Commr. of C. Ex. Vs. Equator Property Managers P. Ltd.

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SooperKanoon Citation : sooperkanoon.com/46390

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-02-2007

Judge : M Ravindran

Appellant : Commr. of C. Ex.

Respondent : Equator Property Managers P. Ltd.

Judgement :

1. This appeal is directed against the Order-in-Appeal No.AT/853/M-II/2006 dt. 23-2-07.

Considered the submissions made by both sides and perused the records.

The contention of the Ld. SDR in this case is that the Ld. Commissioner (Appeals) has reduced the penalties imposed on the respondent to Rs. 15,000/-under all the Sections i.e. Section 76,11 and 78 of the Finance Act, 1994. It is his submission that in this case the respondent had clearly violated the provisions regarding the non-filing of the returns and not depositing the Service Tax correct (sic) (collected) from the Customers. He submits that the violation of the laws made by the respondent does not warrant any reduction in penalties. Ld. Advocate defends the order on the ground that the Ld. Commissioner (Appeals) has considered the provisions of Section 80 and reduced penalties imposed on the respondent. It is seen from the records that the respondent in this case admitted the tax liability and accordingly discharged the same. While coming to the reduction of the penalties imposed by the adjudicating authority the Ld. Commissioner (Appeals) has held as under: As regards imposition of penalties, I find that the service tax being a new levy, they were not aware of the relevant provisions of the service tax. The lower authority has imposed different penalties under different provisions and the quantum of penalties is excessive. The adjudicating authorities have discretion while imposing penalty.

While arriving at the above said findings he also kept in mind, the law settled by the Hon'ble Supreme Court that as to the quantum of penalty is to be decided on the facts and circumstances of the case. After coming to such, the finding, the Ld. Commissioner (Appeals) has reduced the penalties imposed on the respondent under the sections as indicated above. I find that before the Hon'ble High Court of Judicature at Bombay in Central Excise Appeal No. 241 of 2006, the Commissioner of Service Tax, preferred an appeal against order of Tribunal vide which penalties imposed under Sections 76, 77, 78 & 79 were reduced. The Hon'ble High Court dismissed the said appeal by coming to the following findings 2008 (9) S.T.R. 230 (Bom.).

This is an appeal against the order dated 1-12-2005 wherein the Tribunal recorded a finding that Section 80 has overriding effect on Sections 76,77,78 and 79 of the Service Tax Act, The Commissioner (Appeals) considering Section 80 has reduced the penalty. There is no question of any legal infirmity in the order.

The appeal is filed in terms of the questions of law as formulated in para-graph 4 of the appeal memo. We have already held in other matters that Section 76 is subject to Section 80 and there is discretion to reduce the penalty.

Once that is the case, we do not find any infirmity in the order of the Tribunal. The question as framed would not arise, therefore, appeal dismissed.

It can be noted that the above reproduced ratio of the order of the Hon'ble High Court of Judicature at Bombay squarely covers the issue in favour of the respondent. As such, the impugned order is correct and cannot be faulted with.