

Aditya Consultant Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-17-2007

Reported in : (2007)11STJ179CESTATNew(Delhi)

Judge : S T T.V.

Appellant : Aditya Consultant

Respondent : Cce

Judgement :

1. The appellant agitates the order of Commissioner (Appeals) dated 10.10.2006. In the impugned order, the Commissioner had made the following observations while upholding the order of the lower authority imposing penalty. Para 4 and 5 of the impugned order in appeal reads as follows: I observe that the appellant has neither deposited service tax for the period from 01.04.2004 to 30.09.2005 nor filed the ST-3 return for the half year ending Sept. 2005 within the prescribed period by 25.10.2005. The appellant has contravened the provisions of Section 68 & 70 of the Finance Act, 1994 read with Rule 6, 7 and the service tax Rules 1994. The appellant has deposited the entire amount of service tax i.e. Rs. 40,800/- on 26.12.2005 and also filed the ST-3 return on 26.12.2005. The appellant also deposited due interest of Rs. 2194/- on 3.1.2006 for delayed payment of service tax before issuance of show cause notice dated 1.3.2006. I find that the appellant has not disputed about the payment of service tax alongwith interest which they have rightly paid consequently. The same has been confirmed and have rightly paid consequently. The same has been confirmed and appropriated by the

adjudicating authority which is justified. The adjudicating authority has also imposed equal penalty of Rs. 40,800/- on the appellant under Section 78 of the Finance Act, 1994. With regard to imposition of penalty the appellant has contested that where the amount of service tax alongwith interest is deposited before the issuance of show cause notice, penalty provisions cannot be invoked against them.

5. The appellant has cited several decisions in their favour. I find that the facts & circumstances of the cited case are different that of present case so these are not applicable to the instant case. I find that the appellant has paid service tax amounting to Rs. 40,000/-alongwith education cess amounting to Rs. 800/- on persuasion of the department, therefore, the appellant is liable for penalty under Section 78 of the Finance Act, 1994. I find that the adjudicating authority has rightly confirmed the demand of service tax and interest and rightly appropriated the same. Penalty under Section 78 of the Act *ibid* has rightly been imposed on the appellant. I agree with the findings of the adjudicating authority in this regard.

2. Nobody represented the appellant despite notice. The learned authorized representative (DR) heavily relies upon the recent judgment of Punjab & Haryana High Court in the case of CCE, Delhi-III v. Machino Montell (I) Ltd. that payment of tax before issuance of show cause notice cannot prevent the department from invoking penal provisions under the law. In view of the above judgment supporting the department contention, the appellant has not made out any case in favour of them. Accordingly, the appeal is dismissed and the order of the Commissioner (Appeals) is upheld.

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