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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-18-2007

Judge : A T K.K.

Appellant : Ramesh Patkar

Respondent : Commissioner of Central Excise

Judgement :

1. The short matter involved in this appeal is regarding reduction in penalty which was enhanced by Commissioner (Appeals) from Rs. 1,000/ to Rs. 76,677/- on the ground that there has been delay in payment of Service Tax repeatedly and the original authority has not given any justification for reducing the penalty under provision of Section 80 of the Finance Act, 1994.

2. The learned advocate for the appellants submits that the provision of Section 76 were amended in 10^th September 2004 when the words Rs. 100/- for every any from which the such failure continue were introduced which were earlier not there and therefore a penalty of Rs. 100/- per day could not have been imposed for the period prior to September 2004 and the very ground of appeal that Section 70 prescribes a minimum penalty of Rs. 100/- per day was erroneous and not sustainable. He also pleads leniency on the ground that the tax has been paid alongwith interest and as there was some doubts regarding leviability of tax on Architects and similar default by other have been condoned and penalty waived by looking into the amenity scheme introduced by the Government in the year 2004.

3. Learned D.R. however submits that the minimum penalty prescribed under Section 76 is Rs. 100/- per day only and this has been held by the Larger Bench in the case of ETA Engineering Ltd. v. Commissioner of Central Excise, Chennai . He further submits that there are no grounds for reducing the penalty under Section 80 as the default has been repeated and no worthwhile reasons have been brought out for reducing the penalty.

4. I have considered the submissions. I find that Larger Bench decision in the case ETA Engineering Ltd. has conclusively held that the minimum penalty prescribed under Section 76 is Rs. 100/- per day and therefore the appellant's plead that the ground of appeal itself is erroneous is not sustainable. As regards reduction in penalty, I find that there has been repeated delay in payment of Service Tax but looking to the cases cited by the appellants and the fact that amenity scheme was introduced in 2004 allowing the assessee to pay Service Tax alongwith interest and even though the amenity scheme did not provide for non-imposition of penalty, a consistent view has been taken by the Tribunal that in such cases penalty is not called for once the entire amount alongwith interest has been paid, I reduce the penalty from Rs. 76,677/- to Rs. 15,000/- only.