Commissioner of C. Ex. and Cus. Vs. General Manager, Telecom, Bsnl

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SooperKanoon Citation : sooperkanoon.com/729279

Court : Kerala

Decided On : May-26-2008

Reported in : 2009[14]STR450; [2009]21STT404

Judge : C.N. Ramachandran Nair and; V.K. Mohanan, JJ.

Acts : Finance Act, 1994 - Sections 75

Appeal No. : C.E. Appeal No. 4 of 2006

Appellant : Commissioner of C. Ex. and Cus.

Respondent : General Manager, Telecom, Bsnl

Advocate for Def. : V.R. Kesavakaimal, SC

Advocate for Pet/Ap. : John Varghese, Adv. and; Parameswaran Nair, Assistant S.Gs.

Disposition : Appeal allowed

Judgement :

C.N. Ramachandran Nair, J.

1. The appeal is filed against the order of the Customs, Excise and Service Tax Appellate Tribunal cancelling Interest demanded from the respondent under Section 75 of the Finance Act, 1994. The respondent, which is a Government

Department, delayed payment of service tax by four days on account of delay in allotting head of account for payment. Learned Counsel for the respondent submitted that the amount was deposited in time, but on account of delay in allotting head of account, credit was given for payment only with a delay of four days. Whatever be the reason for the belated payment, we find that the provision for interest containing Section 75 is mandatory. The Tribunal appears to have cancelled the interest on the assumption that the demand made is penalty. However, on going through the impugned order of the Additional Commissioner, we find that he had waived penalty and the amount of Rs. 19,009/- demanded is only in the form of interest under Section 75, which is mandatory in nature. Learned Counsel for the respondent submitted that the amount was also deposited prior to final orders issued by the Tribunal. Since we find that the Tribunal has cancelled the demand treating as penalty, we allow the appeal by cancelling the order of the Tribunal and restoring the demand of interest under Section 75 of the Act. The deposit made will be ad justed towards liability in terms of demand but without charging any interest thereon.