(2010) 03 P&H CK 0057

In the Punjab And Haryana At Chandigarh

C.C.E. APPELLANT

Vs

Punjab Small Industries and Export Corpn. Ltd. RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:
Finance Act, 1994 — Section 76, 77, 78, 80, 84

Citation : (2010) 19 STR 16

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The present Appeal is filed by the Revenue-Appellant impugning the Final Order dated 19-11-2008; 2009 (13) S.T.R. 677 passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as ''the Tribunal'') whereby the Tribunal has allowed the Appeal of the Assessee and set aside Order passed by Revisionary Authority. The Revenue has raised following question of law:

Whether the Tribunal is correct in setting aside the penalty imposed u/s 76 & 78 of Finance Act by the Revisionary Authority in exercise of power conferred u/s 84 of the Finance Act. When the Respondent had suppressed the value of taxable service and has deposited the service tax after delay without providing any reasonable cause for delay?

2. Briefly the facts of the case are that the Respondent-Assessee is wholly Government owned Corporation. The Respondent entered into an Agreement with M/s. Hindustan Zinc Limited for supply of material on commission basis. On being pointed out by Revenue, the Assessee deposited the service tax on the amount received by them. The tax was deposited along with interest. The Revenue issued a Show Cause Notice dated 20-06-2005 proposing penalty. The Adjudicating Authority imposed penalty of Rs. 200/- u/s 77 of the Finance Act and Rs. 100/- u/s 76 of the Finance Act. The Commissioner acting as Revisionary

Authority revised the adjudication order. In the Revisionary Order, the Commissioner imposed penalty of Rs. 1,52,499/- u/s 76 and 78 of the Act separately.

3. The Assessee preferred an Appeal before the Tribunal and Tribunal set aside penalty imposed u/s 78 of the Act holding that the said Section was not invoked in the Show Cause Notice. Therefore, imposition of penalty u/s 78 of the Act is not warranted.

4. The Tribunal further set aside the penalty imposed by Commissioner u/s 76 and re-stored the amount of penalty imposed by Adjudicating Authority. The Tribunal re-stored the Order of Adjudicating Authority taking the view that Appellant is State Government Undertaking and have no intention to evade payment of tax and deposited the tax voluntarily with interest before issuance of Show Cause Notice.

5. We find no merits in the present Appeal. From the record, it is clear that penalty was not proposed in the Show Cause Notice. The Show Cause Notice is foundation stone of the case. In the absence of invoking of penalty u/s 78, the Revenue was unjustified to impose the said penalty in exercise of Revisionary jurisdiction.

6. The Tribunal has further rightly re-stored the penalty imposed u/s 76 of the Act by Adjudicating Authority and set aside the penalty imposed by Revisionary Authority. It is undisputed fact that the Assessee-Respondent is a Government Undertaking and there was no intention of evasion of tax. As per Section 80 of the Act, penalty is not imposable if the Assessee proves that there was reasonable cause for the failure. The Assessee has duly explained the reason of non-payment of tax and had immediately deposited on being pointed out.

7. In view of these facts, we do not find it appropriate to interfere in the Order of Tribunal.

8. Appeal is dismissed.

