

Commissioner of Central Excise Vs. Adhunik Steels Ltd.

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Court : Punjab and Haryana

Decided On : Aug-11-2008

Reported in : 2009[13]STR487

Judge : Hemant Gupta and; Rajesh Bindal, JJ.

Appellant : Commissioner of Central Excise

Respondent : Adhunik Steels Ltd.

Disposition : Appeal dismissed against department

Judgement :

ORDER

Rajesh Bindal, J.

1. The Revenue is in appeal before this Court against order dated 30-3-2007, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal')/raising following substantial question of law:

Whether the Tribunal was justified in waiving of penalties under Sections 75A, 76, 77 and 78 of the Finance Act, 1994 without adducing any reason in the present case when the demand of service tax has been fully confirmed?

2. Briefly, the facts are that the respondent-assessee was working as consignment agent for handling and forwarding of iron and steel material on commission basis

for M/s. TISCO Ltd. Considering that the services provided by the assessee as consignment agent are covered under the 'Clearing and Forwarding Agents' and the same was leviable to service tax, assessment of the assessee was framed by the Assistant Commissioner by confirming demand of Rs. 5,060/- and Rs. 3,21,375/- against the respondent. Further the respondent was directed to pay interest under Section 75 of the Finance Act, 1994 (for short, 'the Act') on the service tax deposited late. Still further, a penalty of Rs. 500/- under Section 75A of the Act, a penalty of Rs. 3,26,435/- under Section 76 of the Act, a penalty of Rs. 7,000/- under Section 77 of the Act and a penalty of Rs. 3,26,435/- under Section 78 of the Act was levied.

3. In appeal, the Commissioner (Appeals), relying upon an earlier order passed by the Tribunal in the case of Mahavir Gentricks v. CCE , set aside the order. However, in appeal by the Revenue, the Tribunal upheld the levy of service tax keeping in view the decision of the Larger Bench of the Tribunal in the case of Medpro Pharma Pvt. Ltd. v. Commissioner and set aside the penalty for the reason that the earlier view taken by it was in favour of the assessee.

4. Learned Counsel for the Revenue submitted that once the demand of service tax was upheld by the Tribunal, there was no reason for setting aside the order regarding penalty. However, we find that the argument is misconceived. It is not disputed that earlier there was an order of the Tribunal in Mahavir Cenericks case (supra) taking a view in favour of the assessee on merits of the controversy. However, in a later decision by the Larger Bench of the Tribunal, it was held that the services provided by the assessee were amenable to service tax and in terms thereof, the demand of service tax was upheld by the Tribunal. There was reasonable justification for the assessee for not paying service tax at the initial stage. No mens rea can be attributed and in our opinion, no illegality has been committed by the Tribunal in setting aside the penalty levied against the assessee.

No substantial question of law arises in the present appeal.

For the reasons stated above, the appeal is dismissed.

