(2008) 10 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Commissioner of Central Excise APPELLANT

Vs

Akash Kumar RESPONDENT

Date of Decision : 31-10-2008

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

Citation : (2009) 16 STR 16

Hon'ble Judges : L.N. Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The Revenue has preferred this appeal u/s 35(G) of the Central Excise Act, 1944 (for short - the Act) against the

order Annexure P-2 dated 20-6-2007 passed by the Customs Excise & Service Tax Appellate Tribunal, New Delhi, proposing to raise following

substantial questions:

(i) Whether CESTAT''s Order setting aside Order-in -Revision enhancing penalty u/s 76 of the Finance Act, 1994, on the ground that tax

deposited along with penalty before issue of revision order is legal in view of situation that no reasonable cause for waiver of penalty u/s 80 of the

Finance Act, 1994, have been adduced by the respondent.

(ii) Whether CESTAT is correct in placing reliance on the judgment of Hon''ble High Court of Karnataka in the case of Commissioner of Central

Excise Vs. Sunitha Shetty, without discussing its application in the present case.

2. The assessee is assessable to service tax for the insurance and auxiliary services. On account of delay in payment of tax, show cause notice was

issued to levy penalty. The Adjudicating Authority imposed penalty of Rs. 200/-

per day which was more than the amount of tax and thus beyond

maximum penalty leviable. The Revisional Authority reduced the amount of penalty to Rs. 10,167/- for delay of 129 days which was equal to

100% of the service tax.

3. The Revenue approached the Tribunal. The Tribunal following the judgment of Karnataka High Court in Commissioner of Central Excise Vs.

Sunitha Shetty, , dismissed the appeal.

4. It is not disputed that u/s 76 of the Finance Act, 1994, penalty for delay in service tax cannot exceed the amount of service tax which the

assessee is liable to pay. The said section is reproduced below:

76. - Penalty for failure to collect or pay service tax.- Any person, liable to pay service tax in accordance with the provisions of Section 68 or the

rules made thereunder, who fails to pay such tax shall pay in addition to paying such tax, and interest on the tax in accordance with the provisions

of Section 75, a penalty which shall not be less than one hundred rupees but which may extend to two hundred rupees for every day during which

such failure continues, so, however, that the penalty under this clause shall not exceed the amount of service tax that he failed to pay.

5. In view of the above provision, the view taken by the Revisional Authority is the only possible view.

6. No substantial question, thus, arises for consideration.

7. The appeal is dismissed.