(2011) 09 KAR CK 0212

In the Karnataka High Court

Case No : CEA No. 84 of 2007

Commissioner of Central Excise APPELLANT

Vs

Hemant N. Talekar RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2012) 34 STT 473

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

Bench : Division Bench

Advocate : N.R. Bhaskar and R. Veerendra Sharma, for the Appellant; K. Parameshwaran, for the Respondent

Judgement

1. The revenue has preferred this appeal challenging the order passed by the Tribunal, which has set aside the levy of interest and penalty. It is not in dispute that the relevant period is from July 2000 to October 2003. Once there is a delay in payment of service tax, interest is payable as it is compensatory in nature as held by the Apex Court. Therefore, the finding that interest is not payable is erroneous. Accordingly, the said finding is set aside.

2. Insofar as penalty is concerned, the penalty is imposed for a period prior to the introduction of sub-section (3) of section 73. Therefore, mere payment of tax and interest prior to the issue of show cause notice by itself is not a ground to waive the levy of penalty. However, section 80 mandates, if the assessee shows sufficient cause for non-payment of tax and interest within time, direction is vested with the authority to consider the said cause and in its view, if it is sufficient cause, not to impose penalty. In the instant case admittedly the assessee has paid tax and also paid interest even before the issue of show cause notice and has shown cause why it could not be paid earlier.

3. In the facts of the case, we are satisfied that it constitutes a sufficient cause. In this regard it is also useful to refer to the circular dated 20-10-2010 prohibiting the revenue from preferring an appeal where the tax effect is less

than Rs. 2 lakhs. Though the said circular makes it clear that it comes into effect in respect of appeals to be filed subsequent to the date of the circular i.e., 1-11-2010, the Apex Court in the case of Commnr. of Central Excise, Bangalore Vs. Mysore Electricals Industries Ltd., , has held a beneficial circular has to be applied retrospectively while an oppressive circular has to be applied prospectively. Thus when the circular confers benefit on the respondents they have a right to claim the enforcement of the same prospectively. As this circular is in favour of the assessee, in view of the aforesaid judgment of the Apex Court, the circular had to be applied retrospectively granting the benefit. The interest component is hardly Rs. 24,000. In fact the interest was paid and thereafter refunded pursuant to the Tribunal''s order.

4. In the facts of the case, we are satisfied though we have set aside the order of the Tribunal, insofar as interest paid is concerned, we allow the matter to rest here, so that no liability can be enforced against the assessee in view of the aforesaid circumstances.

