Commissioner of C. Ex. Vs. Science Center

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-24-2007

Judge : R Abichandani

Appellant : Commissioner of C. Ex.

Respondent : Science Center

Judgement :
1. The Revenue has challenged the order dated 25-1-2007 made by me Commissioner (Appeals-I) to the extent that it modifies the order-in-original by setting aside the penalties imposed under Sections 76, 77 and 78 of Chapter V of the Finance Act, 1994. The fact that Service tax of Rs. 1,93,238/- was due along with interest from the respondent-assessee was never in dispute. However, since the assessee had deposited the Service tax in piecemeal on various dates as noted in paragraph 4 of the impugned order, the Appellate Commissioner held that, no penalty can be imposed when the duty was paid before issuance of the show cause notice. He placed reliance on the decision of the Larger Bench of the Tribunal in CCE, Delhi-III Gurgaon v. Machino Montell Ltd. 2. Admittedly, the appellant did not deposit interest and penalty amounts as contemplated by the provisions of Section 78 of the said Act, which is similar to Section 11AC of the Central Excise Act, 1944.

Therefore, the appellant was not entitled to the benefit of the lesser penalty of 25% of the Service tax determined as contemplated by the first proviso to Section 78 of the said Act.CCE, Delhi-III Gurgaon v.Machino Montell Ltd. (supra) was reversed by the High Court of Punjab and Haryana in CCE v. Machino Montell Ltd. 4. Admittedly, the appellant did not deposit interest and penalty amounts as contemplated by the provisions of Section 78 of the said Act, which is similar to Section 11AC of the Central Excise Act, 1944.

Therefore, the appellant was not entitled to the benefit of the lesser penalty of 25% of the Service tax determined as contemplated by the first proviso to Section 78 of the said Act.

5. The decision of the Larger Bench in Machino Montell Ltd.(I) Ltd. was reversed by the High Court of Punjab and Haryana in CCE v. Machino Montell (I) Ltd. it was held that, once a case is covered by the provisions of Section 11A, mere deposit prior to issuance of show cause notice under Section 11A of the Central Excise Act, 1944, will not necessarily negate the situation mentioned therein. This would mean that if the duty is deposited prior to the issuance of the show cause notice, there would not be any automatic waiver of penalty.

6. It transpires from the record that there was delay of 146 days in depositing the Service tax due for the period from July 2003 till 21-8-2006. Penalty was, therefore, imposable under Section 76 of the Act, which did not involve mens rea. No returns were filed and, therefore, penalty under Section 77 was also imposable. The original authority found that there was suppression of fact to evade Service tax until the premises were searched by the department and the documents were resumed in the panchnama dated 25-1-2006. On this finding, penalty under Section 78 was clearly warranted. Therefore, there was no valid reason for the Appellate Commissioner to set aside the penalties imposed on the respondent. The penal provisions do not warrant any such course.

7. The impugned order to the extent that it sets aside the penalties imposed on the respondent is, therefore, set aside and the order-in-original stands restored. The appeal is, accordingly, allowed.