Commissioner of Central Excise Vs. Singhai Sushil Kumar

Commissioner of Central Excise Vs. Singhai Sushil Kumar

SooperKanoon Citation : sooperkanoon.com/41541

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-18-2006

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Singhai Sushil Kumar

Judgement :
1. This appeal is by the Revenue against the order-in-appeal dated 13-12-2004 that allowed the appeal of the assessee.

2. The issue involved in this case is that the respondent is a Chartered Accountant and got himself registered with the Service Tax authorities. The respondent paid the Service Tax liability but failed to furnish the half yearly returns as required. A show cause notice was issued to the respondent for imposing penalties under Sections 76 and 77 of the Finance Act, 1994. The adjudicating authority on adjudication imposed penalty under Sections 76 and 77. On an appeal the appellate authority set aside the penalties imposed, hence this appeal by revenue.

3. None appeared for the respondent despite notice. Heard the learned DR and perused the records. It is the DR's submission that the Commissioner Appeals should not have set aside the penalties relying upon the Circular dated 23-9-2004, as this circular is for the assessees who had failed to register under Service Tax and not for the assessees who failed to do their obligatory duties. I find that the Commissioner Appeals has given relief to the respondent relying on the said

circular dated 23-9-2004. The said circular grants immunity to those assessees who had not got registered with the authorities and come forward voluntarily and discharge the tax liability and interest thereon. In this case the respondent has got himself registered and also paid the Service Tax liability, without any delay to the Government, but faulted in not filing the returns. It is not coming out from record whether by not filing the returns there was difference of the Service Tax liability, to what extent. In the absence of any dues of service tax attributable to non-filing of the return, to my mind the Commissioner (Appeals) order is just and fair and does not require any interference.

4. Accordingly, the impugned order is upheld and the departments appeal is dismissed.