(2014) 04 GUJ CK 0027

In the Gujarat High Court

Case No : Tax Appeal No. 329 of 2014

Commissioner of C. Ex. and Customs APPELLANT

Vs

National Security Force RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Finance Act, 1994 — Section 78, 80

Citation : (2014) 46 GST 22 : (2014) 35 STR 303

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : R.J. Oza, Advocate for the Appellant

Judgement

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Akil Abdul Hamid Kureshi, J.—Revenue has challenged the judgment of the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''the Tribunal'') dated October 1, 2013, raising the following questions of law for our consideration:

"(a) Whether in the facts and circumstances of the case, ignorance of law pleaded by the respondent would cover within the bracket of ''reasonable cause'' under Section 80 of the Finance Act, 1994?

(b) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law by not dealing with the findings recorded by the Commissioner (Appeals) on mala fide conduct of the respondent in not making payment of Service Tax to the Government and consequently holding him not entitled for benefit of Section 80 of the said Act?

(c) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in setting aside penalty under Section 78 of the Finance Act, 1994 imposed on the respondent and extending benefit of Section 80 of the said Act?"

The short question is with respect to invocation of Section 80 of the Finance Act, 1994 by the Tribunal while deleting the penalty imposed on the respondent-assessee for short payment of service tax. The respondent is engaged in providing security services. For the period under consideration, he had short paid the service tax. The proceedings were initiated for recovery as well as penalty. The Commissioner holding that the respondent had maneuvering intention in not paying the service tax in full. The respondent approached in appeal. The Tribunal in facts of the case held that the assessee had bona fide belief that as his clients did not pay Service Tax as indicated in the invoice, his liability to pay the same to the Department did not arise. The Tribunal noted that such non-payment was by the service requirement of the assessee, which included Vadodara Municipal Corporation, Surat Municipal Corporation and Gujarat Electricity Corporation/ Board. It was also noted that as and when he had received the payments, he had promptly paid the same with the authority. The Tribunal relied on the decision of the Karnataka High Court in the case of Commissioner of Service Tax, Service Tax Commissionerate Vs. Motor World, . When Section 80 of the Act gives discretion not to impose penalty, if the assessee shows sufficient cause for not depositing the service tax and when the Tribunal has adverted to relevant facts to hold that there was sufficient cause on the part of the assessee, in our opinion, no question of law arises.

2. In the result, the Tax Appeal is dismissed.

