SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of C. Ex. Vs. Amba Steels

Commissioner of C. Ex. Vs. Amba Steels

SooperKanoon Citation : sooperkanoon.com/41360

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-03-2006

Judge : R Abichandani, S T T.V.

Appellant : Commissioner of C. Ex.

Respondent : Amba Steels

Judgement :

1. In this appeal, the appellant challenges the order of remand made by the Commissioner (Appeals).

2. The adjudicating authority had demanded Service Tax amounting to Rs. 5,75,000/- from the respondent under Section 73 read with Section 71(3) of the Finance Act, 1994 along with interest at the appropriate rate under Section 75. Further, equal penalty was imposed under Sections 75A, 76, 77 and 78 of the Act on the ground that the respondent had received an amount of Rs. 1,55,00,000/- in the form of ad hoc advance reflected as 'Other Income' in the PLA Account of the year 2001-02 which amount was received in terms of an agreement dated 20th July, 2001 between the respondent and the contractor. The appellate authority found that the adjudicating authority had neither considered the relevant Circulars of the Board nor the ratio of the relevant judgments. It was also held that the adjudicating authority did not consider the submissions made by the present respondent and, therefore, the order-in-original was held to be a non-speaking order. The matter was remanded to the adjudicating authority for a fresh order in the light of the observations made by the Commissioner (Appeals), after giving

proper opportunity of personal hearing to the assessee.

3. The only contention that was raised before us is that, the Commissioner (Appeals) has no power to remand the matter. This contention has been negatived by the decision of the Gujarat High Court in the case of Commissioner of Central Excise, Ahmedabad-I v. Medico Labs 2004 (173) E.L.T. 117 (Guj.). The Division Bench of the Gujarat High Court, relying upon the decision of the Supreme Court in the case of Union of India v. Umesh Dhaimode paragraph 14 of its judgment, that the Commissioner (Appeals) was vested with such power of remand while deciding the appeal. It was held that he could confirm, modify or annul the decision appealed against and make such remand, which necessarily annuls the decision. This Tribunal has followed the ratio of the said judgment in its order dated 28-11-2005 in Appeal No. E/3387/05.

4. For the foregoing reasons, there is no substance in this appeal and it is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com