(2014) 08 KL CK 0227

In the High Court Of Kerala

Case No : C.E. Appeal No. 32 of 2008

Akbar Travels of India (P) Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:
Finance Act, 1994 — Section 76, 77, 78, 79, 80

Citation : (2015) 1 KHC 422 : (2015) 1 KLT 523 : (2015) 38 STR 957

Hon'ble Judges : T.B. Radhakrishnan, J;P.B. Suresh Kumar, J

Bench : Division Bench

Advocate : E.K. Nandakumar, Sr. Advocate, K. John Mathai, P. Benny Thomas and Anil D. Nair, Advocates for the Appellant; Tojan J. Vathikulam and P. Gopinath Menon, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.—This appeal is against orders of the Central Excise Customs and Service Tax Appellate Tribunal. Heard the learned counsel for the appellant and the learned counsel for the Department. By the first among the relevant orders, the Tribunal specifically held that the appellant is entitled to the benefit of the provisions in S. 80 of the Finance Act, 1994, hereinafter, the ''Act''. It was held that, on the facts and circumstances of the case, the Tribunal deems it proper to take a lenient view in the matter. The Tribunal was of the view that the provisions of S. 80 of the Act could have been invoked in the case. However, while issuing the final order dated 14.03.2008, what was set aside was "the penalties" imposed under S. 78 of the Act. The appellant, therefore, moved a rectification application pointing out that the penalty under S. 76 of the Act also ought to have been mentioned as vacated. Then, the Tribunal passed an order clarifying that what was vacated was only penalty under S. 78 and that the use of the word ''penalties'' in plural, was a mistake.

2. As rightly pointed out by the learned counsel for the appellant, the aforesaid reasoning is not sustainable in view of the clear terms of S. 80 of the Act and S. 76 of the Act prescribes the penalty for failure to pay service tax. S. 77 provides

for penalty for contravention of rules and the provisions of the Act for which no penalty is specified elsewhere. S. 78 prescribes the penalty for suppressing value of taxable service. S. 80 opens with a non obstante clause saying that notwithstanding anything contained in S. 76, S. 77 or S. 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure. Here and now, we note that the words "or S. 78" were introduced into S. 80 by the Finance Act of 2004, to exclude S. 79 from the net of S. 80. Therefore, once the assessee proves that there was reasonable cause for the failure, S. 80 starts to operate, insulating the imposition of any other penalties under S. 76, S. 77 or S. 78 of the Act. Insofar as the appellant is concerned, this is inexcusably applicable in law, having regard to the Tribunal''s findings noted in paragraph No. 2 above. In this view of the matter, this appeal is eligible to succeed.

In the result, this appeal is allowed, setting aside the impugned orders to the extent the benefit of S. 80 is not extended to the penalty imposed on the appellant under S. 76 of the Act. As a result, it is ordered that the penalty imposed on the appellant under S. 76 of the Act by the statutory authorities shall stand vacated. No costs.