

(2010) 12 P&H CK 0386

High Court Of Punjab And Haryana At Chandigarh

Case No: C.E.A. No. 177 of 2010 (O and M)

Commissioner of Central Excise

APPELLANT

Vs

Bajaj Travels Limited

RESPONDENT

Date of Decision: Dec. 21, 2010

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 35G
- Finance Act, 1994 - Section 78(1)
- Service Tax Rules, 1994 - Rule 6(7)

Citation: (2011) 21 STR 497 : (2011) 30 STT 293

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.

This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 (for short, "the Act") against the order of the Customs, Central Excise & Service Tax Appellate Tribunal, New Delhi dated 19.6.2009 (Annexure A-3) proposing to raise following substantial question of law:

Whether penalty imposed u/s 78(1) of Finance Act, 1994 can be reduced to 25% by invoking the provisions of First Proviso to Section 78(1) when the Assessee has not paid 25% of the penalty amount within 30 days of the order as required under the second proviso to Section 78(1) ibid.

2. The Assessee is a travel agent and its service is "taxable service" exigible to service tax under the provisions of the Finance Act, 1994. On 5.9.2005, a search was conducted at the premises of the Assessee, resulting in issuance of show cause notices dated 20.10.2005 and 31.1.2006 alleging violation of Rule 6(7) of the Service Tax Rules, 1994 on account of suppression of "basic fare". The adjudicating authority passed order in original dated 9.6.2006, creating demand of service tax

and also imposing penalty. However, it was observed that the payment already made be appropriated. On appeal, the Tribunal held that the entire amount of service tax alongwith interest had already been paid by the Assessee before the passing of the adjudication order, in which case, first proviso to Section 78 was attracted and quantum of penalty was required to be limited to 25% of the service tax involved and not 100%. Accordingly, levy of penalty beyond 25% was set aside.

3. We have heard learned Counsel for the Appellant.

4. It is not disputed that the matter is covered against the revenue by judgment of Delhi High Court in K.P. Pouches (P) Ltd. Vs. Union of India (UOI), which has been followed by the Tribunal, as also judgment of this Court in CCE v. J.R. Fabrics (P) Ltd. 2009 (238) ELT 209 holding that if payment is made before adjudication, the quantum of penalty has to be restricted to 25%. It was further held that second proviso resulting in denial of benefit of reduced penalty to cases where payment was made within 30 days of adjudication was not applicable if penalty was not determined in accordance with the first proviso i.e. @ 25%. The revenue is not shown to have questioned the view taken in the said judgments at any higher level.

5. The view taken by the Tribunal being consistent with the view taken by this Court, no substantial question of law arises.

The appeal is dismissed.