(2008) 08 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise APPELLANT

Vs

Adhunik Steels Ltd. RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:
Finance Act, 1994 — Section 75, 75A, 76, 77, 78

Citation : (2009) 13 STR 487

Hon'ble Judges : Rajesh Bindal, J;Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The Revenue is in appeal before this Court against order dated 30-3-2007, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, ''the Tribunal'')/raising following substantial question of law:

Whether the Tribunal was justified in waiving of penalties under Sections 75A, 76, 77 and 78 of the Finance Act, 1994 without adducing any reason in the present case when the demand of service tax has been fully confirmed?

2. Briefly, the facts are that the respondent-assessee was working as consignment agent for handling and forwarding of iron and steel material on commission basis for M/s. TISCO Ltd. Considering that the services provided by the assessee as consignment agent are covered under the "Clearing and Forwarding Agents" and the same was leviable to service tax, assessment of the assessee was framed by the Assistant Commissioner by confirming demand of Rs. 5,060/- and Rs. 3,21,375/- against the respondent. Further the respondent was directed to pay interest u/s 75 of the Finance Act, 1994 (for short, ''the Act'') on the service tax deposited late. Still further, a penalty of Rs. 500/- u/s 75A of the Act, a penalty of Rs. 3,26,435/- u/s 76 of the Act, a penalty of Rs. 7,000/- u/s 77 of the Act and a penalty of Rs. 3,26,435/- u/s 78 of the Act was levied.

3. In appeal, the Commissioner (Appeals), relying upon an earlier order passed

by the Tribunal in the case of 2004 (95) ECC 54 , set aside the order. However, in appeal by the Revenue, the Tribunal upheld the levy of service tax keeping in view the decision of the Larger Bench of the Tribunal in the case of 2006 (110) ECC 652 and set aside the penalty for the reason that the earlier view taken by it was in favour of the assessee.

4. Learned Counsel for the Revenue submitted that once the demand of service tax was upheld by the Tribunal, there was no reason for setting aside the order regarding penalty. However, we find that the argument is misconceived. It is not disputed that earlier there was an order of the Tribunal in Mahavir Cenerics case (supra) taking a view in favour of the assessee on merits of the controversy. However, in a later decision by the Larger Bench of the Tribunal, it was held that the services provided by the assessee were amenable to service tax and in terms thereof, the demand of service tax was upheld by the Tribunal. There was reasonable justification for the assessee for not paying service tax at the initial stage. No mens rea can be attributed and in our opinion, no illegality has been committed by the Tribunal in setting aside the penalty levied against the assessee.

No substantial question of law arises in the present appeal.

For the reasons stated above, the appeal is dismissed.