IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL NO.3/2016

The Commissioner Central Excise, Commissionerate Nagpur -II, Civil Lines, Nagpur
...Versus...
M/s Galaxy Construction Pvt. Ltd., Distt. Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.N. Bhattad, Advocate for appellant

CORAM : SMT. VASANTI A NAIK AND KUM. INDIRA JAIN, JJ.
DATE : 06.10.2016

By this Central Excise Appeal, the appellant – Department challenges the order of the Customs, Excise and Service Tax Appellate Tribunal, dated 26.8.2015, allowing the appeal filed by the respondent – assessee and setting aside the order of the appellant – Department imposing the penalty on the assessee.

The question that fell for consideration before the Tribunal and also falls for consideration in this appeal is whether the assessee was liable to pay the penalty on the delayed payment of service tax, when the assessee had discharged the entire liability of payment of service tax and interest thereon before the issuance of show-cause-notice.

The learned Counsel for the appellant – Department has relied on the decisions, reported in ***2015 (38) S.T.R., page***

131 and ***1999 (112) E.L.T., page 772 (S.C.)*** to substantiate his submission that the penalty is payable by the assessee when there is a delay in payment of service tax.

On hearing the learned Counsel for the Department and on a perusal of the order of the Tribunal, we find that there is no scope for interference with the order of the Tribunal in this appeal. While holding that the respondent – assessee would not be liable to pay the penalty, the Tribunal had relied on the order of the Bangalore Bench of the Tribunal, reported in ***2010 (17) S.T.R., page 474***, wherein the Tribunal at Bangalore had considered the Circular of the Finance Department dated 3.10.2007 that clarified that when an assessee had paid the service tax in full together with interest, the proceedings against the assessee would be concluded including the proceedings under Section 73 (3) of the Finance Act, 1994. Since the judgment of the Tribunal at Bangalore was upheld by the Karnataka High Court while dismissing the Central Excise Appeal filed by the Department, on 9.9.2011, we do not find any error in the order of the Tribunal in relying on the judgment of the Bangalore Bench of the Tribunal to allow the appeal filed by the assessee. Since the order of the Bangalore Bench of the Tribunal was upheld by the Karnataka High Court in ***Commissioner ...Versus...Manipal County,*** reported in ***2014 (36) S.T.R. J188,*** there is no scope for interference with the order of the Tribunal dated 26.8.2015. In the judgments relied on by the Counsel for the appellant – Department, the relevant Circular dated 3.10.2007 was not considered, whereas the same was considered in the judgment of the Karnataka High Court, reported in ***2014***

(36) S.T.R. J118 and the Tribunal was, therefore, justified in relying on the said judgment while allowing the appeal of the assessee.

Since no substantial question of law arises in this Central Excise Appeal, we dismiss the same with no order as to costs.

JUDGE **JUDGE**

Wadkar

C E R T I F I C A T E

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