(2011) 09 KAR CK 0064

In the Karnataka High Court

Case No : C.E.A. No. 85 of 2007

Commissioner of C. Ex., Mangalore APPELLANT

Vs

NISA Industrial Service Pvt. Ltd. RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2011) 24 STR 644

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—The Revenue has preferred this appeal challenging the orders passed by the Appellate Authority reducing the penalties imposed by the assessing authorities, from Rs. 1,28,558/- to Rs. 50,000/-.

2. The material on record discloses that the assessee was providing security services to M/s. BSNL, Mangalore. Though the assessee had paid the Service Tax amount for the period from 1-4-2001 to November 2001, the assessee was yet to file the Service Tax Return. The assessee had obtained Service tax registration only on 12-12-2001. The customer did not pay the service tax. The assessee also underwent loss. In fact the registration certificate was cancelled on 30-4-2002. Assessee has paid service tax though not regular, he had paid an amount of Rs. 34,179/- prior to issue of show cause notice and after the issue of show cause notice, a sum of Rs. 1,28,558/- was paid in instalments. In those circumstances, the assessing authority confirmed the demand and also imposed a penalty of Rs. 1,28,558/-. The assessee preferred an appeal. The Appellate Authority on re-appreciation of the entire evidence on record though found assessee was at default, he accepted the cause shown as constituting sufficient cause and therefore, reduced the penalty to Rs. 50,000/-. Aggrieved by the said order, the Revenue preferred an appeal to the Tribunal, which was confirmed in the said

order.

3. When two fact finding authorities have held the non-payment of service tax was not intentional, it was not with any intention to avoid tax, considered the circumstances in which the assessee was placed and reduced the penalty, it cannot be said that the said order suffers from any legal infirmity. No substantial question of law arises for consideration in this appeal. The contention that once there is a default the payment of penalty is automatically unsustainable in view of the language employed in Section 80 of the Act, where if a sufficient cause is made out for the default under any of these provisions, then no penalty shall be imposed. In that view of the matter, the order passed by the Tribunal do not suffer from any legal infirmity, which calls for interference. Therefore, the substantial question of law is answered in favour of the assessee and against the Revenue.

4. Appeal stands dismissed.

5. No costs.

