J.K. Transport Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-07-2007

Reported in : (2008)12STJ67CESTATNew(Delhi)

Judge : S Kang, Vice

Appellant : J.K. Transport

Respondent : Cce

Judgement :

1. Common issue is involved in these appeals, therefore, are being taken up together.

2. The appellant filed these appeals against impugned orders whereby penalties imposed under the Service Tax were enhanced by the Commissioner of Central Excise.

3. The brief facts of the case are that show-cause notices were issued to the appellant raised demand of Service tax and for imposition of penalties. The adjudicating authority confirmed the demand and imposed penalties. The appellant filed appeals against the adjudication order and the Commissioner (Appeals) vide order dated 15.4.2005 upheld the amount of Service Tax, however, set aside the penalty on the ground that the appellant was under a bona fide belief that they were not covered under the Cargo Handling Agent. Against the order in appeal, the appellant filed appeal before the Tribunal and the Tribunal dismissed the

appeal.

4. Subsequently, the Commissioner of Central Excise reviewed the order passed by the adjudicating authority in respect of imposition of penalty and enhanced the penalties.

5. The contention of the appellant is that the penalties are set aside by the Commissioner (Appeals) in the appeal filed by the appellant and that order has not been challenged by the Revenue, therefore, there is no question of enhancement of penalty. The contention of the Revenue is that as per provisions of Finance Act, the Commissioner of Central Excise is empowered to enhance the amount of Service Tax or penalty.

6. In this case, the adjudication orders were challenged by the appellant. The Commissioner (Appeals) upheld demand of Service Tax, however, set aside the penalties. Against this order no appeal has been filed by the Revenue. In this situation, the order for enhancing the penalty is not sustainable. As the order imposing penalty by the adjudicating authority is already set aside, therefore, the present order revising the order of adjudicating authority enhancing the penalties is not sustainable hence set aside and the appeals are allowed.