NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 145 of 2018

- M/s Navbharat Explosives Company Limited, Abhanpur, Tehsil Abhanpur, District Raipur, Chhattisgarh.

---- Appellant

Versus

- Commissioner of Central Excise and Service Tax, Central Excise Building, Dhamtari Road, Tikrapara, Raipur, Tehsil Raipur, Chhattisgarh - 492001

---- Respondent

For Appellant	:	Shri R.S. Marhas, Advocate.
For Respondent	:	Shri Maneesh Sharma, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

03.01.2019

1. I.A. No.1 of 2018 is an application for condonation of delay of 54 days. For the reasons indicated in the said I.A., delay is condoned.

2. Heard counsel for the Appellant and counsel for the Respondent/Revenue.

3. The appeal arises against the order dated 11.12.2017 passed by the Custom, Excise and Service Tax Appellate Tribunal, New Delhi (for short, 'Tribunal') in Appeal No. ST/2572/2012-CU(DB). The appeal of the Appellant was dismissed since the Tribunal refused to interfere with the order passed by Commissioner (Appeals) (1) Central Excise Raipur, Chhattisgarh.

4. The Tribunal has given the following reasons for refusing to interfere with the order of the Commissioner (Appeals) or to extend any kind of concession or relief to him which is evident from paragraphs 5 and 6 thereof:

> "5. On the first point, regarding the prayer of the appellant/assessee for reduced penalty, we note that the provisions of Section 78 are very clear and unambiguous. For availing reduced penalty of 25% the assessee has to deposit the adjudged tax with applicable interest along with 25% of the penalty imposed under Section 78, within 30 days of the receipt of adjudication order. Admittedly, in the present case, the time limit of 30 days has not been followed by the appellant/assessee. There is provision to extend such time limit. This has been categorically held by the Hon'ble Delhi High Court in the case of **Principal Commissioner of Service Vs. Tops Security Ltd. vide judgment dated 5.12.2015 in CEAC 42/2015**."
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> "6. Regarding the appeal by Revenue for non-imposition of penalty under Section 76, when penalty has already been imposed under Section 78, we hold that prior to amendment in Section 78 w.e.f. 10.05.2008, there is no bar in imposing penalty under both the sections. This has been clarified by the Hon'ble Delhi High Court in the case of **Bajaj Travels Ltd. judgment dated 3.8.2011 in CEAC 6/2009** and also by Kerala High Court in the case of **Asstt. Commissioner Vs. Krishna Poduval – (2005) 199 CTR Ker 581, 2005 (4) KLT 947**. Following the above said ratio, we hold that prior to amendment to Section 78, there is no bar in imposing penalties under both sections 76 and 78 of Finance Act, 1994. Accordingly, while upholding the finding of the Commissioner (Appeals) regarding non-availability of the reduced penalty under Section 78 to the appellant/assessee, we set aside the impugned order with reference to penalty under Section 76. The said penalty is rightly imposable for the period prior to 10.05.2008."

5. The submission of the counsel for the Appellant that there was no fraud or intention not to pay the service tax infact deposits have been made, but beyond the period of 30 days prescribed under Section 78 of the Finance Act, 1994.

6. The provision is unambiguous. A time frame has been fixed for deposit of the tax, the interest on delayed payment and penalty. The same is quite rigid. Since these are issues of Revenue and the legislature have not given any

window, therefore, keeping in mind some of the principles which have been taken note of by the Tribunal, we do not feel that the Tribunal has committed any error by dismissing the appeal of the Appellant / the assessee.

7. Appeal has no merit. It is dismissed.

Sd/- Sd/-

(Ajay Kumar Tripathi)
Chief Justice

(Parth Prateem Sahu)
Judge

Brijmohan