**(2010) 01 AHC CK 0221**

**In the Allahabad High Court**

**Case No :** Central Excise Appeal No. 464 of 2009

Commissioner of Central Excise APPELLANT

Vs

Auto World RESPONDENT

**Date of Decision :** 05-01-2010

**Acts Referred:**

Finance Act, 1984 — Section 80
Finance Act, 1994 — Section 78

**Citation :** (2010) 27 STT 81

**Hon'ble Judges :** Rajes Kumar, J;Bala Krishna Narayana, J

**Bench :** Division Bench

**Advocate :** Shambhu Chopra, for the Appellant;

**Final Decision :** Dismissed

## Judgement

1. Heard Sri Shambhu Chopra, learned Counsel for the appellant.

2. This is an appeal under the Service Tax Act against the order of the Tribunal dated 17.04.2009 by which the Tribunal has set aside the penalty.

3. The opposite party was acting as a agent, arranging the loan for the purchase of vehicle as a marketing agent from I.C.I.C.I. Bank and received commission from I.C.I.C.I. Bank. The Central Excise Authority, who was authorized to levy the service tax was of the view that the opposite party was liable to pay service tax from July 2003 under the Business Auxiliary Service for the period from July 2003 to November 2004.

4. It appears that the assessee had paid service tax partly in the month of December 2004 alongwith interest partly before the issue of show cause notice and balance amount before passing of the adjudication order. There is no dispute about the levy of service tax on the commission received by the assessee from I.C.I.C.I. Bank. However, Central Excise Authority has levied penalty u/s 78 of the Finance Act, 1994. Against the imposition of the penalty the assessee filed the appeal which has been allowed by the Tribunal. The Tribunal held as follows:

After hearing both sides and on perusal of the records, it appears that there was doubt regarding levy of tax on commission by the authorized automobile dealers which working as " directing marketing agent" of I.C.I.C.I. Bank for providing services to various customers for purchasing vehicles on loan, was clarified by the Board''s circular dated 06.11.2006. In the present case, the appellants were engaged in providing service to different customers who were purchasing vehicles by getting loan from financial institutions and the appellants were receiving commissioner on the loan arranged by them. It is seen that the appellants paid the tax in December, 2004 partly. There is no mala fide on part of the appellants and, therefore, imposition of penalty u/s 78 of the Finance Act, 1994 is not warranted. It is noticed that service tax was introduced on the activities of the appellants in July, 2003 and the appellants paid the tax voluntarily in December, 2004 with interest. After considering the facts and circumstances of the case, I find that the dispute relates to new levy and the appellant paid the tax partly before issue of show cause notice and the balance amount before issue of Adjudication Order. Payment of tax was not disputed by them. Hence, it is a fit case to invoke Section 80 of the Act. Hence, penalty imposed on the appellant are set-aside. Demand of duty is upheld. Appeal is allowed with consequently relief.

5. Section 80 of the Finance Act, 1984 the penalty can be waived only if the assessee proves that there was a reasonable cause. In the present case, he fails to prove the reasonable cause, therefore the Tribunal was not justified in setting aside the penalty.

6. We do not find any substance in the argument of learned Counsel for the appellant. Having regard to the facts and circumstances as recorded and the findings that the service tax was introduced for the first time in July 2003. By the Boards Circular dated 06.11.2006, it has been clarified that the service tax leviable on a marketing agent of I.C.I.C.I. Bank for providing service to authorize customers for purchasing vehicles on loan and further that the assessee has partly paid the amount alongwith the interest in the month of December 2004 and there was no mala fide on the part of the appellant and further the balance amount has been paid partly before the show cause notice and partly before the adjudication order. We are of the view that Tribunal has rightly held that this is a fit case to invoke Section 80 of the Act.

7. On the facts and circumstances of the case, we do not see any error in the order which requires any interference by this Court.

8. The appeal is accordingly dismissed.

 