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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/697 /2007-SM[BR]&ST/CO/35 /2008-SM[BR] Date 31/03/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S RAJENDRA GUPTA, PROPRIETOR OF NEW ARMAN TRAVELS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 508 /2008 –SM[BR] dated 18.2.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S RAJENDRA GUPTA, PROPRIETOR OF NEW
   ARMAN TRAVELS
   NEW ARMAN TRAVESL MUNGELI NAKA, BILASPUR
   (CG)
2. Adv. / Consult
   NONE--------
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 697 of 2007 –SM (BR) & ST/CO/35/08

(Arising out of Order-in-Appeal No. 67(ST)/RPR-I/2007 dated 13.8.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

1.	**Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?**	
2.	**Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?**	
3.	**Whether their Lordships wish to see the fair copy of the order?**	
4.	**Whether order is to be circulated to the Departmental authorities.**	

CCE, Raipur — Appellant

Vs.

M/s Rajendra Gupta — Respondent

Appearance:
Shri B.S. Suhag, DR - For appellant
None - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 18.2.2008

Final Order No. 508/08-S.M.(B.R.) dated 18.2.08

Per S.S. Kang:

Heard ld. 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.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM