

Edc Ltd. Vs. Ccex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-11-2008

Reported in : (2008)13STJ155CESTAT(Mum.)bai

Judge : M Ravindran

Appellant : Edc Ltd.

Respondent : Ccex

Judgement :

1. This appeal is listed for admission as the amount involved in this case is less than threshold limit. On perusal of the appeal, I find that it is a Service Tax matter and 2nd proviso of Section 35B does not apply to Service Tax matters. Hence, the appeal is admitted.

2. Heard both sides. On perusal of the records, I find that at this stage the appeal itself can be disposed of, hence, I take up the appeal for disposal.

3. The appeal is directed against the order-in-appeal No.GOA/CEX/SB/42/2007 dated 12.4.2007 for imposition of penalty under Section 76 read with Section 77 of the Finance Act, 1994. The Commissioner (Appeals) has come to the conclusion that the appellants have not come up with any reasonable grounds to attract the provisions of Section 80, so as to prove the reasonable cause for such failure and hence, upheld the penalty.

4. On perusal of the records, I find that the appellants' being State Finance Corporation, were providing loans to the small industrial enterprises and enterprises carrying on other economic activities for starting, running, expanding and modernizing. On being pointed out that they are supposed to pay Service Tax, the appellant discharged the entire Service Tax liability alongwith interest before the issuance of show cause notice. To my mind, if the appellants have paid the service tax and interest thereon before issuance of show cause notice, the question of imposition of penalty does not arise. The adjudicating authority has held that since the Service Tax liability is accepted and paid by the assessee and they had defaulted the payment for 435 days, an amount of Rs. 43,500/- (@ Rs. 100/- per day) is imposable as penalty under Section 76 read with Section 77 of the Finance Act. I do not agree with this proposition.

5. Considering the facts and circumstances of the case, I find that the provisions of Section 80 of the Finance Act, 1994 can be invoked and penalty imposed on the appellant is liable to be set aside and I do so.

The impugned order is set aside and the appeal is allowed.

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