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C.C.E. Vs. Nesamony Tours and Auto

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

Decided On : Oct-29-2007

Reported in : (2008)10STR42

Judge : K T P.

Appellant : C.C.E.

Respondent : Nesamony Tours and Auto

Judgement :

1. Revenue has filed this appeal against the impugned order whereby the Commissioner (Appeals) reduced the penalty imposed on the respondents under Section 76 and Section 78 respectively from Rs. 1000/- and Rs. 8173/- to Rs. 500/- and to Rs. 2000/-. The original authority had imposed penalties under Section 75A, Section 76, Section 77 and Section 78 of the Finance Act, 1994, in addition to demanding the service tax of Rs. 8173/- due and the interest thereon not paid by M/s. Nesamony Tours & Auto Consultant, Nagarcoil.

2. The ld. SDR reiterates the grounds of appeal and submits that Section 76 of the Finance Act, 1994 mandates that any person who fails to pay service tax shall be liable to pay in addition to the tax due and interest thereon, the penalty which shall not be less than Rs. 100/- for everyday during which the failure continues, which may extend to Rs. 200/- but not in excess of the amount of service tax not paid.

It is argued that the reduction was inconsistent with the above legal provisions. However, he is not in a position to explain how the penalty of Rs. 1000/- imposed by the original authority sought to be restored is in accordance with law. As regards the penalty under Section 78, it is argued that the original authority had imposed an amount of Rs. 8173/- equal to the duty not paid which was lawful. Reduction of this penalty to Rs. 2000/- was against the express mandate of Section 78.

Section 78 prescribed that the assessee who had not paid the tax was liable to penalty not less than the amount of service tax not levied.

3. I find that the Commissioner has reduced the penalties after taking into consideration the facts of the case and the ratio of the decision of the Bangalore Bench of CESTAT in the case of CCE, Bangalore v. S.B.Gopalakrishna . In the above case, the Tribunal had decided that in respect of penalty under Section 78 of the Finance Act, 1994, the quantum was discretionary and minimum penalty may be imposed in the facts of the case. The ratio is in line with the Apex Court decision that the penal provisions had an inbuilt discretion conferred on the authorities and it was not necessary to impose a minimum penalty for the reason that the statute provided for it. Moreover Section 80 of the Finance Act '94 empowers the authorities to waive penalties under the Sections 75, 76, 77 and 78 of the Finance Act '94 if the assessee shows sufficient cause for the failure involved. In the circumstances, I do not find any reason to interfere with the impugned order. The revenue appeal is accordingly dismissed.

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