Rs. 200/- per day.

4. After considering the submission, I find that there is discrepancy in computing the number of day's delays in depositing the Service Tax.

For the said purpose, I set aside the impugned order and remand the matter to the original adjudicating authority for recalculation of penalty amount in terms of the Section 76 of Finance Act, 1994 read with the Larger Bench's decision referred supra. The appeal is thus allowed by way of remand.

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