

Commissioner of C. Excise Vs. Ajanta Sales Corporation

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-30-2007

Reported in : (2007)13STT324

Judge : T Anjaneyulu

Appellant : Commissioner of C. Excise

Respondent : Ajanta Sales Corporation

Judgement :

1. Heard both sides. I have seen the impugned order passed by the Learned Commissioner (A), Aurangabad wherein he has imposed penalty of Rs. 25,000/-.
2. Aggrieved by the same, the Revenue is in appeal. This case pertains to payment of Service Tax which has been delayed including filing of Returns Under Section 77 & 78 of Service Tax Act. Of course, there is no doubt that the Service Tax amount of Rs. 97,048/- and interest amount of Rs. 29,395/- was paid much prior to the issue of Show Cause Notice. The defense of the assessee in not making payment is that there was no intention to commit delay on their part and this is due to unawareness of the provision of law. Further it is submitted that they have not collected the Service Tax from the Service Receiver (Grasim Industries Ltd) and if they have knowledge, they would have paid it and collected it from them. Anyway the assessee has paid the amount under the bonafide belief without any ill intention. According to the assessee the Commissioner (A) has rightly reduced the penalty amount to Rs. 25,000/- which has also been paid.

3. The learned DR contended that the Commissioner (Appeals) has no discretion to reduce the penalty amount more so no reason has been given in the impugned order. I perused the impugned order and find that the learned Commissioner has failed to assign any reason for less imposition of penalty. The facts as submitted above and the reason for reduction in penalty are not found in the impugned order. Therefore, it is felt expedient to remand the case back to the Commissioner (Appeal) for de-novo proceedings to assign reasons for reduction in penalty, by taking into consideration the recent judgment of Bombay High Court at Aurangabad Bench which shows there is no discretion under Section 11-AC of the Central Excise Act to award penalty lesser than evaded duty.

Accordingly the appeal is allowed in remand in above terms.

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