

R. Devendiran Vs. Cce, (St) Coimbatore

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : May-11-2012

Judge : The Honourable Dr Justice Chittaranjan Satapathy

Appeal No. : ST/592 of 2011

Appellant : R. Devendiran

Respondent : Cce, (St) Coimbatore

Advocate for Pet/Ap. : For the Appellant: Ms. Radhika Chandrasekar, Advocate.
For the Respondent: Parmod Kumar, Advocate.

Judgement :

1. Heard both sides.

2. The Ld. Advocate appearing for the appellants states that the entire amount of service tax demand and interest due thereon have been paid by the appellants partly before the issue of show cause notice and partly within one month of the issue of show cause notice and before passing the adjudicating order. Since the lower authorities did not accept the contention of the appellants to calculate the tax amount treating the value realized by the appellants as inclusive of tax, the balance amount of Rs.42000/- on that count also has been deposited by the appellants after filing the appeal before the Tribunal. She states that the appellants had not paid the tax amount earlier on account of their ignorance and not on account of any suppression, fraud etc. Even now, they are not disputing

their tax liability. The appellants have not collected any tax amount from their customers, yet, they have promptly paid the tax amount soon after coming to know about their tax liability. Therefore, she prays for a lenient view in respect of penalty imposed under Section 78 of the Finance Act, 1994. Accordingly, she prays for the following:-

1. The realization made by the appellant should be taken as cum-tax value and the tax amount should be calculated accordingly.

2. The amount paid before the issue of show cause notice may be treated as tax plus interest and to that extent no penalty may be imposed in view of the provisions of Section 73 (3) of the Act.

3. Since the balance amount of tax which also stands paid, the appellants may be allowed to pay 25% of the same towards penalty within one month from the date of receipt of the fresh adjudicating order.

4. The amounts already paid by the appellants may be allowed to be adjusted against tax, interest and penal liability determined against the appellants.

3. The Ld. SDR supports the impugned order and states that the cum-tax benefit can only be allowed to the appellants in case they are able to substantiate that they have not received any amounts towards tax over and above the value realized by them from their customers.

4. Considering all aspects of the case, and arguments from both sides, I find that the prayer made by the Ld. Advocate for the appellants is not unreasonable, particularly considering the promptness with which the appellants have discharged their tax liability and interest liability, after coming to know that they were liable to pay tax amount even though they have separately not collected the tax amount from their customers. In view of the fact that the appellants have made a payment of Rs. 3,42,788/- before the issue of show cause notice, and there is no evidence of fraud, suppression etc., on their part, they can be given benefit under Section 73(3) of the Finance Act, 1994, to the extent the tax and interest has been paid by them prior to the issue of show cause notice, as the total amount paid by them

towards tax and interest may be appropriated.

5. As regards the payment made subsequent to the issue of show cause notice, I find that the appellants were not given an option to pay 25% of penalty amount and hence, as held by the Honble Delhi High Court in the case of K.P. Pouches (P) Ltd., Vs. UOI 2008 (228) ELT 31 (Del.), they may be allowed to pay 25% of the penalty amount within 30 days from the date of re-quantification of the tax amount. Such re-quantification is necessary as the appellants are required to be given the benefit of treating the value received by them as cum-tax value in view of their contention that they have not separately collected any tax amount from their customers. This is of course subject to a factual verification of their contention. The prayer made by the Ld. Advocate that the amounts paid by the appellants should be adjusted against their tax, interest and penal liability to be reworked is also reasonable and is acceptable.

6. Accordingly, the impugned order is set aside and the matter is remanded to the original authority for passing a fresh order for reworking the tax, interest and penal liability in the above terms. The appeal is allowed by way of remand.

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