Adm India Enterprises Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/45806

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-2007

Reported in : (2008)12STJ53CESTATNew(Delhi)

Judge : P Das

Appellant : Adm India Enterprises

Respondent : Cce

Judgement :

1. The appellant is a Commission Agent and Channel partner of M/s.

Airtel. It has been alleged that on scrutiny of data provided by M/s.

Airtel, it transpired that the appellant received the gross amount of taxable value involving service tax to the tune of Rs. 2,56,876/- during the period July, 2003 to December, 2004.

2. The learned Counsel on behalf of the appellant submits that there was a dispute regarding levy of service tax on such activity.

Therefore, the appellant obtained registration from the central excise office for payment of service tax on 30.11.2004 and paid entire amount of tax with interest during the period from December, 2004 to April, 2005. He submits that thereafter the department issued show cause notice dated 30.5.2005. It is his contention that there is no suppression of facts with intent to evade payment of tax in as much as the appellant deposited tax with interest before the issue of show cause notice. He further submits that in this case, no penal provision can be involved.

3. The learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that the Department detected non-payment of tax during scrutiny of record of M/s. Airtel. Thereafter, the appellant obtained registration and paid tax. Thus, this is a clear case of suppression of facts with intend to evade payment of tax. So, imposition of penalty under the various provisions is justified.

4. After hearing both sides and on perusal of the record, it is seen that the Commissioner (Appeals) upheld the penalty of equal amount of tax on the ground that the department detected evasion of tax. On perusal of Section 73 of the Finance Act, 1994, it appears that where the service tax has not been levied or paid or has been short paid by reason of fraud, collusion or willful misstatement or suppression of facts with intent to evade payment of tax, such person must pay the tax full or in part, as may be and interest paid thereon and penalty equal to 25% of the tax within 30 days of the receipt of the notice. In this case, the appellant paid tax before the issue of show cause notice and, therefore, the imposition of penalty under Section 73 equal to the amount of tax is not justified. Accordingly, the penalty of Rs. 2,57,000/- under Section 78 read with Sub-section 3 of Section 73 of the Act is reduced to Rs. 64,250/-. As such, I do not find any justification to imposed penalty under the other provisions of the Act and the same are set aside. To sum-up, the total penalty of Rs. 3,70,693/- is reduced to Rs. 64,250/- and otherwise the appeal is rejected.