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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-2008

Judge : S Kang, Vice

Appellant : Mangal Singh

Respondent : Cce

Judgement :

2. The appellant filed this appeal challenging the imposition of penalties imposed under Section 76 and 77 of the Finance Act.

3. The contention of the appellant is that the demand is made in respect of the Man Power Recruitment Agency Services. The contention is that the appellant is an individual and not a commercial concern and only with effect from 16.6.05 the definition of this service was amended and instead of commercial concern the person was substituted, therefore, the appellant being individual are liable to pay Service Tax with effect from 16.6.05 whereas in the present case the demand is made from April 2005 to September 2005. The penalty is imposed on the ground that the appellant filed necessary returns for April 2005 to September 2005 and Service Tax was paid late. The contention is that the appellant comes under the scope of Service Tax with effect from 16.6.05 when the person has been substituted in stead of commercial concern, therefore, there is no question of late filing of returns prior to this date. This aspect has not been considered by the lower authority.

4. The Revenue submitted that the appellant had not replied to any show cause notice nor appeared before the adjudicating authority to explain his position; therefore, the demand is rightly made.

5. In this case, the appellant challenged imposition of penalties imposed under the Finance Act. The penalty imposed on the ground that the appellant failed to file necessary returns for the period April 2005 to September 2005 the returns were filed late and Service Tax was also paid late. The appellant is not a commercial concern but an individual and only providing labour. The Finance Act was amended with effect from 16.6.2005 whereby the word commercial concern was substituted by any person, therefore, come under the purview of Service Tax with effect from 16.6.2005. In these circumstances, the issue of late filing of returns for the period prior to this date requires reconsideration by the adjudicating authority. The impugned order imposing penalty is set aside and matter is remanded to the adjudicating authority to decide the issue of penalty afresh after affording an opportunity of hearing to the appellant.

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