

2013 (3) ECS (110) (Tri-Del)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI
COURT-1

Date of hearing: 04.04.2013

Date of decision:04.04.2013

M/s Simplex Engg. Foundary Works Pvt. Ltd.

Versus

CCE, Raipur

Service Tax Appeal No. 06 of 2009

Arising out of the Order in Appeal No. 29 – ST/RPR – II/2008 dated 29.9.2008 passed by the Commissioner (Appeals - II), Customs & Central Excise, Raipur).

M/s Simplex Engg. Foundary Works Pvt. Ltd. ..Appellants

Versus

CCE, Raipur Respondent

Appearance:

Ms Tuhina, Advocate for the appellants.

Shri M S Negi, DR for the Revenue

Coram:

Hon'ble Mr. Justice G. Raghuram, President

Hon'ble Mr. Sahab Singh, Technical Member

Final Order No. 55938/2013 dated 04.04.13

“In Castrol India Ltd. the Bombay High Court referred to several decisions including those of this Tribunal which followed the judgment of the Delhi High Court in K. P. Pouches (P) Ltd. Distinguishing the decision of Delhi High Court by placing reliance on the decision of the Supreme Court in Union of India vs. Dharmendra Textile Processors – reported in 2008 – TIOL – 192 – SC – CX – LB, the Bombay High Court held that once the conditions enumerated in Section 11 AC and failure to remit the amount of duty under the first proviso and the amount of penalty determined under the second proviso to the said provision are established, the liability to remit 100% of the penalty is statutorily enjoined and no discretion inheres in any authority to avoid the legislative mandate as to the quantum of penalty.”
[Para 4]

Per G. Raghuram, J.:

1. We have heard Ms. Tuhina, Id. Counsel for the appellant and Sh. M. S. Negi, Id. DR for the respondent.

1. The appeal by the assessee is preferred against the order – in – appeal dated 29.9.2008 confirming the order – in – original dated 23.06.2008 passed by the adjudicating authority – the Deputy Commissioner, Division – I, Bhilai whereby the demand of service tax of Rs. 3,51,122/-, education cess of Rs. 8022/-, interest and penalty under section 75 of the Finance Act, 1994 and a penalty equivalent to the service tax liability under Section 78 of the Act were confirmed and penalty under section 76 was waived, under Section 80 of the Act. The process of recovery of service tax by Revenue was initiated against the appellant in respect of service of Goods Transport Agency by road on freight paid by the appellant. Enquires initiated in the process revealed under – disclosure of service tax liability on GTA services. after a due process of notice and hearing the adjudication order was passed. The appellant preferred an appeal unsuccessfully, which was rejected by the Commissioner (Appeals). Accordingly the present appeal is filed.

2. Ld. Counsel for the appellant fairly states the position that on merits of the order of the adjudication, confirmed by the appellate order, no contest is available, since the appellant has failed to furnish any substantiating material to support its claim that the allegation of under – disclosure of the value was in respect of transactions pertaining to non taxable services. The single point urged by the Id. Counsel is that the adjudicating

authority as well as appellate authority erred in failing to exercise discretion under the second proviso to section 78 of the Act, in the light of the decision of Delhi High Court in K. P. Pouches (P) Ltd. vs. Union of India reported in 2008 (228) ELT 31 (Del.) and the decision of this Tribunal in Sonam Clock Pvt. Ltd. vs. CCE, Rajkot reported in 2012 (278) ELT 263 (Tri. Ahmd.) (the latter decision having followed several decisions including the decision of the Delhi High Court in K P Pouches).

3. Shri M.S. Negi, Id. DR has placed for our consideration the recent decision of the High Court of Bombay in the case of CCE, Mumbai vs. Castrol India Ltd. reported in 2012 – TIOL – 464 – HC – MUM – CX. In Castrol India Ltd. the Bombay High Court referred to several decisions including those of this Tribunal which followed the judgment of the Delhi High Court in K. P. Pouches (P) Ltd. Distinguishing the decision of Delhi High Court by placing reliance on the decision of the Supreme Court in Union of India vs. Dharmendra Textile Processors – reported in 2008 – TIOL – 192 – SC – CX – LB, the Bombay High Court held that once the conditions enumerated in Section 11 AC and failure to remit the amount of duty under the first proviso and the amount of penalty determined under the second proviso to the said provision are established, the liability to remit 100% of the penalty is statutorily enjoined and no discretion inheres in any authority to avoid the legislative mandate as to the quantum of penalty.

4. In the light of the judgment of the High Court of Mumbai in Castrol India Limited the contention of the Id. Counsel does not commend acceptance by this Tribunal. The appeal is dismissed in the above circumstances, but without costs.