(2011) 09 KAR CK 0065

In the Karnataka High Court

Case No : C.E.A. No. 53 of 2009

Commissioner of Service Tax, Bangalore — APPELLANT

Vs

Handimann Services Ltd. — RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:
Finance Act, 1988 — Section 76, 78, 80

Citation : (2011) 24 STR 641

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

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—The Revenue has preferred this appeal challenging the order passed by the Tribunal (2009) 16 STJ 32 which has set aside the imposition of penalty in a suo-motu proceedings by the Commissioner.

2. The Asst. Commissioner, after due consideration of the grounds urged, held, no penalty is leviable for the reason that the service tax has been paid under Amnesty Scheme. However the Commissioner has imposed a penalty of Rs. 7,00,000/- under Sec. 78 and penalty of Rs. 200/- per day under Sec. 76 of the Finance Act, in pursuance of the power of suo motu revision. Aggrieved by the said order, the assessee filed an appeal to the Tribunal. The Tribunal, following the judgment of this court in the case of Commissioner of Central Excise Vs. Sunitha Shetty, and also the judgment of the Tribunal in 2008 (11) S.T.R. 609 held that the Commissioner was not justified in exercising his suo motu powers to interfere with a discretionary order passed by the original authority where he was satisfied with the cause shown and he had not imposed penalty. Aggrieved by the said order, the Revenue is in appeal.

3. The judgment rendered by the Tribunal in Majestic Mobikes (P) Ltd. has been upheld by this court. Therefore in view of the judgment rendered by this court in

C.C.E. v. Sunitha Shetty as well as Majestic Mobikes (P) Ltd. case, once the original authority being satisfied about the cause shown, exercised its power under Sec. 80 of the Act and did not impose penalty, the Commissioner has no jurisdiction to interfere with such discretionary orders and impose penalty in pursuance of his revisional jurisdiction. The Tribunal was justified in interfering with the said order and setting aside the same.

4. No merit. Appeal dismissed.