
(2015) 03 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Application CROSS No. 99 Of 2009, Appeal No. 200 Of 2009

C.C.E., Bhopal

APPELLANT

Vs

M/s. Hernkunt Petroleum Ltd.

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Finance Act, 1994 — Section 76, 77, 78

Citation : (2015) 03 CESTAT CK 0003

Hon'ble Judges : G. Raghuram, J; R. K. Singh, Technical Member

Bench : Division Bench

Advocate : BB Sharma, Krishan Garg

Final Decision : Dismissed

Judgement

1. Revenue has filed this Appeal against Order-in-Appeal No.1/BPL/2009, dated 12.01.2009 on the ground that Commissioner (Appeals) has set aside

the penalty under Section 76 while upholding the penalties under Sections 77 and 78 of the Finance Act, 1994. Revenue has contended that in this case

service tax demand of Rs.2,71,904/- was confirmed and penalties under Sections 76, 77 and 78 of the Act were imposed by the primary adjudicating

authority. The service tax was demanded under packaging service as the respondents were rendering service of bottling of LPG for companies like

HPCL and BPCL. Revenue further contended that during the relevant period, penalties under Sections 76 and 78 of the Act were not mutually

exclusive and cited the judgement of the Supreme Court in the case of BCCI Vs. CST, Mumbai-I (2015-TIOL-04-SC-SC-ST], wherein it has been

held that the BCCI was liable to pay penalty under Sections 76, 77 and 78 of the Act. They also cited the judgement in the case of ACIT Vs. Krishna

Poduval (2006 (1) STR 185 (Ker.)), where Kerala High court held that the

incidents of imposition of penalties are distinctively separate under the provisions of Sections 76 and 78 of the Act and also the judgement in the case of *Bajaj Travels Ltd. Vs. CST (2012 (25) STR 417 (Del.)*], where Delhi High Court also held that prior to 16.05.2008, the two Sections, i.e., 76 and 78 were in operation in two different fields and penalties were imposable under both in the course of same transaction.

2. We have considered the contentions of Revenue. There is no dispute about the fact that the penalties under Sections 76 and 78 of the Act, became mutually exclusively only with effect from 16.05.2008 when proviso was added to Section 78 to the effect that if the penalty was payable under Section 78 provisions of Section 76 shall not apply. That having been said, it has to be seen that with effect from 16.05.2008, penalties under Sections 76 and 78 *ibid* were made mutually exclusive in-as-much-as if the penalty under Section 78 was imposed, the penalty under Section 76 was made unimposable. This amendment with effect from 16.05.2008 in a way reflected the refinement of penal provisions. Indeed it has been held by Punjab and Haryana High Court in the case of *CCE Vs. M/s. Pannu Property Dealers, Ludhiana (2011 (24) STR 173 (P&H)*] that "aet ven if technically, scope of sections 76 and 78 of the Act may be different, as submitted on behalf of the revenue, the fact that penalty has been levied under section 78 could be taken into account for levying or not levying penalty under section 76 of the Act. In such situation, even if reasoning given by the appellate authority that if penalty under section 78 of the Act was imposed, penalty under section 76 of the Act could never be imposed may not be correct, the appellate authority was within its jurisdiction not to levy penalty under section 76 of the Act having regard to the fact that penalty equal to service tax had already been imposed under section 78 of the Act. This thinking was also in consonance with the amendment now incorporated though the said amendment may not have been applicable at the relevant time." Further in the case of *CCE Vs. First Flight Courier (2011-TIOL-67-HC- P&H-ST)*] Punjab & Haryana High Court held that "penalty under Section 76 may not be justified if penalty under Section 78 has been imposed even if technically penalties under both sections could be imposed and that the appellate authority was well within its jurisdiction not to levy penalty under

Section 76 having regard to the fact that penalty under Section 78 has been imposed:"" In the wake of the said judgements of Punjab & Haryana High Court we are of the view that the impugned order does not suffer from such a grave illegality/impropriety as to warrant our interference. Therefore, we dismiss Revenue's appeal.

3. Since Revenue's Appeal is dismissed, the Respondents' cross-objections stand disposed of as infructuous.