(2015) 04 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 294 Of 2009

M/s Premier Motor Garage APPELLANT

Vs

CCE, Chandigarh RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:
Finance Act, 1994 — Section 76, 77, 78, 84, 84(4)

Citation : (2015) 04 CESTAT CK 0006

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Suchitra Sharma

Final Decision : Allowed

Judgement

1. Appeal has been filed against order in original dated 23.1.2009 passed by the Commissioner, Central Excise, Chandigarh as revisionary authority

under Section 84 of the Finance Act, 1994 as it existed during the relevant period.

2. The facts of the case, in brief, are as under:

The Additional Commissioner, Central Excise, Chandigarh vide order-in-original No.17/JC/CHD/07 dated 15.02.2007 confirmed Service Tax demand

of Rs.14,07,448/- alongwith interest but did not impose any penalty under Sections 76, 77 and 78 of the Finance Act, 1994 by extending the benefit of

Section 80 of the Act ibid. The assessee filed appeal against the order-in-original before the Commissioner (Appeals) which was dismissed vide order-

in-appeal dated 10.08.2007 for default under Section 35F of the Central Excise Act, 1944. The CESTAT vide the final order dated 01.02.2008 set

aside the order-in-appeal dated 10.08.2007 and remanded the case to Commissioner (Appeals) who vide order-in-appeal dated 04.04.2008 allowed the assessee's appeal.

3. The Commissioner, Central Excise, Chandigarh on the other hand took up the order-in-original for revision in terms of Section 84 and passed the

impugned order dated 23.01.2009 in terms of which he imposed penalties under Sections 76, 77 and 78 ibid. It is seen that the show cause notice for

revision which resulted in the impugned order was issued by the Commissioner on 06.02.2008. It is thus evident that on the date of issue of show

cause notice for revision of the order-in-original dated 15.02.2007 in terms of Section 84 of the Finance Act, 1994, the assessee's appeal against the

said order-in-original dated 15.02.2007 was very much pending before the Commissioner (Appeals). It is seen that sub-section (4) of Section 84 ibid as

it existed during the relevant period, provided as under:-

Section 84(4) No order under this Section shall be passed by the Commissioner, Central Excise in respect of any issue if an appeal against

such issue is pending before the Commissioner, Central Excise (Appeals).

4. As stated earlier, on the date of issue of show cause notice for revision, the assessee's appeal against the same order-in-original dated 15.02.2007

was pending before the Commissioner (Appeals) and therefore as per Section 84(4) quoted above, the said order-in-original could not have been taken

up for passing the revision order. Further, the Commissioner (Appeals) issued the order-in-appeal on 03.04.2008 and consequently the order-in-original

dated 15.02.2007 got merged in the said order-in-appeal dated 03.04.2008 and so on the date of issue of the revisionary order dated 23.01.2009, there

was no order-in-original in existence which could be thus revised in terms of Section 84 of the Finance Act, 1994.

5. In the light of the foregoing, it is evident that the order of revision has been issued without jurisdiction. Therefore the order-in-revision dated

23.01.2009 is set aside and appeal allowed.

