Tele Tech Communications Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-05-2007

Reported in : (2008)12STJ401CESTATNew(Delhi)

Judge : P Das

Appellant : Tele Tech Communications

Respondent : Cce

Judgement :

1. By adjudication order dated 7 March 2006, the Assistant Commissioner of Central Excise appropriated the tax as already paid by the appellant and also imposed penalty under Section 77 and Section 78 of Finance Act, 1994. The appellant preferred an appeal before the Commissioner (Appeals) against the said adjudication order. By Order-in-Appeal dated 31 August 2006, Commissioner (Appeals) upheld the adjudication order.

Then the appellant filed an appeal against the Order-in-Appeal before the Tribunal. By final order No. 1049/07-SM (BR) dated 4 June 2007, the Tribunal set aside the impugned orders. The relevant portions of order of the Tribunal are reproduced below: 4. The submission of the learned Counsel for the appellant is that the lower authorities were in error in imposing the penalty in as much as the scheme made no distinction between parties who sought registration on their own and the parties who took registration in the light of pending proceedings.

5. The scheme has been extracted under paragraph '2'. A perusal of the scheme makes it clear that service providers were welcome to avail of the scheme irrespective of whether proceedings have been initiated or not. In this view of the matter, the lower authorities were clearly in error in denying the appellant the benefit of exemption from penalties. The impugned order is not sustainable. It is set aside and the appeals are allowed with consequential relief, if any, to the appellant.

2. The Commissioner of Central Excise in exercise power under Section 84 of the Finance Act 1994 revised the adjudication order dated 07/3/06. By order in revision dated 17/4/07 imposed penalty under Section 76 of the said Act. The appellant filed the present appeal against the revised order of Commissioner.

3. The learned advocate on behalf of the appellant submits that the Tribunal vide final order dated 4 June 2007 set aside the impugned order and therefore the revision order of the Commissioner against the same adjudication order is not sustainable. He further submits that the appellant paid the tax on the amenestry scheme. So, the imposition of penalty under Section 76 is contrary to the said scheme.

3.1. The learned DR reiterates the findings of the order of the Commissioner. He submits that the Tribunal set aside the penalty imposed under Section 77 and 78 of the Finance Act. In the present revised order, the Commissioner imposed penalty under Section 76 which was not set aside by the Tribunal. Therefore, the final order of the Tribunal is not applicable herein.

4. After hearing both the sides and on perusal of the record, I find force in the submission of the learned advocate. It is seen that the impugned order was passed against the adjudication order dated 7/3/05.

It is further seen that the Tribunal vide final order dated 4 June 2007 set aside the adjudication order dated 07/03/05 and order in appeal dated 31 August 2006. Therefore, the impugned order passed by the Commissioner against the said adjudication order dated 7^th March 2006 is not maintainable. The impugned order is set aside. The appeal is allowed with consequential relief.