(2014) 11 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : S.T.A. No. 5 of 2014 (O and M)

Care and Cure (P) Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 03-11-2014

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

Citation : (2015) 38 STR 225

Hon'ble Judges : Rajive Bhalla, J;Amit Rawal, J.

Bench : Division Bench

Advocate : Jagmohan Bansal, Advocate, for the Appellant; Sukhdev Sharma, for the Respondent

Judgement

Rajive Bhalla, J.?The appellant is before us challenging the imposition of penalty under Sections 76, 77 and 78 of Finance Act, 1994 (hereinafter referred to as "the Act"). Counsel for the appellant submits that while considering Sections 76, 77 and 78 of the Act, this Court in STA No. 48 of 2010 titled as Commissioner of C. Ex. Vs. First Flight Courier Ltd., titled as Commissioner of Central Excise, Commissionerate, Ludhiana v. M/s. Akash Cable, 1411 Urban Estate, Phase-II, Ehagri, Ludhiana, in STA No. 13 of 2010 titled as Commissioner of Central Excise Vs. Pannu Property Dealers, held that the Act does not envisage imposing of simultaneous penalties. Counsel for the appellant further submits that finding recorded by the Tribunal that the appellant did not deposit 25% penalty within one month is factually incorrect as the adjudicating authority did not impose any penalty. It is prayed that the appeal may be allowed and the matter may be remitted to the CESTAT to decide the matter afresh.

2. Counsel for the Revenue submits that he has no objection, if the matter may be reconsidered as there are prima facie errors in the order passed by the CESTAT.

3. The appellant commenced operations in September, 2005 and though admittedly, offering taxable services did not get itself registered as a service

provider. The appellant eventually got itself registered as a service provider in March, 2007 and deposited arrears of Service Tax and interest, on 2-5-2007. The adjudicating authority, however, issued a notice dated 3-4-2008, calling upon the appellant to show cause why penalty should not be imposed but eventually held that as Service Tax was deposited before issuance of the show cause notice and the appellant has furnished a bona fide explanation, penalty cannot be levied.

4. The revisional authority, however, issued a suo motu notice calling upon the appellant to show cause why penalty be not imposed. After affording an opportunity to the appellant, the revisional authority imposed the following penalties:--

"(i) I impose a penalty of two hundred rupees for every day during which failure to pay service tax continued, starting with the first day after the due date till the date of actual payment of the outstanding amount of Service Tax, so far as the period prior to 19-4-2006 is concerned.

(ii) I impose a penalty of two hundred rupees for every day during which failure to pay Service Tax continues or at the rate of two percent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of Service Tax in terms of Section 76 of the Act for the period 19-4-2006 onwards;

(iii) I impose a penalty of Rs. 1,000.00 on the Noticee under Section 77 of the Act;

(iv) I impose a penalty of Rs. 3,97,406.00 on the Noticee under Section 78 of the Act."

5. Aggrieved by the aforesaid order, the appellant filed an appeal, which was dismissed by the CESTAT.

6. We have heard counsel for the parties. While considering the scope and ambit of Sections 76, 77, 78 of the Act, this Court has held in STA No. 48 of 2010 - Commissioner of Central Excise Commissionerate v. M/s. First Flight Courier Limited; STA No. 50 of 2010 - Commissioner of Central Excise, Commissionerate, Ludhiana v. M/s. Akash Cable, 1411 Urban Estate, Phase-II, Dugri, Ludhiana and STA No. 13 of 2010 - Commissioner of Central Excise v. M/s. Pannu Property Dealers, Ludhaina that Sections 76, 77 and 78 of the Act, do not envisage imposition of simultaneous penalties. This apart, there appears to be error in the order passed by the Tribunal holding that the appellant did not deposit 25% of penalty within one month of its impositions. The Tribunal lost sight of the fact that adjudicating authority did not impose penalty and therefore, the assessee did not get an opportunity to deposit 25% of the penalty, within one month.

7. Consequently, but without expressing any opinion on the merits of the appeal and as to the rights of parties, the appeal is allowed, order dated 4-7-2013 [2014 (33) S.T.R. 176 (Tri. - Del.)], is set aside and the matter is restored to the CESTAT, for adjudication afresh.

8. Parties through their Counsel are directed to appear before the CESTAT, on 27-1-2015. The appeal shall be decided within three months from the aforementioned date.

