

Commissioner of Central Excise Vs. Mr. Dinesh Kumar

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-07-2005

Reported in : (2006)(104)ECC493

Judge : R Abichandani, S T T.V.

Appellant : Commissioner of Central Excise

Respondent : Mr. Dinesh Kumar

Judgement :

1. The Revenue has filed this appeal against the order made by the Commissioner (Appeals) by which he has set aside the order made by the Assistant Commissioner of Central Excise, Sangrur.

2. It appears from the record that an order was made on 31.12.2003 by the Assistant Commissioner of Central Excise in the context of the provisions of Section 66 of Chapter V of the Finance Act, 1994 on an allegation that the respondent who was giving tuitions and thereby providing the services of commercial coaching centre did not apply for registration under Section 69 of Chapter V of the Finance Act, 1994, read with Rule 4 of the Service Tax Rules, 1994. It appears that without issuing any show cause notice as to the penalty which could be imposed under Section 75A for failure of registration, the Assistant Commissioner straightaway passed the said order holding that the respondent was liable to service tax under Section 66 of the said Act and since he had not made an application for registration within the stipulated period, he was liable to

pay penalty of Rs. 500/- without dispute. The impugned order was, therefore, passed, directing the respondent to pay penalty of Rs. 500/- and to get himself registered under Section 69 of the Act.

3. The Commissioner (Appeals) instead of examining the validity of the order purported to have been made under Section 75A of the Act for violation of Section 69 without issuance of any notice giving an opportunity of hearing to the respondent before imposition of the penalty, proceeded to decide the issue as to whether the respondent was providing training or coaching and thereby rendered services of commercial coaching centre, and came to a finding that as an individual, he was not maintaining any establishment Page 495 for doing the tuition work and, therefore, his case was not covered under 'commercial training or coaching services' as defined in the service tax notification.

3.1 The Commissioner (Appeals) was only concerned with the validity or otherwise of the order impugned before him which was issued without giving any opportunity of hearing to the respondent. Since the order made by the Assistant Commissioner was admittedly, issued without according an opportunity of being heard to the respondent, it could not have been sustained. The order of the Commissioner (Appeals) setting aside that the order is, therefore, upheld on the ground that the Assistant Commissioner had made an order without affording any opportunity of hearing to the respondent and not for the reasons given in the impugned order.

4. As a result, while dismissing this appeal against the impugned order of the Commissioner (Appeals) on the ground that the order passed by the Assistant Commissioner being violative of principles of natural justice deserved to be set aside, and dismissing this appeal, we leave it open for the Assistant Commissioner to proceed against the respondent in accordance with law.

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