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Cce Vs. Spice Communication (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-14-2007

Reported in : (2007)9STJ140CESTATNew(Delhi)

Judge : S Kang, Vice, N T C.N.B.

Appellant : Cce

Respondent : Spice Communication (P) Ltd.

Judgement :

1. Heard the learned SDR as none appeared on behalf of the respondents despite notice. Therefore, the appeal is taken up for disposal.

2. The revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) allowed suo-moto adjustment of service tax and the Commissioner (Appeals) followed the earlier order No.82/CE/CHD/2005 dated 28.2.2005.

3. We find that the revenue appeal filed against order in appeal No.82/CE/CHD/2005 dated 28.2.2005 is already allowed by the Tribunal vide final order No. 129/2006-ST dated 9.1.2006. The Tribunal held as under: We find that the provisions of Rule 6(3) of Service Tax Rules provides adjustment of Service Tax which had been paid by the assessee to the credit of Central Government Service Tax in respect of the taxable service, which is not so provided by him and the assessee has refunded the value of taxable service and the amount of service

tax to the persons from whom it was received. In the present case, the respondents had not paid the amount in question to the credit of Central Government service Tax. It is not the case of respondents that as they had not provided any taxable service to their customer and they had refunded the amount of service tax to their customers. The respondent paid the service tax to DOT. Therefore, the respondents are not entitled for any adjustment in terms of Rule 6(3) of Service Tax Rules, 1944. In view of the clear provisions of the rule, the finding of the Commissioner (Appeals) whereby such adjustment was allowed is not sustainable and set aside.

In view of the above decision, the impugned order is set aside and the appeal filed by the revenue is allowed.

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