

(2010) 04 KAR CK 0212
In the Karnataka High Court
Case No : C.E.A. No. 73 of 2007

Commissioner of Service Tax

APPELLANT

Vs

A.D.A. Rangamandira

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Finance Act, 1994 — Section 75 A, 76, 78, 80

Citation : (2010) 27 STT 268 : (2011) 42 VST 144

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Raghavendra B. Hinges, for N.R. Bhaskar, for the Appellant; M.A. Narayan, for the Respondent

Judgement

1. The revenue has preferred this appeal by challenging the order dated 28.11.2006. passed in Final Order No. 1993/2006 dated 28.11.2006 by raising the following substantial questions of LAW:

i) Whether the CESTAT was legal and correct in setting aside the penalties imposed u/s 75A, Section 76 and Section 78 of the Act, when the respondent did not prove any reasonable cause for their failure to comply with the provisions mentioned in Section 80 of the Act. In the absence of any reasonable cause, whether waiver of aforesaid penalties by invoking Section 80 of the Act was legal and correct.

ii) Whether the case involved suppression of facts and there is no reasonable cause apparent from the record, whether CESTAT was correct in setting aside the Order-in-Appeal No. 99/2004 dated 1.9.2004 on the ground that the provisions of Section 80 of the Act could be invoked in the case.

iii) Whether the order of CESTAT is legally sustainable, in view of erroneous findings and misinterpretation of statutory provisions.

2. The facts leading to the filing of this appeal are that, on 15/21.07.2003 a show-cause notice was issued to the respondent by the department by

contending that the respondent is a service provider coming under the category of "Mandap Keeper" and for the period from 1.2.1998 to 30.6.2002, there was no payment of service tax under the category of Mandap Keeper. That the respondent was letting out the hall for organising social and cultural functions and was liable to pay tax. The said show-cause notice was replied to by the respondents and the same was adjudicated upon and an order-in-original was passed on 31.3.2004 confirming the payment of service tax and also interest as well as penalty. Being aggrieved by the said order, the respondent preferred an appeal before the Commissioner of Central Excise (Appeals-II) which was rejected on 1.9.2004. As against the said order, the respondent preferred an appeal before the CESTAT. The CESTAT has, while confirming the order of the lower authorities that the service rendered by the respondent herein was amenable to service tax under the category of Mandap Keeper, however, set aside the levy of penalty and interest. Being aggrieved by the setting aside of the penalty and interest, the revenue has preferred this appeal.

3. We have heard the learned Counsel for the appellant and the learned Counsel for the respondent and perused the material on record.

4. It is noticed that CESTAT has come to a conclusion that the respondent-assessee was letting out the hall for organising social and cultural functions and was liable to pay service tax under the category of mandap keeper and therefore, confirmed the payment of the said tax made under the said show cause notice. However, when it came to the question of imposing of penalty the tribunal has merely stated that the appellants were under a bonafide belief that they would not be liable to pay service tax penalty u/s 80 of the Finance Act, 1994 and therefore, set aside the said penalty. We find that in arriving at such a conclusion, the tribunal has not assigned any reason and as to whether a bonafide belief on the part of the assessee in regard to the payment of tax would be consideration for setting aside the order imposing penalty. Under the circumstances, we are constrained to remand the matter to the tribunal to take into consideration the provision of Section 80 of the Finance Act, 1994 with regard to the imposition of penalty and also to consider the reasons assigned for non-payment of service tax and thereafter to conclude as to whether the penalty imposed has to be waived or set aside in the instant case. Hence, the appeal is allowed without answering the substantial questions of law raised in this appeal. The matter is remanded to the tribunal to reconsider the issue with regard to levying of penalty in the light of the aforesaid observations.