(2015) 03 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 58752 Of 2013, Service Tax Appeal No. 58130 Of 2013

M/s. Shree Venkatesh Medical Agencies — APPELLANT

Vs

C.C.E. & S.T., Raipur — RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:
Finance Act, 1994 — Section 73, 73(i), 78

Citation : (2015) 03 CESTAT CK 0009

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Amresh Jain

Final Decision : Allowed

Judgement

1. Stay Application along with Appeal has been filed against Order- in-Appeal No.31 (ST/RPR-l/2013, dated 06.03.2013, which upheld the service tax

demand of Rs.19,576/- confirmed by the original adjudicating authority. However, the Commissioner (Appeals) while setting aside the mandatory

penalty under Section 78 of the Finance Act, 1994, in paras 7 and 8 of the impugned order observed as under:-

'7. Regarding imposition of penalty Rs.19,5761- under Section 78 of the Act, I find that issue has been in dispute since long and there are

number of conflicting decisions on this issue and the issue is of interpretational nature and therefore imposition of penalty under Section 78

of the Act is not justifiable. My aforesaid views find support from the Apex Court's decision in the case of M/s. Uniflex Cables Ltd. Vs. CCE

Surat-II (2011 (271) ELT. 161 (SC) wherein it has been held that penalty is not imposable when issue involved is of interpretational nature.

Also in the case of Asian Tubes Ltd. Vs. CCE Ahmadabad (2011 (263) EL T 707 (Tri-Ahmd.) it has been held that if the disputed issue is a

issue of interpretation, there is no justification for imposition of penalty.

8. Under the facts and circumstances as stated above, I consider that this is a fit case of waiver of penalties imposed under Section 78 of

Finance Act, 1994. In the result appeal is partially allowed by setting aside penalties imposed upon the Appellant under Section 78 of the

Finance Act, 1994. Held Accordingly.

In this regard it is to be noted that the conditions/criteria for invoking the extended period under Section 73 of the Finance Act, 1994 are identical to

the conditions/criteria for liability to penalty under Section 78 ibid. As stated earlier, Commissioner (Appeals) has come to a reasoned/clear finding that

the conditions/criteria for imposing mandatory penalty under Section 78 ibid are not satisfied in this case. It then follows that even the extended period

under proviso to Section 73(i) ibid would not be invokable. It is pertinent to mention here that Revenue has not filed any appeal against the impugned

Order-in-Appeal for dropping the penalty under Section 78 ibid. The period involved in this case is October, 2002 to December, 2006 while the Show

Cause Notice was issued on 23.02.2008. It is thus obvious that the entire demand is beyond normal period of one year (except for a period of mere

three months i.e. October, 2006 to December, 2006 and that too only if the Show Cause Notice dated 23.02.2008 was actually received by the

appellants on or before 25.02.2008) and therefore is hit by time bar in view of the analysis above. When the entire demand covering the period

October, 2002 to December, 2006 is a meagre Rs. 19576/- the demand for a mere 3 months will be pittance or less making it ridiculous to remand the

case for computation thereof in view of the paper and effort involved as a consequence of so doing particularly when it does not involve any question

of law or interpretation thereof. Accordingly, we dispense with the pre-deposit and allow the appeal.