

Arvind Motors Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-2007

Reported in : (2008)9STR464

Judge : R Abichandani

Appellant : Arvind Motors

Respondent : Cce

Judgement :

1. The appellant challenges the order of the Commissioner (Appeals) passed on 11.12.2006 upholding the penalties imposed by the adjudicating authority under the provisions of Section 75-A, 76 and 78 of Chapter V of the Finance Act, 1994.
2. The appellant was authorised dealer of Hyundai cars and was also providing service in relation to promoting and marketing various car loan schemes of the Bank and financial institutions. The appellant received commission for the cars sold in the assigned territory.

According to the Revenue, the appellant was providing services under the category of 'Business Auxiliary Service'. The activities undertaken by the appellant were, according to the Revenue, directly or indirectly linked to the promotion and marketing of financial services provided by clients and also with promotion and sale of goods belonging to the clients. The adjudicating authority, on the basis of the material on record, gave a finding that the appellant was liable to pay Service

Tax of Rs. 1,27,543/- on the value of the taxable service, which had escaped assessment during the period from 01.07.2003 to 22.02.2006.

Since the amount was already paid up prior to the issuance of the show cause notice dated 28.02.2006, it was ordered to be adjusted towards the payment of Service Tax confirmed under the order. Penalties were imposed of Rs. 500/- under Section 75A; of Rs. 1,27,543/- under Section 76 of the Act; and of Rs. 1000/- under Section 78 of the Act.

3. The Appellate Commissioner, while dealing with the contention of the appellant that penalties ought not to have been imposed, held in paragraph 9 of the impugned order that the Hon'ble High Court of Punjab & Haryana in the context of scope of Section 11-AC of the Central Excise Act, 1944 has held in Commissioner of Central Excise, Delhi-III v. Machino Montell (I) Ltd. , that : "Once a case is covered by situation, as stated in the Section, i.e, Section 11-AC of the Central Excise Act, 1944, mere deposit of duty before issue of notice does not necessarily negate situation mentioned in the said Section." It appears that the Ld. Commissioner (Appeals) has proceeded on the footing that equal penalty is to be imposed, following the ratio of the decision of the Hon'ble High Court of Punjab & Haryana in the case of Commissioner of Central Excise, Delhi-III v. Machino Montell (I) Ltd. (supra), even in cases falling under the provisions of Section 76 of the Act. There appears to be an obvious error committed in proceeding on such assumptions because the provisions of Section 80 of the Finance Act, 1994 do not have any parallel in Section 11-AC of the Central Excise Act, 1944. under Section 80 of the said Act, it is provided that, notwithstanding anything contained in the provisions of Sections, 76, 77 & 78, no penalty shall be imposed on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for such failure. The Commissioner (Appeals) instead of considering the issue, whether reasonable cause for failure was made out, resorted to the stringency of Section 11-AC of the Central Excise Act, 1944, as reflected in the decision of Commissioner of Central Excise, Delhi-III v. Machino Montell (I) Ltd. (supra). He also did not notice that penalty of only Rs. 1,000/- was imposed under Section 78 of the said Act which was of more aggravated nature than Section 76 under which penalty equal to the tax determined was imposed.

The validity of the order imposing penalties is, therefore, required to be re-considered by the learned Commissioner (Appeals). The impugned order is, therefore, set-aside and the matter is remanded to the Commissioner (Appeals) for a fresh consideration and decision, in accordance with law and in light of this judgment. The appeal is accordingly allowed by way of remand.

(Dictated and pronounced in the open Court on the 23rd day of November, 2007)

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