
(2000) 68 ECC 52 : (2000) 89 ECR 390 : (2000) 115 ELT 622

Delhi High Court

Case No: C.W. No. 3940 of 1999

Combatta Aviation Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: July 8, 1999

Acts Referred:

- Finance Act, 1979 - Section 28(3), 35(1), 35(2), 38(3), 38(5)
- Foreign Travel Tax Rules, 1979 - Rule 10A, 4, 9

Citation: (2000) 68 ECC 52 : (2000) 89 ECR 390 : (2000) 115 ELT 622

Hon'ble Judges: D.K. Jain, J; Arun Kumar, J

Bench: Division Bench

Advocate: K.G. Seth, for the Appellant; Neeraj Kaul, for the Respondent

Final Decision: Dismissed

Judgement

Arun Kumar, J.

The petitioner has challenged imposition of penalty for delay in deposit of Foreign Travel Tax (for short FTT) and in filing the return with respect thereto.

2. Briefly stated the facts are that the petitioner who is engaged in travel business, has been authorised to collect Foreign Travel Tax livable under [sub-section] (1) of Section 35 of the Finance Act, 1979, read with Notification No. 4/ FTT/ 79, dated 16th June, 1979 issued under [sub-section] (2) of Section 35 of the said Act. As per Rule 4 of the FTT Rules, 1979 (as amended), the carrier is required to deposit the tax collected in any month into the Government Treasury form 2 in respect of every month before the expiry of 30 days from the end of the month. As per Rule 9 the carrier is required to submit a return in form 2 in respect of every month before the expiry of 30 days from the end of the month showing the particulars of flight operated, number of passengers carried, amount of tax collected and paid into the Govt. treasury.

3. Before the levy of the penalties a show cause notice was given to the petitioner. The reply to the show cause notice was received and considered and personal hearing was also provided. The show cause notice related to late deposit of the amount of FTT collected by the petitioner as well as the late filing of the returns with respect to the FTT. According to the petitioner there was only one day's delay in deposit of the amount collected by it by way of FTT and there was a delay of 30 days in filing the returns. The authorities imposed a penalty of Rs. 2,500/- under Rule 10A of FTT Rules, 1979 (as amended) read with Rule 9 of the said Rules for late submission of FTT return. Further a penalty of Rs. 2,84,250/- was imposed u/s 38(3) of the Finance Act, 1979 (as amended) for delayed payment of FTT amount of Rs. 14,21,250/- collected during the month of November, 1997. Section 28(3) of the Finance Act, 1979 is as under :-

"Section 38(3)

Every carrier or other person who fails to pay the foreign travel tax to the credit of the Central Government under Sub-section (2) of Section 35 shall, in addition to the payment of such tax and the interest livable thereon, be liable to pay penalty which shall not be less than one-fifth but which may extend to three times of the amount of the tax not so paid to the credit of the Central Government."

Section 38(5) of the said Act is also relevant for the present purposes and is reproduced as under :-

"Section 38(5).

Any penalty under this section may be adjudged, collected and paid to the credit of the Central Government by such authority and in such manner as may be specified in the rules made under this Chapter :

Provided that no order for imposing a penalty shall be passed by such authority unless the carrier or other person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority."

4. Admittedly oral hearing was allowed to the petitioner and thereafter the impugned penalty was imposed. The language of Section 38(3) quoted above shows that the provision is in absolute terms and in the matter of imposition of penalty the discretion of the authorities is limited to it being not less than one fifth of the amount of tax not so paid and the upper limit extends up to three times of the amount of tax involved. In the present case the petitioner had made a grievance only with respect to the penalty imposed on it regarding delay in deposit of amount of the FTT. The amount involved was Rs. 14,21,250/- and the penalty imposed works out to almost one fifth of the said amount which is in terms of Section 38(3) of the Act. Thus the authorities have already taken a lenient view in the matter and imposed minimum penalty which works out to one fifth of the amount involved. The learned Counsel for the respondent has drawn our attention to the fact that the petitioner has been changing its stand. At one place it is stated that the

delay occurred due to an accident which the person who was going to deposit the amount met with whereas at another place the delay was ascribed to some misunderstanding about the date by which the amount was to be deposited. Thus according to the learned Counsel for the respondent the petitioner was trying to cook up an Explanation and really there was no Explanation for the delay. It was further emphasised that these are matters which required a strict adherence and means read has no place in such matters. Unless the provisions are strictly complied with the very purpose of the provision will be lost. We agree with the learned Counsel for the respondent that the provision requires to be strictly complied with. In any case in the present facts minimum penalty provided under the Section, i.e. one fifth of the amount involved has been levied on the petitioner and, Therefore, there could be no cause for any grievance. The writ petition is accordingly dismissed.