

2012 (25) S.T.R. 439 (Kar.)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
N. Kumar and Ravi Malimath, JJ.

COMMISSIONER OF SERVICE TAX, BANGALORE

Versus

MASTER KLEEN

C.E.A. No. 2 of 2010, decided on 8-9-2011

REPRESENTED BY : Shri K.N. Mohan, Advocate, for the Appellant.

Shri K.S. Ravishankar, Advocate, for the Respondent.

[Judgment per : N. Kumar, J.] - The Revenue has preferred this appeal against the order passed by the Tribunal [2010 (17) S.T.R. 365 (Tribunal)] setting aside the orders passed by the lower authorities, imposing penalty under Section 76 of the Finance Act, 1994 for non-payment of service tax on due dates.

2. The material on record discloses that the assessee on being pointed out by the authorities for not paying the service tax, has paid the service tax with interest even before the issue of show cause notice. Sub-section (3) of Section 73 of the Finance Act, 1994, categorically states that if tax and interest is paid and the same is informed to the authorities, then the authorities shall not serve any notice calling upon the authorities to pay penalty. It is unfortunate that inspite of statutory provisions, the authorities have issued a show cause notice claiming penalty. So tax and interest was paid before issue of show cause notice. Therefore, the Tribunal was justified in setting aside those orders. As the said order is strictly in accordance with law we do not find any legal infirmity that calls for interference. Therefore this appeal is dismissed.

3. The substantial question of law framed is answered in favour of the assessee and against the Revenue.
