(2010) 07 P&H CK 0200

In the Punjab And Haryana At Chandigarh

Case No : Service Tax Appeal No. 13 of 2010

Commissioner of Central Excise APPELLANT

Vs

Pannu Property Dealers RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance (Amendment) Act, 2008 — Section 78
Finance Act, 1994 — Section 76, 77, 78

Citation : (2011) 24 STR 173 : (2010) 29 STT 180 : (2010) 34 VST 478

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Revenue against deletion of penalty by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi levied u/s 76 of the Finance Act, 1994, which contains the provisions for levy and collection of service tax ("the Act").

2. The respondent-assessee is a property dealer and service provider of taxable service under the Act. Show-cause notice was given by the authority alleging failure on its part to file return and pay service tax on the taxable value for the period from 2001-02 to 2003-04. After consideration, order-in-original dated October 16, 2007, was passed adjudicating the amount of service tax and also levying penalty u/s 76 of the Act for non-payment of service tax, u/s 77 for not filing the return and u/s 78 for suppressing the taxable value. On appeal, while upholding the penalty u/s 78 of the Act for suppression, penalty under Sections 76 and 77 of the Act was deleted. It was held that penalty under Sections 76 and 77 could not be imposed in addition to penalty u/s 78. The Tribunal partly allowed the appeal of the Revenue against the said order and upheld the penalty of Rs. 1,000 u/s 77 of the Act.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the Revenue submits that the concept of penalty under Sections 76 and 77 is different from penalty u/s 78. Reliance has been placed on the judgment of the Kerala High Court in Assistant Commissioner of Central Excise v. V. Krishna Poduval [2006] 3 VST 21 : [2006] 1 STR 185, holding that the incidence of imposition of penalty under different sections was distinct and even without suppression, there could be failure to pay tax or to file return.

5. Learned Counsel for the assessee on the other hand submitted that there has been an amendment to Section 78 by the Finance Act, 2008, with effect from May 10, 2008, adding a proviso to the effect that if penalty is payable u/s 78 of the Act, the provision of Section 76 of the Act will not apply. The said amendment shows the intention of the Legislature to avoid double penalty.

6. We are of the view that even if technically, the scope of Sections 76 and 78 of the Act may be different, as submitted on behalf of the Revenue, the fact that penalty has been levied u/s 78 could be taken into account for levying or not levying penalty u/s 76 of the Act. In such situation, even if reasoning given by the appellate authority that if penalty u/s 78 of the Act was imposed, penalty u/s 76 of the Act could never be imposed may not be correct, the appellate authority was within its jurisdiction not to levy penalty u/s 76 of the Act having regard to the fact that penalty equal to service tax had already been imposed u/s 78 of the Act. This thinking was also in consonance with the amendment now incorporated though the said amendment may not have been applicable at the relevant time. Moreover, the amount involved is Rs. 51,026 only.

7. In view of this position, we are unable to hold that any substantial question of law arises for entertaining the appeal u/s 35G of the Central Excise Act, 1944, read with Section 83 of the Act.

8. The appeal is dismissed.