

Cce Vs. Skypack Services

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-26-2008

Judge : P Das

Appellant : Cce

Respondent : Skypack Services

Judgement :

1. Revenue filed this appeal against the order of the Commissioner (Appeals), whereby adjudication order was modified insofar as penalty under Section 78 of the Finance Act, 1994 was upheld for the period upto August, 2004 and the amount of penalty was reduced from Rs. 7,85,095/- to Rs. 2,61,185/-.

2. Ld. DR submits that the respondent failed to file the Returns during the material period. He submits that they submitted ST 3 Returns in August, 2007. He also submits that delay in filing of the Return indicates the suppression of facts with intention to evade payment of tax.

3. After hearing both the sides and on perusal of the records, I find that the respondent obtained registration certificate in the year 2004 and also furnished data for the period September, 2004 and October, 2004 to March, 2005 on 1.11.2004 and 12.8.2005 respectively. The Commissioner (Appeals) observed that the allegation of suppression of facts with intent to evade payment of duty after August, 2004 is not sustainable. I agree with the findings of the Commissioner (Appeals).

The main contention of the Id. DR is that the respondent filed the return beyond the stipulated period. It is seen that the adjudicating authority confirmed the demand of tax and imposed penalty under Section 78 of the Act for suppression of fact. The Commissioner (Appeals) observed that Section 76 of the Act for imposition of penalty for non-filing of return was proposed in the show cause notice. But no penalty was imposed under Section 76 in the adjudication order. So, the submission of the Id. DR to impose penalty under Section 78 for delay in filing of Return have no force. It is noted that the Commissioner (Appeals) upheld the adjudication order in respect of the imposition of penalty under Section 78 of the Act upto August, 2004 (i.e. prior to registration). So, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

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