

Service-tax not collected from customer but paid to Treasury is an allowable business expenditure.

Summary – The High Court of Gujarat in a recent case of Kaypee Mechanical India (P.) Ltd., (the Assessee) held that where assessee had not collected and deposited service tax but on being pointed out, deposited same, amount being expended by assessee in course of business was allowable as business expenditure.

Facts

- During the assessment proceedings, the service tax authorities raised an audit objection pointing out that the assessee had not collected the service tax on mechanical erection and installation of plant and machinery, structure work, piping work and work contract works for the period from financial years 2003-04 to 2006-07 and a demand of service tax was raised and interest thereon.
- The assessee accepted the audit objection and paid up the said amount and claimed deduction thereof as business expenditure.
- The stand of the revenue was that this amount having been expended by the assessee for infraction of law, deduction thereof was not available.
- The Commissioner (Appeals) as well as the Tribunal accepted the claim of the assessee.
- On appeal:

Held

- The view of the Commissioner (Appeals), as confirmed by the Tribunal was to be upheld. The amount was expended by the assessee during the course of business, wholly and exclusively for the purpose of business. If the assessee had taken proper steps and charged service tax to the service recipients and deposited with the Government, there was no question of assessee expending such sum. It is only because the assessee failed to do so, that he had to expend the said amount, though it was not his primary liability. Be that as it may, this cannot be stated to be a penalty for infraction of law.
- It is equally well settled that payment of interest is compensatory in nature and would not partake of the character of penalty.