(2012) 03 GUJ CK 0141

In the Gujarat High Court

Case No : Tax Appeal No''s. 1189 and 1205 of 2010

Commissioner of Central Excise APPELLANT

Vs

Dineshchandra R. Agrawal RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:
Finance Act, 1994 — Section 76, 78, 80

Citation : (2013) 22 GSTR 379 : (2013) 31 STR 5

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Sejal K. Mandavia, for the Appellant; Paresh M. Dave and Paritosh Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, A.C.J.

1. Both these Appeals are taken up together as similar question of law arises for determination in these two Appeals. Both these Appeals are at the instance of the Revenue and are directed against order of the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad ("the Tribunal"), thereby setting aside the order of penalty under the provisions of Sections 76 and 78 of the Finance Act, 1994 ("the Act").

2. The only question that arises for determination in these Appeals is whether the Tribunal below was justified in setting aside the order of penalty by invoking the discretion exercised u/s 80 of the Act.

3. There is no dispute that in these cases, the respondents obtained service tax registration but failed to pay the service tax due in the year 2005-06 and 2006-07. However, they paid the entire amount of service tax along with interest prior to the issue of the show cause notice.

4. Notwithstanding such fact, the Commissioner, Central Excise, imposed penalty

limiting to 25% of the service tax u/s 78 of the Act. As indicated earlier, the Tribunal below, by the orders impugned has set aside the penalty and we are convinced by the reason given by the Tribunal below that as the appellant was providing services to the central excise assessee, the service tax paid by him was available as Cenvat credit and, therefore, payment of service tax would be revenue neutral exercise and in such case, there was no deliberate intention to evade tax. In our opinion, the Tribunal, in such circumstances, rightly exercised its discretion u/s 80 of the Act. We do not find any reason to interfere with the discretion exercised by the Tribunal below in the facts of these cases. We, accordingly, find no merit in these appeals and those are summarily dismissed. No costs.

