

Cce Vs. Rajendra Gupta

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-2008

Judge : S Kang, Vice

Appellant : Cce

Respondent : Rajendra Gupta

Judgement :

1. Heard Id. SDR. None appeared on behalf of the respondent in spite of notice.
2. The Revenue filed this appeal against the impugned order whereby Commissioner (Appeals) set aside the adjudication order on the ground that as per provisions of Section 73 of Finance Act the Assistant Commissioner or as the case may be the Deputy Commissioner of Central Excise is the proper officer to issue the notice for recovery of tax.

In the present case show-cause notice was issued by the Supdt. of Central Excise.

3. The contention of the Revenue is that the provisions of Section 73 of Finance Act were further amended by Finance Act 2005 with effect from 13.5.05 whereby the Central Excise Officer was empowered to issue a show-cause notice in respect of Service Tax which has not been levied or short paid or which has been short levied or short paid. The contention is that the notice has been issued by the Supdt. of Central Excise who is Central Excise officer, therefore, the demand cannot be set aside on the ground that notice has not been issued by Assistant

Commissioner or Deputy Commissioner of Central Excise.

4. I find that the Commissioner (Appeals) in the impugned order held that only Assistant Commissioner or Deputy Commissioner as the case may be is the proper officer to issue the notice for recovery of Service Tax. I find that the provisions of Section 73 of Finance Act were amended with effect from 13.5.05 and instead of Assistant Commissioner or Deputy Commissioner the Central Excise officer was authorized to issue notice for recovery of the Service Tax. In the present case, show-cause notice was issued on 7.6.06. In these circumstances, as the amended provisions were not taken into consideration, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide the appeal afresh after affording an opportunity of hearing to the present respondent. The appeal is disposed of by way of remand.

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