

Real Mathematic Classes Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2008

Judge : S Jha

Appellant : Real Mathematic Classes

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal by the assessee is directed against the order of the Commissioner of Central Excise, Jaipur dated 26.4.2007/3.5.2007 imposing penalty at the rate of Rs. 100/- per day from the date service tax became payable till the actual date of payment under Section 76 of the Finance Act, 1994. The order was passed in exercise of suo moto revisional power under Section 84 of the Finance Act. Section 84 of the Act lays down that the Commissioner may call for the record of proceedings in which an adjudicating authority has passed any decision or order, make such inquiry or cause such inquiry to be made and, subject to the provisions of this Chapter, pass such order thereon as he thinks fit after giving opportunity of hearing to the assessee.

Section 76 of the Act provides for imposition of penalty on failure to pay service tax. For easy reference Section 76 may be quoted as hereunder- SECTION 76. Penalty for failure to collect or pay service tax- Any person, liable to pay service tax in accordance with the provisions of Section 68 or the rules made thereunder, who fails to pay such tax shall pay in addition to paying such tax, and interest on that tax in accordance with the provisions of Section 75, a penalty which shall not

be less than one hundred rupees for everyday during which such failure continues but which may extend to two hundred rupees for everyday during which such failure continues....

Provided that the total amount of the penalty payable in terms of this Section shall not exceed a service tax payable.

2. On a bare reading it is evident that where any person liable to pay service tax, fails to pay the same, he is liable to pay in addition to the tax and interest thereon, penalty which shall not be less than one hundred rupees per day till the date of payment. The language of the section - especially use of the word "shall" - leaves no room for doubt about the mandatory nature of the liability. Learned Counsel for the appellant at one stage attempted to challenge the adjudication Order of the Assistant Commissioner but having not appealed against the same and availed of the remedy of appeal, the appellant is clearly not entitled to challenge the correctness of the order at a later stage while challenging the correctness of the suo moto order under Section 84 the scope of which is limited to imposition of penalty.

3. Counsel then submitted that the appellant having paid the tax with interest thereon before issuance of the show cause notice, the Commissioner committed error in imposing penalty under Section 76. In this regard he placed reliance on Commissioner of Central Excise & Customs, Aurangabad v. Innotech Pharmaceuticals Ltd. 2007 (216) ELT 515 (Rajasthan), and Commissioner of Central Excise, Ludhiana v. Sigma Steel Tubes context of Section 11AC of the Central Excise Act which is *pari materia* to Section 78 of the Finance Act, 1994 and therefore, lends no assistance to the appellant. Section 78 of the Act provides for imposition of penalty in cases of fraud, collusion, wilful mis-statement or suppression of facts leading to non-levy or short levy or short payment or erroneous refund of the service tax. The instant case is one of the penalty under Section 76 for failure to pay service tax from the due dates. As observed above, Section 76 is mandatory in nature and where the person liable to pay service tax failed to pay the tax, he is liable to penalty from the date/dates payment became due for each day's of default "during which such failure continues". The nature of

penalty imposable under Section 76 being different from the imposable under Section 78, the decisions rendered in the context of the latter provision obviously have no bearing.

4. Learned Counsel finally took shelter under Section 80 of the Act which lays down that "notwithstanding anything contained in the provisions of Section 76, Section 77 or Section 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure". On a plain reading and in view of the non-obstantive clause with which the section begins, it is clear that Section 80 overrides the provisions of Section 76 among other Sections. The benefit of non-imposition of penalty, however, can be claimed by the assessee only if he is able to prove that there was a reasonable cause for failure to pay the tax and interest thereon. Question for consideration is whether in the facts and circumstances, there was a reasonable cause for failure to pay the tax. The case of the appellant is that it was providing the coaching service from the residence of the proprietor, Smt. Meenu Vijay, and it was misled into believing that the service is not covered by the definition of taxable service and as such did not pay the tax; no sooner than it came to realize the existence of the liability it paid the sum of Rs. 1,38,689/- between 6.12.2005 and 9.3.2006.

5. It may be mentioned here that the service by a commercial training or coaching centre in relation to commercial training or coaching is a taxable service within the meaning of Sub-clause (zxc) of Clause (105) of Section 65 of the Finance Act since the beginning of the enactment.

"Commercial training or coaching" has been defined in Clause (26) of Section 65 of the Finance Act to mean any training or coaching provided by a commercial training or coaching centre and the term "commercial training or coaching centre" has been defined in Clause (27) of Section 65 to mean "any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes". Having regard to the definition of 'commercial training or coaching centre' it is not possible to

accept the case of the appellant. The term 'establishment' has not been defined in the Act and therefore, has to be given dictionary meaning. In the Oxford Concise Dictionary (Ninth Edition) the meanings given to word 'establishment' are:- "a business organization or public institution; the staff or equipment of an organization; a household; any organized body permanently maintained for a purpose", among other things. Section 80 dispenses with the imposition of penalty where the assessee proves that there was "a reasonable cause" for failure to pay the tax. The expression 'reasonable cause' would appear to mean something which is reasonable to a man of ordinary care or prudence. Having given my anxious consideration to the submissions advanced by learned Counsel, I am unable to accept the bald plea that there was a reasonable cause for the appellant for not paying the tax when the payment became due.

'Reasonable cause' cannot be construed to mean any ipse dixit on the part of the assessee. In the absence of any material corroborating the appellant's case it is difficult to accept that the mere fact that coaching was provided from the house was sufficient to make the proprietor believe that she was not liable to pay the tax. The appellant should have shown better discretion and paid the tax on time in accordance with law. In the circumstances I am unable to accept that there was a reasonable cause or a sufficient cause for non-payment.

6. The subject matter of the appeal being the imposition of penalty, there being no error in the order, the appeal must fail and it is accordingly dismissed.

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