Akila Textiles Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-26-2007

Reported in : (2008)10STR622

Judge : P Chacko

Appellant : Akila Textiles

Respondent : Commissioner of Central Excise

Judgement :

1. A demand of service tax was raised on the appellants by the department in show-cause notice dated 13-8-2002 in respect of GTO service received by them during the period 16-11-97 to 2-6-98. This tax was paid on 10-12-2002. The original authority did not charge interest on tax or impose penalty on the party. Its order was revised by the Commissioner who imposed a penalty of Rs. 26,175/- on the appellant under Section 76 of the Finance Act, 1994 and also directed them to pay interest on tax under Section 75 of the Finance Act. The present appeal is against the demand of interest and penalty.

2. After examining the records and hearing both sides, I note that a similar case had arisen for consideration before this Bench in Appeal No. S/94/2005 [Prachidhi Spinners (P) Ltd. v. CCL, Coimbatore 2007 (8) S.T.R. 260 (Tri)]. The Commissioner (Revisional Authority) had imposed a similar penalty on that party under Section 76 of the Finance Act. In that case, the party had paid service tax with interest on 10-12-2001 and the original authority had not imposed any penalty

on them. The revisional authority imposed the above penalty on the party, which was set aside in Final Order No. 190/2007 dated 2-3-2007. [2008 (8) S.T.R.260 (Tribunal)] Paragraphs 2 and 3 of the said final order are reproduced below: 2. The assessee had received Goods Transport Operators' Service (GTO service, for short) during the period 16-11-1997 to 2-6-98 but had not paid any tax thereon during such period. They had not even filed service tax returns during the said period. However, later on, they filed such returns on 12-12-2002 and simultaneously paid the tax with interest thereon. This payment was before the deadline fixed by the Supreme Court in the case of Gujarat Ambuja Cements Ltd. v. Union of India . The original authority, having noted that the assessee had complied with the provisions of Section 71A of the Finance Act, 1994 and Rule 7A of the Service Tax Rules, 1994 within the period prescribed under the Finance Act, 2003, refrained from imposing penalty on them. It was this part of the order of the Assistant Commissioner that was revised by the Commissioner in the impugned order, wherein the above penalty was imposed on the assessee.

3. After hearing both sides and considering their submissions, I observe that, in the impugned order, learned Commissioner proceeded on the wrong premise that the assessee had not paid service tax as assessed by themselves in the returns which were filed on 12-12-2002, that the assessee had, in fact, made such payment is a fact acknowledged by the original authority. However, apparently, it occurred to the Commissioner that such payment of tax was beyond the period prescribed under the Finance Act, 2003. He took the view that the Finance Act, 2003 did not grant any extension of time for payment of service tax by recipients of GTO services for the aforesaid period. Obviously, learned Commissioner was misconceiving the provisions of law. He also failed to take into account the relief granted to similar assessees by the apex court in the case of Gujarat Ambuja Cements (supra). Their Lordships had held, in para 44 of their judgment as under: ...Furthermore the liability to pay interest or penalty outstanding amounts will arise only if the dues are not paid within the period of two weeks from the order passed by this Court on 17th November 2003. In those cases in which the tax may have been paid but not refunded to the writ petitioners, for whatever reason, there is no question of levy of any interest or penalty at all.

The appellants had paid the tax in question within the period allowed by the Finance Act, 2003 as also that allowed by the apex court in the above case. In the circumstances, they were not liable to be penalized.

3. Following the above decision, I set aside the impugned order and allow this appeal.