

**Jindal and Power Ltd. Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/46676](http://sooperkanoon.com/46676)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-18-2007

**Reported in :** (2008)12STJ396CESTATNew(Delhi)

**Judge :** J Balasundaram, Vice-

**Appellant :** Jindal and Power Ltd.

**Respondent :** Cce

**Judgement :**

1. Demand of service tax of Rs. 4,73,593/- was confirmed against the appellants herein that they were rendering services of consulting engineers and penalty of Rs. 1000/- each under Sections 77 and 78 of the Finance Act, 1994, was imposed. This order was challenged by the assessee before the Commissioner (Appeals) who vide his order dated 28.9.2005 rejected the appeal holding that, both service tax demands had been rightly confirmed and that penalty had been rightly imposed.

The present impugned order had been passed in revision by the Commissioner of Central Excise by enhancing penalty under Section 76 to Rs. 4,43,400/- 2. The submission of the learned Counsel for the appellant is that the order of the Assistant Commissioner which has been revised by the Commissioner was no longer in existence as it had already merged in the order dated 58.9.2005 of the Commissioner (Appeals). I find that the Commissioner has interpreted the provisions of Section 84(4), which stipulate that "no order under this section shall

be passed by the Commissioner of Central Excise in respect of any issue if an appeal against such issue is pending before the Commissioner of Central Excise (Appeals)" by holding that the issue was no longer pending before the Commissioner (Appeals) but has already been decided by the Commissioner (Appeals) and Therefore, the revision was permissible. However, as rightly contended by the appellant that once the order of the Assistant Commissioner, which has been revised, no longer existed but had merged with the order of the Commissioner (Appeals), it was not permissible in law for the Commissioner to pass the present order in revision. My view finds support from the Inani Carriers v. CCE, Jaipur reported in 2006(3) STR wherein it has been held that the reviewing authority could have preferred an appeal against the order-in-appeal instead of resorting to review an order which was non-existent on the date of issue of show cause.

2.1. Following the ratio of the above decision, I set-aside the impugned order and allow the appeal.

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