Commissioner of Central Excise Vs. Renee Telepoint

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-2007

Reported in : (2008)10STR414

Judge : J Balasundaram, Vice-

Appellant : Commissioner of Central Excise

Respondent : Renee Telepoint

Judgement :
1. The Revenue is aggrieved by the setting-aside of the penalties imposed by the adjudicating authority under the provisions of Sections 78 and 75A of the Finance Act, 1994 by the lower appellate authority.

I have heard both sides. According to the Revenue, the argument of the respondents that there was reasonable cause for failure to comply with the provisions of Sections 76, 77 and 78 due to initial confusion as to whether their activity of purchasing and selling sim cards amounted to rendering services in the nature of business auxiliary services should not have been accepted by the Commissioner (Appeals) for the reasons that the respondents were carrying out these services over a period of one and half years after the introduction of business auxiliary service. Therefore, the learned DR submits that there was no reasonable cause for failure to comply with the provisions of Sections 76 to 78 and therefore, the provisions of Section 80 are not attracted in the facts of the present case. Section 80 provides that no penalty shall be imposable for any failure under

Sections 76, 77 or 78, if the assessee proves that there was reasonable cause for the failure.

2. I find that for the purpose of imposition of penalty under Section 78, non-levy or short levy of service tax should be by reason of fraud, collusion, willful misstatement or suppression of facts or contravention of any of the provisions of Chapter V or of the Rules with intent to evade payment of duty and in such cases penalty is imposable under Section 78. In the present case, there is no finding that non-payment was due to any reasons enumerated therein. Therefore, penalty under Section 78 was not justified. However, as regards Section 75A under which penalty of Rs. 500/- can be imposed for failure to apply for registration, I accept the plea of the Revenue that penalty is called for under this Section. The penalty under this Section cannot exceed Rs. 500/-. I, therefore, hold that the respondents are liable to penalty of Rs. 500/- under the provisions of Section 75A.3. The appeal is thus partly allowed by upholding the findings of the Commissioner (Appeals) as regards setting-aside the penalty under Section 78, but set-aside the findings on Section 75A by holding that the respondents herein are liable to pay penalty of Rs. 500/- under this Section.