(2011) 09 KAR CK 0051

In the Karnataka High Court

Case No : CEA No''s. 101 and 102 of 2008

Commissioner of Central Excise and Service Tax — APPELLANT

Vs

Adecco Flexione Workforce Solutions Ltd. — RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:
Finance Act, 1994 — Section 73 (1), 76

Citation : (2012) 26 STR 3 : (2012) 34 STT 472 : (2012) 51 VST 110

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

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, for the Appellant; Padmini Sundaram, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The these appeals are preferred by the revenue (sic) challenging the order passed by the Tribunal as well as the Appellate Commissioner who have held that the assessee is not liable to pay any penalty u/s 76 of the Finance Act, 1994 and therefore, set aside the order passed by the lower authorities imposing penalty.

2. Facts are not in dispute. The assessee has paid both the service tax and interest for delayed payments before issue of show cause notice under the Act. Sub-section (3) of section 73 of the Finance Act, 1994 categorically states, after the payment of service tax and interest is made and the said information is furnished to the authorities, then the authorities shall not serve any notice under sub-section (1) in respect of the amount so paid. Therefore, authorities have no authority to initiate proceedings for recovery of penalty u/s 76 of the Act.

3. Unfortunately the assessing authority as well as the appellate authority seem to think, if an assessee does not pay the tax within the stipulated time and regularly pays tax after the due date with interest, it is something which is not pardonable in law. Though the law does not say so, authorities working under the

law seem to think otherwise and thus they are wasting that valuable time in proceeding against persons who are paying service tax with interest promptly. They are paid salary to act in accordance with law and to initiate proceedings against defaulters who have not paid service tax and interest inspite of service of notice calling upon them to make payment and certainly not to harass and initiate proceedings against persons who are paying tax with interest for delayed payment. It is high time, the authorities will change their attitude towards these taxpayers, understanding the object with which this enactment is passed and also keep in mind the express provision as contained in sub-section (3) of section 73. The Parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served. If notices are issued contrary to the said section, the person to be punished is the person who has issued notice and not the person to whom it is issued. We take that, in ignorance of law, the authorities are indulging in this extravaganza, and wasting their precious time and also the time of the Tribunal and this Court. It is high time that the authorities shall issue appropriate directions to see that such taxpayers are not harassed, if such instances are noticed by this Court hereafter, certainly it will be a case for taking proper action against those law breakers.

4. In that view of the matter, we do not see any merit in these appeals. The appeals are dismissed.

5. Mark a copy of this order to the Commissioner of Large Tax Payers Unit who is in charge of collection of service tax to issue proper circular to all the concerned authorities, not to contravene this provision, namely sub-section (3) of section 73 of the Act.