

Cce Vs. Target Institution of

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-25-2008

Judge : P Das

Appellant : Cce

Respondent : Target Institution of

Judgement :

1. The Revenue filed this appeal against the Order of the Commissioner (Appeals) whereby penalty under Sections 76 and 78 of the Finance Act, 1994 was set-aside in exercise of power under Section 80 of the said Act.

2. After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) set-aside the penalty on the ground that appellants were providing coaching service and were not aware the service tax liability on them. But, they recorded all the fees in their accounts and admitted the service tax liability subsequent to visit of officer and discharged service tax liability before issue of the show cause notice.

3. Learned DR submits that the respondent obtained registration on 27.07.2004 and the officers conducted search on 9.2.2005 and thereafter, the respondent paid the tax for the period 8.12.2003 to 21.12.2004 in the month of February 2005 and March 2005. The learned Advocate submits that service tax was levied on coaching centre and there was dispute of levy of service tax on certain commercial coaching centre. I find that the respondent obtained the registration on 27.7.2004

and did not pay the tax and failed to file return. But they recorded the fees in their records. So, there is no material for suppression of facts with intent to evade payment of tax and penalty under Section 78 of the Act is not justified.

4. However, I find force in the submission of the learned DR regarding imposition of penalty under Section 76 of the Act. It is seen that the respondent had not paid tax in spite of the fact registration certificate obtained on 27.07.2004 and therefore the finding of the Commissioner (Appeals) is not proper. I find that it is a new levy on coaching centre and there was a dispute regarding availability of the exemption benefit and the respondent paid the tax before issue of the show cause notice and the imposition of penalty under Section 76 of the Act is excessive. The Tribunal in the case of Alliance Inc. v. CCE, Nashik reported in 2008 (84) RLT 557 (CESTAT-Mum.) held that authorities have discretion to impose penalty less than that prescribed under Section 76 of the Act.

5. In view of the above, the Order of the Commissioner (Appeals) is modified in so far as the penalty of Rs. 10,000/- under Section 76 of Finance Act, 1994 is upheld and the appeal is otherwise rejected.

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