

Apex Colour Lab and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-07-2007

Reported in : (2008)12STJ68CESTATNew(Delhi)

Judge : P Das

Appellant : Apex Colour Lab and ors.

Respondent : Cce

Judgement :

1. Common issue involved in these applications and therefore all are taken up together for disposal.

2. The revenue filed these applications for rectification of mistake of the Final Orders passed by the Tribunal. In these cases, Commissioner passed review order under Section 84(l) of the Finance Act 1994. The Tribunal set aside the order of the Commissioner on the ground that the same were decided without giving opportunity of personal hearing and remanded back to the Commissioner for denovo decision after giving proper opportunity of personal hearing. In the instant applications, it is contended that in terms of Section 84 of Finance Act, 1994, the Commissioner is empowered to pass order reviewing the order of adjudicating authority subordinate to him and no order shall be passed after the expiry of two years from the date of the order sought to be reviewed. It is contended that the said period of two years have already been expired and therefore the Commissioner cannot pass any review order in terms of the Section

84(I) of the Finance Act 1994.

3. The learned DR on behalf of the revenue submits that the Tribunal is erred in holding that the proper opportunity was not given to the assessee. He submits that Commissioner had provided sufficient opportunity of personal hearing. He also submits that delayed payment of tax and non-filing of returns are admitted fact and therefore no further opportunity of hearing is required.

4. Heard both sides and perused the records, it is seen from the Final Order of the Tribunal that the matters were remanded back to the Commissioner for de novo decision after giving proper opportunity of personal hearing. It is seen from the applications filed by the revenue that the de novo adjudication as directed by the Tribunal will be ultravires of provisions of Section 84(I) of the Finance Act 1994. It is also seen that the revenue contended that the personal hearing in these cases will not serve any fruitful purposes. I find that such grounds are nothing but review of the Tribunal's own order which is not permissible in law. Hence, I do not find any mistake in the Final Orders of the Tribunal. Therefore, the applications filed by the revenue are without any substance and accordingly dismissed.

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