REGISTERED / AD

FAX : 011-26108426

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

Dated: **04/01/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53824/2015-CU[DB]** dated **11/09/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/3035/2009	ST/835/2009	**BSL LTD** Mandapam, Bhilwara

	Name and Address of Respondent
2	-C.C.E. JAIPUR II N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.

Copy To

3 Advocate(s) / Consultant(s):

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 Guard File

4/1/16

Asstt. Registrar(CUSTOMS Appeal Branch)

DB-D

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing 11.09.2015

For Approval & Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.ST/835/2009-CU[DB]

[Arising out of Order-in-Appeal No.150-152(KKG)ST/JPR-II/2009 dated 26.08.2009 passed by the C.C.E.(Appeals), Jaipur-II]

M/s. B.S.L. Ltd. — Appellant

Vs.

C.C.E., Jaipur-II — Respondent

Appearance

Mr. Rajni Gupta, Advocate - for the appellant

Ms. Suchitra Sharma, DR - for the respondent

CORAM: Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 53824/2015, dated 11.09.2015

Per Mr. R.K. Singh :

Appeal has been filed against Order-in-Appeal dated 26.08.2009, which upheld Order-in-Original dated 12.06.2008 which:-

(i) In respect of Show Cause Notice dated 06.06.2007, confirmed service tax demand of Rs.17,77,604/- along with interest and penalties under Sections 76, 77 & 78 of the Finance Act, 1994.

(ii) In respect of Show Cause Notice dated 04.10.2007, confirmed service tax demand of Rs.7,45,157/- along with interest and penalties under Sections 76, 77 & 78 of the Finance Act, 1994.

(iii) In respect of Show Cause Notice dated 12.02.2008, confirmed service tax demand of Rs.9,91,888/- along with interest and penalties under Sections 76, 77 & 78 of the Finance Act, 1994.

The said demands were confirmed on the ground that the appellant engaged various overseas agents to procure export orders and paid them commission, but did not pay service tax under Business Auxiliary Service (BAS) under reverse charge mechanism during the period 01.10.2006 to 30.01.2007.

2. The appellant is not contesting the impugned demand and interest, but is pleading that (i) the impugned Order-in-Appeal was received by it on 06.01.200, (ii) it had deposited the entire impugned service tax demand amounting to Rs.35,14,649/- with interest and also deposited 25% of the said amount as penalty within 30 days of the receipt of the impugned order and that the penalty under Section 76 *ibid* should not be imposed as penalty under Section 78 *ibid* has been imposed.

3. We have considered the contentions of the appellant. There is no doubt that the commission paid to overseas agents by the appellant was liable to service tax under BAS and the appellant is not contesting the same. However, regarding the contention of the appellant that it should not have been imposed penalty under Section 76 ibid, we find that in the case of Jubiliant Enpro (P) Ltd. Vs. CCE, Noida

[2015-TIOL-2535-CESTAT-DEL], CESTAT has held as under:-

> *"12. The appellants have argued that once penalty under Section 78 has been imposed, penalty under Section-76 of Finance Act, 1994 should not be imposed. We find that Punjab & Haryana High Court in several cases (viz CCE Vs. First Flight Couriers Ltd. – 2011-TIOL-67-HC-P7H-ST, CCE-Chandigar-I Vs. M/s. Cool Tech Corporation – 2011-TIOL-23-HC-P&H-ST, CCE Vs. Pannu Property Dealers Ludhiana 2010-TIOL-874-HC-P&H-ST) has held that even if at the relevant time the penalties under Section 76 & 78 were not mutually exclusive, once penalty under Section 78 has been imposed, penalty under Section 76 ibid may not be justified. We also have no difficulty in agreeing with the appellants that maximum penalty under Section 77 was only Rs.1000/-."*

In the light of the said judicial pronouncement, we are inclined to accept the contention of the appellant with regard to the penalty under Section 76 *ibid*. We also find that none of the lower authorities expressely gave the appellant option to pay reduced mandatory penalty under Section 78 *ibid*. In terms of the decision of Gujarat High Court in the case of ***Ratnamani Metals & Tubes [2013-TIOL-1124-HC-AHM-CX]***, such an option can be given even at the level of CESTAT.

4. In the light of the foregoing, we pass the following order:-

(i) We uphold the impugned demand and interest.

(ii) We set aside the penalty under Section 76 *ibid*.

(iii) Penalty under Sections 77 and 78 ibid are upheld. However, penalty under Section 78 ibid shall be 25% of the amount of demand confirmed (i.e., 25% of Rs.35,14,649/-), if the same along with impugned demand and interest is deposited within 30 days of the receipt of this order, if the same has already not been done. Needless to say, (any) amounts already deposited towards the impugned demand, interest and penalty will be taken into account for this purpose.

5. The appeal is disposed of in the above terms.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK