(2011) 08 KAR CK 0046

In the Karnataka High Court

Case No : CEA No. 101 of 2009

Commissioner of Service Tax — APPELLANT

Vs

C Ahead Info Technologies India Pvt. Ltd. — RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Citation : (2012) 53 VST 215

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

Bench : Division Bench

Advocate : B. Pramod, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the Revenue challenging the order passed by the Tribunal, which has held that the assessee has paid the service tax and interest even before the issue of show-cause notice, and therefore in view of section 73(3) of the Finance Act 1994 no penalty could be levied. Aggrieved by the same the Revenue is in appeal. The material on record discloses that the assessee had not disputed the leviability of service tax in respect of their activity. However, after investigation he had paid the service tax with interest as and when it became due. It is only during the course of investigation that the officials pointed out this default of the assessee. The assessee opened his eyes and then promptly paid the service tax with interest. It is after such payment, the authorities issued the show-cause notice calling upon him to show cause why penalty should not be imposed. Being not satisfied with the reasons given by him, the assessing authority proceeded to pass an order imposing penalty.

2. The Appellate Commissioner set aside the penalty imposed u/s 76 but confirmed the penalty imposed under sections 77 and 78. Aggrieved by the same the assessing authority preferred the appeal before the Tribunal. The Tribunal has set aside the penalty on all counts. It is aggrieved by the said order, the present appeal is filed.

3. Sub-section (3) of section 73 of the Finance Act, 1994, provides that, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by the Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officers of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid. Therefore, it is clear before the issue of show-cause notice the assessee acknowledges the leviability to pay the entire service tax due with interest and pays the same; then the authorities are precluded from issue of show-cause notice.

4. In these circumstances, the order passed by the Tribunal is strictly in accordance with the aforesaid statutory provision and docs not suffer from any legal infirmity which calls for interference. No merit. Appeal stands dismissed. In view of the fact that we are dismissing the appeal on merits, the application for condonation of delay in filing the appeal is also dismissed.