

(2008) 12 P&H CK 0190
In the Punjab And Haryana At Chandigarh

Commr. of C. Ex.	Vs	APPELLANT
Narinder Arora and Associates		RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(G)
Finance Act, 1994 — Section 76, 80

Citation : (2010) 19 STR 20

Hon'ble Judges : L.N. Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Revenue u/s 35(G) of the Central Excise Act, 1944 (for short, "the Act"), proposing to raise following substantial questions of law:

(i) Whether CESTAT's order setting aside Order-in-Revision enhancing penalty u/s 76 of the Finance Act, 1994, on the ground that tax deposited along with penalty before issue of revision order is legal in view of situation that no reasonable cause for waiver of penalty u/s 80 of the Finance Act, 1994, have been adduced by the respondent.

(ii) Whether CESTAT is correct in placing reliance on the judgment of Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise Vs. Sunitha Shetty, without discussing its application in the present case.

2. The Assessee is a service provider under the category of Architect Service and delayed payment of service tax by 1197 days. The adjudicating authority imposed penalty of only Rs. 100/-, taking a lenient view. The revisional authority set aside the said order and held that assessee had not given any valid explanation, in absence of which, Section 80 of the Act could not be invoked for setting aside the penalty. On appeal of the assessee, the Tribunal set aside the order of revisional authority relying upon judgment of Karnataka High Court in the case of Commissioner of Central Excise Vs. Sunitha Shetty, .

3. Learned Counsel for the Revenue submits that the judgment of Karnataka High Court was not applicable. Therein, the Tribunal held that interference with the discretionary order passed u/s 80 of the Act was not justified, which is not the position here. In the present case, the revisional authority has recorded a specific finding that Section 80 of the Act was not applicable as the assessee had not given any valid explanation.

4. Learned Counsel for the assessee points out that the assessee had given explanation to the effect that there was a stay granted by the High Court and leviability was not clear and this fact, though mentioned in the order of the revisional authority, has not been taken into account by the said authority or the Tribunal.

5. The order of the Tribunal does not appear to be justified in absence of any relevant discussion on the question whether the assessee had given any valid explanation. The revisional authority has also not discussed the explanation of the assessee.

6. The normal course adopted by us, in these circumstances, would have been to remand the case to the Tribunal or to the revisional authority for fresh decision but having regard to the fact that the amount involved in this appeal is not significant, we refrain from interfering with the impugned order while expressing our disapproval to the manner of disposal of the matter by the Tribunal.