

The Management Group Vs. Commissioner of Service Tax

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-26-2007

Reported in : (2007)11STJ173CESTATNew(Delhi)

Judge : R Abichandani

Appellant : The Management Group

Respondent : Commissioner of Service Tax

Judgement :

1. The appellant challenges the order of the Commissioner (Appeals) upholding the order-in-original imposing penalty of Rs. 20,551/- under Section 76 of the Finance Act, 1994, for late payment of Service Tax.

The appellant did not file any reply to the show cause notice.

2. The learned authorised representative for the appellant submitted that the appellant had deposited the service tax along with interest on 13.8.02 and the service tax return was to be submitted on 25.4.02.

There was delay of only about four months. It was submitted that since the appellant honestly deposited the dues, penalties should not have been imposed under Section 76 of the Act. Moreover, there was a Extra-ordinary-Tax-Payer Friendly Scheme, benefit of which has not been given to the appellant. It was also submitted that the appellant was suffering from asthma which should have been considered as a reasonable cause for waiving the penalty by applying the

provisions of Section 80.

3. It is evident from the provision of Section 76 that mens rea is not an ingredient for imposing the penalty thereunder unlike the provisions of Section 78. The provision of Section 76 have to be mandatorily applied unless the ground is made out for not imposing penalty as contemplated by Section 80.

4. In the present case, no particulars of ailment were given and it is now stated that appellant is suffering from asthma, which appears to be a chronic disease. No medical proof was submitted at the relevant time to show that during the period of delay, the sole proprietor of the appellant was incapacitated in any manner. The adjudicating authority in its discretion has held that no case was made out for imposing penalty under Section 80. The appellate Commissioner has concurred with the findings of the adjudicating authority. There is no case whatsoever made out for meriting admission of this appeal.

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