

2014 (2) ECS (208) (Tri.- Ahm.)

In the Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench, Ahmedabad

CCE & ST SURAT I

VS

M/S. GIGARAM BHAGVANRAM YADAV

Date of Hearing/ Decision: 21.02.2014

Appeal No. ST/503/2011 SM

[Arising out of the Order-in -Appeal No. RKA/221/SRT-I/2011 dated 20.07.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Surat I.]

Appearance:

Shri M Kutty(AR)

None

for the appellant

for the respondent

CORAM-

Mr. M.V. Ravindran, Hon'ble Member (Judicial)

The provisions of section 78 of the finance act, 1994 were amended from 16.5.2008 which provided for imposition of penalties either under section 76 or 78.....Since the show cause notice is issued prior to the amendment, I find that both the lower authorities were in error in not imposing penalties under section 76 of the finance act, 1994 (para 3).

Per. M.V. Ravindran;

This appeal is filed by the Revenue against the OIO OIA No. RKA/221/SRT-I/2011 dated 20.07.2011 Wherein the first Appellate Authority has held that appellant is not liable to penalize under Section 76 of the Finance Act 1944 having been deposited when the penalty under Section 78 of the finance Act 1944. None appeared on behalf of the respondent deposit notice. This matter is coming up for disposal for some time and is adjourned due to absence of respondent as such I take up the matter for disposal in the absence of any representation from the respondent.

2. Learned Department Representative would submit that Show cause Notice for demand of duty imposition of penalties was issued on 14.02.2008 i.e. The date 16.05.2008 wherein amendment was made to Section 78 of Finance Act 1944. It is his submission that in the facts and circumstances of this case the judgment if Hon'ble High Court of Delhi in the case of Bajaj Travels Ltd - 2012(25) SRT.417 (Del.) will apply.

3. On consideration of submissions made by the Learned Department Representative and perusal of records, I find that the Adjudicating Authority has not imposed the penalties under Section 76 Which was contested by the Revenue before the First Appellate Authority and the First Appellate Authority also concurred with the views if The Adjudicating Authority. I find that the contention raised by the Learned Department Representative are having strong force in much as the Show Cause Notice which is issued in this case is on 14.02.2008 and the provisions of Section 76 and 78 for imposition of penalties were invoked. The provision of Section 78 of the Finance Act 1944 were amended from 16.05.2008 which provide for imposition of penalties either under Section 76 or 78. In the facts and circumstances of this case, since the Show Cause Notice is issued prior to the amendment, I find that both the Lower Authorities were in error in not imposing penalties under sec 76 of Finance Act 1944. The orders of both the Lower Authorities are liable to set aside to the extent they held the penalties under Section 76 can not be imposed Impugned order is set aside and appeal is allowed.