
(2008) 07 UK CK 0002
In the Uttarakhand High Court

The Commissioner of Central Excise	Vs	APPELLANT
Maha Laxmi Sugar Mills Company Ltd.		RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 69, 70, 77
FINANCE ACT, 2000 — Section 117

Citation : (2008) 219 CTR 393 : (2008) 2 UD 11 : (2006) 2 UD 11

Hon'ble Judges : Prafulla C. Pant, J; Dharam Veer, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 35G of the Central Excise Act, 1944, is directed against the order dated 03.12.2004, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred as CESTAT), whereby Appeal No. ST/69/04?NB(S), filed by the assessee was allowed.

2. Following substantial question of law has been raised by the Revenue in this appeal:

Whether, the penalty u/s 77 of the Finance Act, 1994 in respect of default in submitting ST-3 return for period prior to 31.03.2000, even though the same was filed on 23.01.2002 i.e. long after the amendment in the Statute with retrospective effect came into force vide Finance Act, 2000?

3. We Heard learned Counsel for the parties.

4. Brief facts of the case are that respondent-assessee M/s Maha Laxmi Sugar Mills Company Ltd., Iqbalpur, Haridwar are manufacturers of sugar, and also engaged in the business of providing service of transport of goods. The assessee has service tax registration No. 207/STX/Trans. Operator/SRE/98, as required u/s 69 of the Finance Act, 1994. Allegation against the assessee is that it violated

the provisions of Section 70 of the Finance Act, 1994, as it failed to furnish half yearly returns in the prescribed form ST-3 for the quarter ending on December 1997. A show cause notice No. V-CE(3)ST/22/98/2436 dated 17.04.1998 appears to have been served on the respondent-assessee to show cause as to why penalty should not be imposed for violating the provisions contained in Section 70 of the aforesaid Act. The respondent-assessee submitted its reply explaining the default and delay in submitting the return. The Deputy Commissioner, Central Excise, Saharanpur, adjudicated the case and dropped the proceedings against the assessee. Aggrieved by said order dated 29.01.2002, passed by Deputy Commissioner, Central Excise, a revision was entertained by Commissioner Central Excise, who set aside the order passed by the Deputy Commissioner and imposed penalty of Rs. 1,34,500/- on the assessee for violating the provisions of Section 70 of the Finance Act, 1994. Aggrieved by said order dated 27.01.2004, passed by Commissioner, Central Excise, Appeal No. ST/69/04?NB(S) was preferred by the respondent-assessee before the CESTAT, who vide its impugned order dated 03.12.2004 allowed the appeal and set aside the order passed by the Commissioner. Hence, this appeal by the revenue.

5. Before further discussion, we think it just and proper to mention here relevant provision of law, applicable to this case. Section 70 of the Finance Act, 1994, reads as under:

70. Person responsible for collecting service tax to furnish prescribed return.-

(1) Every person responsible for collecting the service tax shall furnish or cause to be furnished to the Central Excise Officer in the prescribed form and verified in the prescribed manner, a quarterly return, within fifteen days of the end of the preceding quarter, showing-

(a) the aggregate of payments received in respect of the value of taxable services;

(b) the amount of service tax collected;

(c) the amount of service tax paid to the credit of the Central Government; and

(d) such other particulars as may be prescribed.

(2) In the case of any person who, in the opinion of Central Excise Officer, is responsible for collecting service tax under this Chapter but who has not furnished a return under Sub-section (1), the Central Excise Officer may, before the expiry of the quarter in which the return is to be furnished, issue a notice to such person and serve it upon him, requiring him to furnish within thirty days from the date of service of the notice the return in the prescribed form and verified in the prescribed manner setting forth the prescribed particulars.

(3) Any person, responsible for collecting the service tax who has not furnished the return within the time allowed under Sub-section (1) or Sub-section (2) or having furnished a return under Sub-section (1) or Sub-section (2) discovers any

omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

Section 77 of the Finance Act, 1994, provides the penalty for violation to furnish the prescribed returns as mentioned in Section 70, quoted above, and reads as under:

77. Penalty for failure to furnish prescribed return.—If a person fails to furnish in due time the return which he is required to furnish under Sub-section (1) of Section 70 or by notice given under Sub-section (2) of that section, he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees, but which may extend to two hundred rupees for every day during which the failure continues.

6. Now, we have to examine whether, the CESTAT has committed any error of law by setting aside the penalty imposed by the Commissioner, Central Excise, in the matter? Broadly speaking, it is settled principle of law that the penalty is required to be imposed wherever the assessee avoids or attempts to avoid to pay the tax. The circumstances of the present case, which have come on the record, in the orders passed by the Deputy Commissioner and the Commissioner, Central Excise, disclose that the return ST-3 with regard to which the assessee is said to have committed default pertains to the quarter ending December 1997. It is also not disputed that the said return was submitted by the assessee on 23.01.2002. It is also not disputed that the amount of service tax for said quarter was only Rs. 1,000/- and that too has been paid by the assessee. As to the delay in filing the return ST-3, learned Counsel for the parties agree that the Constitutional validity of rules relating to levy of service tax on goods transportation was challenged before the Supreme Court. The said matter which was subjudice before the Apex court was decided in 1999, in the case of *Laghu Udyog Bharati and Another Vs. Union of India and Others*, , whereby Rules 2(d)(i) to (ix), (xiii) and (xvi) of the Finance Rules, 1944, were declared ultra vires, and it was determined that for the purposes of service tax, transport operator shall be treated as service provider (assessee), and not the Clearing Agent or customer.

Thereafter, Section 117 of the Finance Act, 2000, came into force w.e.f. 1st April 2000, whereby certain action taken under service tax rules since the commencement of Finance Act, 1994 were validated.

7. Having heard learned Counsel for the parties, in the above circumstances, we are of the view that non-submission of one particular return ST-3 for only quarter ending December 1997, on the part of the assessee cannot be said to be intentional withholding of the same for the purposes of avoiding the payment of tax, which has been paid by the assessee. It is pertinent to mention here that amount of tax was only Rs. 1,000/-. Therefore, considering the peculiar circumstances of the case, we are of the view that the Deputy Commissioner, Central Excise has committed no error of law in dropping the proceedings and the CESTAT has also committed no error in upholding the same and in setting

aside the order passed by the Commissioner, in revision. On the facts and circumstances of the case, we hold that though penalty can be imposed u/s 77 of the Finance Act, 1994, for violation of Section 70 of said Act, even for the period prior to 31.03.2000, but in the present case the same was not justified, for reasons discussed above.

8. The question of law stands answered, accordingly. Consequently, the appeal is dismissed.