

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. E. A. No. 90 of 2008

Date of Decision : November 28, 2008.

Commissioner of Central Excise
Commissionerate, Jalandhar

.... Appellant

Vs.

M/s Batala Citi Cable Pvt. Ltd.,
Batala, District Gurdaspur

.... Respondent

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE L. N. MITTAL

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Present : Mr. Sanjeev Kaushik, Standing Counsel
for the appellant.

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ADARSH KUMAR GOEL, J. (Oral) :

1. The Revenue has preferred this appeal under Section 35(G) of the Central Excise Act, 1944 (for short, the Act) proposing to raise following substantial questions of law :-

“i) Whether the Customs Excise & Service Tax Appellate Tribunal (in short CESTAT) is correct in relying upon the Extraordinary Taxpayer Friendly Scheme issued by the Hon'ble Finance Minister, Govt. of India (Central Board of Excise & Customs, New Delhi) in the month of September, 2004 and which

remained in operation upto November, 2004 when the respondents were caught evading service tax before announcement of said scheme ?

ii) Whether the penalties imposed under Section 75A, 76, 77 & 78 of the Finance Act, 1994 by the Revisionary Authorities in exercise of the powers conferred under Section 84 of the Finance Act, 1994 are correct when the respondent failed to obtain service tax Registration Certificate, failed to file Service Tax-3 Returns and also failed to deposit the due amount of Service with the department ?”

2. The Assessee is engaged in providing advertisement service falling under Section 65 of the Finance Act, 1944. The Assessee did not pay the service tax for the period from 06.08.1998 to 30.06.2002. Notice for imposition of penalty was issued to the Assessee.

3. In reply, the Assessee deposited the amount and also relied upon Taxpayer Friendly Scheme announced by the Finance Minister in September 2004, which remained operative upto November 2004, providing that if a service provider has failed to register himself due to ignorance, no penalty would be levied, if he made a declaration of his past liability. The Adjudicating Authority accepted the declaration and levied token penalty of Rs.1,000/- only. The matter was thereafter reviewed by the Commissioner on the ground that conduct of the Assessee was not bona fide. The Tribunal, on appeal of the Assessee, restored the original order by observing that since there was confusion in the field, bona fides of the Assessee could not be doubted.

4. We have heard learned counsel for the appellant and perused the record.

5. In view of the finding that the Assessee was admittedly covered by the Scheme, we do not find that any substantial question of law arises.
6. The appeal is accordingly dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 28, 2008
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(L. N. MITTAL)
JUDGE