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(2010) 07 KAR CK 0002

In the Karnataka High Court

Case No : CEA No. 72 of 2007

Commissioner of Central Excise APPELLANT

Vs

Mrs. K. Vijaya C. Rai RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Finance Act, 1994 — Section 76, 78

Citation : (2011) 21 STR 224 : (2010) 29 STT 98

Hon'ble Judges : N. Kumar, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : C. Shashikantha, for the Appellant; Hareesh Bhandary T., for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is by the revenue, challenging the order passed by the Tribunal, granting relief to the Respondent by holding that there is no wilful evasion of duty and accordingly, setting aside the penalty imposed for non-payment of service tax.

2. The facts of the case are that the Respondent-Assessee was providing rent-a-cab services to M/s. New Mangalore Port Trust, Panambur, Mangalore, with effect from 1-4-2000 to 30-9-2003. She collected a sum of Rs. 4,75,710 as rentals. She did not obtain Service Tax Registration and therefore, she did not pay any service tax on the said rentals. She did not disclose the receipt of rentals to the Department also. It is only during the course of survey, the said fact came to be noticed by the Department. Thereafter, she obtained Service Tax Registration on 15-9-2003 and for the period from 1-4-2000 to 30-9-2003, she filed NIL return on 30-12-2003. Thereafter, a show-cause notice came to be issued on 22-6-2004. Then the Assessee paid service tax of Rs. 24,581, interest of Rs. 9,894 and penalty of Rs. 500 and filed the required ST-3 Return. Thereafter, the adjudicating authority took note of the aforesaid payments but imposed penalty of Rs. 24,581 in terms of Section 78 of the Finance Act, 1994 ("Act" for short)

i.e., 100 per cent penalty. Aggrieved by the same, Assessee preferred an appeal before the Commissioner of Central Excise (Appeals), Mangalore, who affirmed the order of the adjudicating authority and dismissed the appeal.

3. In second appeal before the Tribunal, it took a very lenient view of the matter and took note of the fact that, the service was exempted from payment of service tax from 1-3-1999 as per Notification No. 3/99-ST, dated 1-3-1999 which was reintroduced with effect from 1-4-2000 which was not known to the Assessee who is a household lady; that she held a bona fide belief that there was no service Lax payable on taxi services; M/s. New Mangalore Port Trust also did not inform her about re-introduction of service tax with effect from 1-4-2000; immediately, on receipt of the notice, tax was paid by the Assessee. Therefore, there was no wilful, evasion of duty. Accordingly, it allowed the appeal and set aside the penalty imposed u/s 78 of the Act. Aggrieved by the same, revenue is in appeal.

4. This appeal was admitted to consider the following substantial question of law :

Whether the Tribunal has discretion to waive the penalty u/s 76 of the Finance Act. when no sufficient cause was shown by the Assessee?

5. The learned Counsel appearing for the revenue submitted that after obtaining Service Tax Registration, she filed a false return showing that no tax is payable. It is only thereafter when a show-cause notice was issued, she promptly paid service tax + interest + penalty. In these circumstances, it cannot be said that it is not a case of wilful evasion of duty and this aspect has been completely missed by the Tribunal and therefore, the order requires to be set aside.

6. Per contra, learned Counsel for the Respondent submitted that she is a lady; immediately after receipt of the show-cause notice, not only the tax was paid but she also paid interest and penalty. She being a lady and a housewife, has omitted to pay the tax which is a bona fide act on her part and therefore, when the Tribunal has taken a lenient view in its discretion, such an order need not, be interfered with, in appeal before this Court.

7. If it is a case of payment of service tax with interest and penalty in pursuance of the show-cause notice issued, we would not have interfered with the order of the Tribunal. But, in this case, for a period of three long years after re-introduction of the service tax, Assessee did not pay service tax. When a survey was conducted, it came to the notice of the Department as well as to the notice of the Assessee. Thereafter, she got herself registered under the Act and filed a NIL return. When once she got herself registered, any reasonable enquiry would have disclosed that she was liable to pay tax and that she has not paid the tax and the minimum that is expected of her was to file a return, pay tax with interest and request for a waiver insofar as penalty is concerned. In such circumstances, it was open to the authorities having regard to her bona fide conduct, waive imposition of penalty. When once she filed a NIL return and after service of show-cause notice, she realised her mistake and paid tax with interest

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and penalty, that by itself did not constitute sufficient reason to give her exemption from payment of penalty u/s 78 of the Act. This aspect of the matter has been completely missed by the Tribunal which seems to have been unduly carried away by the fact that Assessee is a lady. The Tribunal failed to notice that people who want to indulge in such malpractices, would purchase properties or carry on business in the names of housewives as their front and carry on the activities. Therefore, authorities need not unduly worry about the persons in whose names the vehicle stand, but they have to look at the substance of the case and find out if it is a case of wilful evasion or bona fide error. Therefore, we are satisfied that this is not a bona fide omission on the part of a housewife - a lady who wilfully evaded service tax and suppression of fact. Therefore, the order passed by the Tribunal is illegal and requires to be set aside. The orders passed by the adjudicating authority as well as first appellate authority requires to be upheld.

8. In the result, the substantial question of law is answered in favour of the revenue and against the Assessee.

9. Accordingly, we pass the following order.

The appeal is allowed. The impugned order is set aside. The orders passed by the adjudicating authority and the first appellate authority imposing penalty u/s 78 of the Act is upheld.

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