

Nithyananda Electronics Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Feb-26-2008

Judge : S Peeran, J T T.K.

Appellant : Nithyananda Electronics

Respondent : The Commissioner of Central

Judgement :

1. This appeal has been filed against order-in-Appeal No. 185/2006 CE dated 14.06.2006 passed by the Commissioner of Central Excise (Appeals), Mangalore.
2. Revenue initiated the proceedings against the appellants for non-payment of service tax. The Adjudicating Authority confirmed an amount of Rs. 35,339/- for the period from 01.07.2003 to March 2004.

Interest under Section 75 was also demanded. A penalty of Rs. 500/- under Section 75A was imposed. A penalty of Rs. 100/- per day was imposed under Section 76. A penalty of Rs. 500/- was imposed under Section 77 for delay in filing of returns. The Original Authority did not impose any penalty under Section 78 taking recourse to Section 80 of the Act. The appellants approached the Commissioner (Appeals) for relief. The Commissioner (Appeals) upheld the order of the Original Authority. Hence, the appellants have come before this Tribunal for relief.

3. Shri. K.S. Ramesh, learned Consultant, appeared on behalf of the appellants. He stated at the time of personal hearing before the Tribunal that the Service Tax in the instant case has been paid before the issue of show cause notice. Further, the appellant does not contest the issue on merits. He stated that the appellant was not familiar with service tax provisions and therefore did not collect the same from the clients. Imposition of penalty under Section 76 at the rate of Rs. 100/- per day and other penalties imposed under Section 77 are very harsh. He relied on the following case laws, wherein it has been held that penalty and interest couldn't be imposed where the Service Tax has been paid before the issue of show cause notice.

(a) Mass Marketing and Advertising Services (P) Ltd. reported in 2006 (3) STR 333 (Tri.-Bangalore) (b) CCE Mangalore v. Vishwanath Karkera reported in 2006 (1) STR 282 (Tri.-Bangalore) CCE v. Toyota Kirloskar Ltd. reported in 2006 (206) ELT 1116 (KAR) 4. On a careful consideration of the issue, we find that the appellant is not contesting the issue on merits. From the records it is seen that the appellants had certain doubts regarding their liability to service tax. It is further seen that the appellant had not collected service tax from the client. In these circumstances, the Original Authority himself did not impose any penalty under Section 78. Taking the facts and circumstances of the case into consideration, we set aside the penalties imposed under Section 76 and 77. However, the appellant is liable to pay interest on the delayed payment, as the various decisions cited by the appellant relate to Central Excise and are not applicable to delayed payment of Service Tax. The appeal is disposed of in the above manner.

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