

“,” Too insignificant - But it can make or mar!

(By S. Jaikumar & G.Natarajan, Advocates, Swamy Associates, Chennai)

A mercy petition by a death sentenced prisoner was conceded by the Sovereign Supreme in the last hour and a telegram was sent to the executionary authorities as “Let him, not hang him”. But due to a typographical error, it was transmitted as “ Let him not, hang him!” and the unfortunate victim was hanged. This school time story, is often told to implant the significance of a COMMA and the symbols of punctuation.

Here is a comma, which has not decided the life of any person, but detrimental in deciding the quantum of penalty under the Service Tax Act, 1994. Section 76 & 77 of the Service Tax Act, 1994 provides penalty for failure to pay Service Tax or to furnish prescribed returns respectively. Both the Sections 76 & 77 of the Service Tax Act, 1994, as they stood earlier, proposed to impose a penalty “which shall not be less than one hundred rupees but which may extend to two hundred rupees every day”. As Section 76 did not have any comma in between, the said Section 77 had a mystery comma appearing after the words ‘one hundred rupees’.

The ever green interpretators, with their microscopic lens, analysed the significance of the ‘comma’ under Section 77 which was absent under Section 76. The Hon’ble Tribunal in the case of Commissioner of Central Excise, Calcutta I Vs. B.L Company as reported in 1999 (105) E.L.T- 434, held that under Section 77, the minimum penalty is rupees hundred and not hundred per day, whereas the maximum penalty is rupees two hundred per day. The Hon’ble Tribunal also observed that, in the absence of ‘comma’ after two hundred rupees, it is clear that “everyday” will qualify only for two hundred rupees under Section 77 of the Service Tax Act, 1994.

In the case of Harilal & Company Vs. CCE Mumbai I as reported in 2000 (115) E.L.T- 375, the above said decision was disagreed and it was held that the minimum penalty under Section 77 is rupees hundred per day and not a mere rupees hundred. The Hon’ble Tribunal also decided that, despite the minimum penalty being rupees hundred per day, considering the service tax being a fresh levy leniency could be shown by way of reduction in penalties. By this decision the Tribunal quashed the mandatory nature of the penalty under Section 77.

The department got rid of this ‘comma’ problem by way of amending Section 77 which currently imposes the penalty not exceeding one thousand rupees. Section 77 is settled. What happens to Section 76, wherein the penalty stands as it stood earlier?.

The Hon’ble Tribunal of the South Zonal Bench, Bangalore, in its final order No.843-846/2003 dated.27.06.2003 as reported in IND TAX/2003/SZB/470 and contained in the CESTAT CORNER of the portal www.taxindiaonline.com has categorically held that even under Section 76, with or without a comma, the minimum penalty imposable shall be rupees hundred only and not one hundred rupees for every day and the maximum penalty would be rupees two hundred for every day. In the stated judgement, the Tribunal also held that even if a minimum penalty is prescribed, the authority competent to impose such penalty will be justified in refusing to impose such penalty. In other words, the Tribunal has held that imposition of penalty is at the discretion of the adjudicating authority and has thrashed its mandatory nature.

Viewed in the backdrop that the Tribunal's order in the case of B.L Company (as cited earlier) has already been referred to the Hon'ble High court for its decision of interpreting the minimum penalty imposable under Section 77 as rupees one hundred only and not at the rate of rupees one hundred per day (2000 (117) E.L.T-696), the latest decision should be regarded as nothing less than, "Bold And The Beautiful!".