The Commissioner of Central Vs. Impel Machines (P) Ltd.

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SooperKanoon Citation : sooperkanoon.com/40772

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-11-2005

Reported in : (2006)(105)ECC248

Judge : S Peeran

Appellant : The Commissioner of Central

Respondent : impel Machines (P) Ltd.

Judgement :

1. The Revenue is aggrieved with OIA No. 30/04-ST dated 27.9.04.

Respondents have availed the services of goods transport operators.

Persons who are availing these services were not covered within the ambit of goods transport operators. However, the services availed by them were that of clearing and forwarding agent as per Section 68-70 of Finance Act 1994. The Revenue has not issued any show cause notice confirming the demands. The Tribunal in the case of L.H. Sugar Factories Ltd. v. CCE Meerut had analysed the entire issue and has held that if the show cause notice has not been issued prior to amendment then the demands cannot be confirmed. This Tribunal's ruling has since been confirmed by the Apex Court.

Therefore, the Commissioner relying on the Tribunal's ruling has set aside the demand. Revenue is aggrieved with this order.

2. Heard learned SDR who fairly conceded that the issue is covered by the judgment of L.H. Sugar Factories Ltd., (supra). However he reiterates the grounds in the appeal memo.

3. On a careful consideration, I notice that the Revenue should not have filed this appeal; as the issue is already covered by the judgment of the larger bench of the Tribunal which has since been confirmed by the Apex court. The demands were not confirmed by issue of show cause notice. The Revenue contend that the show cause notice issued even after the amendment would also be valid is not acceptable, as the said issue has been conclusively decided by the Tribunal in the case of LH Sugar Factories Ltd. There is no merit in this appeal and the same is dismissed.