(2011) 06 GUJ CK 0045

In the Gujarat High Court

Case No : Tax Appeal No. 2375 of 2010

C.C.E. and C., Vadodara-I — APPELLANT

Vs

Gujarat Intelligence Security (India) — RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:
Finance Act, 1994 — Section 75, 76, 78

Citation : (2011) 24 STR 167

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : R.J. Oza, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Revenue is in appeal against the judgment of the CESTAT dated 7-5-2010 [2010 (19) S.T.R. 270 (Tri. - Ahmd.)] raising following questions for our consideration :

(A) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in setting aside penalty u/s 76 of the Finance Act, 1994 imposed upon the respondent by application of irrelevant consideration such as absence of mala fide issue involved to be open for interpretation etc., even though admittedly the respondent has failed to pay service tax in accordance with provisions of section 68 and the interest on the said tax amount in accordance with section 75 of the Finance Act, 1994?

(B) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in setting aside penalty u/s 78 of the Finance Act, 1994 imposed upon the respondent in ignorance of jurisdictional facts indicating intention of jurisdictional facts indicating intention of respondent to evade payment of service tax under provisions of the Finance Act, 1994?

2. The issue pertains to deletion of penalty by the Tribunal for nonpayment of service tax. From the record we find that the amount involved is not very large.

The Tribunal deleted the penalty. In the impugned order, the Tribunal observed that on the staff salary and other infrastructural expenses, no service tax is required to be paid. However, the assessee did not question such service tax collected and paid the same. Service tax was thus confirmed as admitted. However, penalty was deleted observing that in view of the judgments of the courts, question whether service tax is payable at all or not was a pure question of interpretation of law and the figures of payments were reflected in the balance and no mala fides can be attributed to the assessee.

3. We are of the opinion that no substantial question of law arises. u/s 78 of the Finance Act, 1994, penalty can be levied where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of the Act or the Rules with an intent to evade payment of service tax. In the present case, the Tribunal came to the definite finding that no such factors exist. Additionally we find that Section 80 provides that such penalty shall not be imposed if the assessee proves that there was reasonable cause for failure to pay such tax. As already noted, we find that the amount is not significant. The entire penalty imposed was in the range of Rs. 70,000/-.

4. Tax Appeal is, therefore, dismissed.

