(2010) 12 GUJ CK 0202

In the Gujarat High Court

Case No : Tax Appeal No. 318 of 2010

Commissioner of Central Excise APPELLANT

Vs

Pratik Enterprises RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 73(1), 75A, 76, 77, 78

Citation : (2011) 21 STR 597

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Harsha Devani, J.—The Commissioner of Central Excise, Daman in this appeal u/s 35G of the Central Excise Act, 1944 has challenged order dated 1st July, 2009 (2009) 18 STJ 319 made by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal) proposing the following two questions:

(a) Whether the Assessee is a proprietary concern and cooperated with the investigation and paid the Service tax with interest as applicable, would be sufficient to constitute "reasonable cause" within meaning of Section 80 of the Finance Act, 1994?"

(b) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in extending benefit of Section 80 of the Finance Act, 1994 even though no reasonable cause for nonpayment of Service tax and interest as also penalty is proved by the Respondent?

2. The Respondent is a proprietary firm engaged in clearing and forwarding services. A search came to be conducted on the business premises of the Respondent pursuant to which show-cause notice came to be issued which culminated into an order dated 14th March, 2008 made by the adjudicating authority whereby service tax of Rs. 69,038/- came to be confirmed u/s 73(1)(a)

of the Finance Act, 1994 (the Act)-with interest and separate penalties under Sections 75A, 76, 77 and 78 of the said Act. Being aggrieved, the Assessee preferred appeal before the Commissioner (Appeals) but did not succeed. The Assessee carried the matter in second appeal before the Tribunal who set aside the penalties and allowed consequential relief to the Assessee.

3. Mr. R.J. Oza, learned Senior Standing Counsel appearing on behalf of the Appellant assailed the impugned order of the Tribunal by reiterating the reasoning adopted by the adjudicating authority and the Commissioner (Appeals). It was submitted that the Tribunal was not justified in extending the benefit of Section 80 of the Act to the Respondent Assessee even though no reasonable cause for non-payment of service tax had been made out in the facts and circumstances of the case.

4. As can be seen from the impugned order of the Tribunal, before the Tribunal, on behalf of the Assessee it was submitted that the Assessee had already paid the duty amount alongwith interest before completion of the adjudication process and request was made for taking a lenient view as regards penalty. The Tribunal after considering the facts of the case recorded that the Assessee is an individual and is a proprietary firm and has co-operated with the investigation and paid service tax with interest as applicable and as such, lenient view was required to be taken. The Tribunal taking note of the fact that the firm was a small proprietary firm and considering the volume o; the transaction, found that reasonable cause has been made out for the purpose of invoking Section 80 of the Act.

5. A perusal of the impugned order indicates th(sic) the total amount of duty liability involved in the present case is Rs. 70,000/- over a period of almost five years. In the circumstances, considering the findings fact recorded by the Tribunal as noted hereinabove and considering the smallness of amount involved, it cannot be stated that the approach adopted by the Tribunal is, in any manner unreasonable so as to warrant interference.

6. In the absence of a question of law, much less a substantial question of law, the appeal is dismissed.