Lovely Dish Centre Vs. Cce

Lovely Dish Centre Vs. Cce

SooperKanoon Citation : sooperkanoon.com/44488

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-02-2007

Reported in : (2007)9STJ20CESTATNew(Delhi)

Judge : P Das

Appellant : Lovely Dish Centre

Respondent : Cce

Judgement :

1. This appeal is filed by the appellant against the imposition of penalty of Rs. 15,000/-.

2. The relevant facts of the case, in brief, are that the appellants are engaged in providing services of cable operator on which service tax was leviable with effect from 16.8.2002 under Section 65 of Chapter V of the Finance Act, 1994. Show cause notice dated 10.9.2004 was issued demanding service tax amounting to Rs. 42,003/- and imposition of penalty, interest for non-payment of service tax during the period September, 2002 to 25.10.2002. After receipt of the show cause notice, the appellants deposited entire amount of tax on 21.10.2004. They have also filed a declaration on 22.10.2004 which was received by the department on 25.10.2004. By the adjudication order dated 30.11.2005, the Assistant Commissioner of Central Excise confirmed the tax of Rs. 42,003/- and also imposed penalty of equal amount. In the impugned order, the Commissioner (Appeals) reduced the penalty to Rs. 15,000/-.

3. The learned advocate on behalf of the appellant submits that Voluntarily Disclosure Scheme was announced by the department vide F.No. 137/39/2004-Ex.4 dated 23.9.2004 and the scheme was effect upto 30.10.2004. He submits that in this case, the appellant deposited tax in terms of the aforesaid scheme within the stipulated period and, therefore, no penalty can be imposed upon them. He relied upon the decision of this Tribunal in the case of CCE, Bhopal v. R.K. Electronic Cable Network 2006 (2) STR-153 (Tri.-Del). Therefore, he submits that in the facts and circumstances when the appellant deposited tax voluntary in terms of the Scheme, no penal action can be taken.

4. The learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that the department detected non-payment of tax and, accordingly show cause notice was issued;. Thereafter, the appellant deposited tax in pursuance of the show cause notice. Hence, Voluntarily Disclosure Scheme cannot be applicable in this case. He also submits that the Commissioner (Appeals) has also reduced the penalty and taken lenient view and, therefore, the appeal should be rejected.

5. After hearing both sides and on perusal of the record, I find that in this case, the appellant deposited tax on 21.10.2004. Penalty was imposed by the adjudicating authority as proposed in the show cause notice. Hence, I am of the view that Voluntarily Disclosure Scheme dated 23.9.2004 as referred to by the learned advocate is not applicable herein and the penalty was rightly imposed by the lower authorities. I also find that the Commissioner (Appeals) has taken a lenient view in respect of imposition of penalty. As such, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal is rejected.