

Fiitjee Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-2007

Reported in : (2008)13STJ151CESTATNew(Delhi)

Judge : P Das

Appellant : Fiitjee Limited

Respondent : Cce

Judgement :

1. The appellant filed this appeal against imposition of penalty under Section 76 and 78 of the Finance Act, 1994 vide revision order dated 14.05.2007 passed by the Commissioner of Central Excise.

2. Learned Advocate on behalf of the appellant submits that the appellants are rendering services of coaching centre. They paid tax @ 8% and filed the return accordingly. Later service tax was enhanced from 8% to 10.2% w.e.f. 10.09.2004 by Finance Act 2004. The differential amount of tax with interest were deposited by them on 24.11.2005. The adjudicating authority dropped the penalty under Section 76 and 78 of the Finance Act, 1994. After considering that the appellant was under a bonafide belief that the rate applicable was 8%.

He further submits there is no suppression of facts with intent to evade tax and therefore penalty under Section 76 and 78 cannot be invoked. He relied upon the decision of the Hon'ble High Court of Karnataka in the case of CCE, Bangalore-II

v. Sunitha Shetty reported in 2004 (174) FAT 313 (Kar.).

3. Learned DR on behalf of the respondent reiterates the finding of the Commissioner of Central Excise. He submits that it is revealed from the order of the Commissioner that after long persuasion by the department the appellant deposited the differential tax. He further submits that there is a delay of 14 months and therefore imposition of penalty under Section 76 is justified. He also submits that the appellant suppressed the value of the taxable service and Section 78 is rightly invoked.

4. After hearing both the sides and on perusal of the records, I find that the appellant paid tax @ 8% and filed the return and therefore the allegation of suppression of facts with intent to evade duty is not sustainable and Section 78 of the Finance Act, 1994 cannot be invoked.

Regarding imposition of penalty under Section 76, the Commissioner of Central Excise had given a finding as under: Short payment of service tax has, in fact, been accepted by the assessee and consequently the sum of tax short paid earlier was paid subsequently on 24.11.2005 after pursuance of the matter by the department vide letters dated 25.5.2005, 7.7.05 and 4.8.2005.

5. I agree with the finding of the learned Commissioner that it is not a case of interpretation of law. It is very clear that the appellant is liable to pay differential tax w.e.f. 10.09.2004 and it was paid on 24.11.2005. Therefore, the imposition of penalty under Section 76 is justified. Accordingly, the penalty under Section 78 is set-aside and penalty under Section 76 is upheld. The order is modified in the above terms.

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