

Service Tax Appeal No.47 of 2010

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Service -Tax Appeal No.47 of 2010

Date of decision: 17.12.2010

Commissioner of Central Excise Commissionerate, Chandigarh-I

...Appellant

Versus

M/s Cool Tech. Corporation, Chandigarh

...Respondent

**CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE AJAY KUMAR MITTAL**

Present: Ms. Sukhdev Sharma, Advocate for the appellant.

ADARSH KUMAR GOEL, J (Oral).

This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 against order dated 22.3.2010 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi proposing following substantial question of law:-

“Whether the Id. CESTAT was right in not imposing penalty under section 76 of the Finance Act, 1994 for the period to 16.5.2008 holding that penalty under section 76 & 78 of the Act is not imposable simultaneously, both section being mutually exclusive, particularly when these sections became mutually exclusive only from 16.5.2008 after amendment of section 78 of the Finance Act, 1994?

A show cause notice dated 20.8.2007 was issued to the respondent-assessee alleging non payment of service tax from July, 2003 to September, 2003 in time. The adjudicating authority vide order dated 2.7.2008 raised demand on service tax with interest after adjusting the amount already deposited and also imposed penalty under Sections 76 and 78 of the Act. On appeal levy of penalty under Section 76 was set aside while under Section 78 was upheld. It was held that penalty under Sections 76 & 78 are mutually exclusive and could not be imposed simultaneously. On further appeal, the Tribunal dismissed the appeal following order of this Court in **Service Tax Appeal No.15 of 2010 (CCE Chandigarh Vs. City Motors)** decided on 18.2.2010.

We have heard learned counsel for the appellant.

It is not disputed that the Tribunal has merely followed the order of this Court in City Motor's case. Moreover, in order dated 12.7.2010 in **STA No.13 of 2010 (Commissioner of Central Excise Vs. M/s Pannu Property Dealers, Ludhiana)** after referring to judgment of Kerala High Court in **Assistant Commissioner of Central Excise V. Krishna Poduval 2006(1) STR 185** and amendment vide Finance Act, 2008, it was observed:-

“We are of the view that even if technically, scope of sections 76 and 78 of the Act may be different, as submitted on behalf of the revenue, the fact that penalty has been levied under section 78 could be taken into account for levying or not levying penalty under section

76 of the Act. In such situation, even if reasoning given by the appellate authority that if penalty under section 78 of the Act was imposed, penalty under section 76 of the Act could never be imposed may not be correct, the appellate authority was within its jurisdiction not to levy penalty under section 76 of the Act having regard to the fact that penalty equal to service tax had already been imposed under section 78 of the Act. This thinking was also in consonance with the amendment now incorporated though the said amendment may not have been applicable at the relevant time.”

In view of above, no substantial question of law arises.

Accordingly, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

December 17,2010
Pka

(Ajay Kumar Mittal)
Judge