(2009) 09 P&H CK 0131

In the Punjab And Haryana At Chandigarh

Commissioner of C. Ex. APPELLANT

Vs

Ess Ess Kay Engg. Co. Ltd. RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35(G)

Citation : (2010) 18 STR 393

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant appeal filed u/s 35(G) of the Central Excise Act, 1944 read with Section 83 of finance Act, 1994 (for brevity "Finance Act") is directed against order dated 13-12-2007 [2008 (10) S.T.R. 430 (Tri.-Del.)] passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity "the Tribunal").

2. The Tribunal has upheld the order passed by the Commissioner (Appeal) setting aside the penalty imposed on the respondent-dealer in pursuance of Section 77 of the Finance Act. The Commissioner (Appeal) has found that there was a reasonable cause for the failure to deposit the amount of Service tax within the time prescribed. It has come on record that the dealer was availing the services of goods transport operators and he was liable to pay Service tax for the period from 16-11-1997 to 2-6-1998. The amount was payable by 13-11-2003. However, dealer could pay the amount of Service tax along with interest only on 29-10-2004. Accordingly, the Assistant Commissioner in its order-in-original imposed penalty by rejecting the plea that there was a reasonable cause for the delay. However, the Commissioner (Appeal) partly allowed the appeal of assessee filed against the order-in-original passed by the Assistant Commissioner. whereby period of payment of interest was modified and order of penalty was set aside by accepting the plea that there was reasonable cause. He has accepted the view that the dealer did not deposit the Service tax

earlier under the impression that the recipients of service was under no obligation to pay the Service tax as per the judgment of Hon''ble the Supreme Court in Laghu Udyog Bharati and Another Vs. Union of India and Others, and that they were not aware of amendment made vide Notification No. 4/2003-S.T. and, therefore, it was found that there was reasonable cause for delay.

3. At the hearing, we asked learned Counsel for the revenue the tax effect, which would be incurred by requiring the dealer-respondent to pay the penalty. The answer was that the tax effect would not be more than Rs. 30,000/-. Taking into account the meager amount involved, we are not inclined to admit the appeal to decide the question of law raised. However, it shall not be taken to mean that we have expressed any opinion on the question of law concerning payment of penalty u/s 77 of the Finance Act and the requirements of a reasonable cause u/s 80 of the Finance Act. We leave those questions open and dismiss the appeal on the ground that meager sum is involved.

