

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

Dated: 20/04/2015

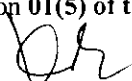
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/51198/2015-CU[DB] dated 26/03/2015

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/CROSS/99/2009 ST/200/2009	C.C.E. BHOPAL Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011 Name and Address of Respondent
2		HEMKUNT PETROLEUM LTD Village- dodi, P.O. Khamliya, Distt- Sehore(MP),,

Copy To

3 Advocate(s) / Consultant(s):

**AUM ASSOCIATES,ADV
WZ-451, Naraina Village,
New Delhi-110028**

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, I-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 C.D.R.

15 Office Copy

16 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

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

Date of Hearing 26.03.2015

For Approval & Signature :

**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

Application No.ST/CROSS/99/2009

Appeal No.ST/200/2009-CU[DB]

[Arising out of Order-in-Appeal No.1/BPL/2009, dated 12.01.2009 passed by the C.C.E.(Appeals), Bhopal]

C.C.E., Bhopal

Appellants

Vs.

M/s. Hemkunt Petroleum Ltd.

Respondents

Appearance

Shri BB Sharma, DR

- for the appellants

Shri Krishan Garg, Advocate

- for the respondents

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

Final Order No. 51198/2015, dated 26.03.2015

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Per Mr. R.K. Singh :

Revenue has filed this Appeal against Order-in-Appeal No.1/BPL/2009, dated 12.01.2009 on the ground that Commissioner (Appeals) has set aside the penalty under Section 76 while upholding the penalties under Sections 77 and 78 of the Finance Act, 1994. Revenue has contended that in this case service tax demand of Rs.2,71,904/- was confirmed and penalties under Sections 76, 77 and 78 of the Act were imposed by the primary adjudicating authority. The service tax was demanded under packaging service as the respondents were rendering service of bottling of LPG for companies like HPCL and BPCL. Revenue further contended that during the relevant period, penalties under Sections 76 and 78 of the Act were not mutually exclusive and cited the judgement of the Supreme Court in the case of **BCCI Vs. CST, Mumbai-I [2015-TIOL-04-SC-SC-ST]**, wherein it has been held that the BCCI was liable to pay penalty under Sections 76, 77 and 78 of the Act. They also cited the judgement in the case of **ACIT Vs. Krishna Poduval [2006 (1) STR 185 (Ker.)]**, where Kerala High court held that the incidents of imposition of penalties are distinctively separate under the provisions of Sections 76 and 78 of the Act and also the judgement in the case of **Bajaj Travels Ltd. Vs.CST [2012 (25) STR 417 (Del.)]**, where Delhi High Court also held that prior to 16.05.2008, the two Sections, i.e., 76 and 78 were in operation in two different fields and penalties were imposable under both in the course of same transaction.

2. We have considered the contentions of Revenue. There is no dispute about the fact that the penalties under Sections 76 and 78 of the



Act, became mutually exclusively only with effect from 16.05.2008 when proviso was added to Section 78 to the effect that if the penalty was payable under Section 78 provisions of Section 76 shall not apply. That having been said, it has to be seen that with effect from 16.05.2008, penalties under Sections 76 and 78 *ibid* were made mutually exclusive in-as-much-as if the penalty under Section 78 was imposed, the penalty under Section 76 was made unimposable. This amendment with effect from 16.05.2008 in a way reflected the refinement of penal provisions. Indeed it has been held by Punjab and Haryana High Court in the case of **CCE Vs. M/s. Pannu Property Dealers, Ludhiana [2011 (24) STR 173 (P&H)]** that *"even if technically, scope of sections 76 and 78 of the Act may be different, as submitted on behalf of the revenue, the fact that penalty has been levied under section 78 could be taken into account for levying or not levying penalty under section 76 of the Act. In such situation, even if reasoning given by the appellate authority that if penalty under section 78 of the Act was imposed, penalty under section 76 of the Act could never be imposed may not be correct, the appellate authority was within its jurisdiction not to levy penalty under section 76 of the Act having regard to the fact that penalty equal to service tax had already been imposed under section 78 of the Act. This thinking was also in consonance with the amendment now incorporated though the said amendment may not have been applicable at the relevant time."* Further in the case of **CCE Vs. First Flight Courier [2011-TIOL-67-HC-P&H-ST]** Punjab & Haryana High Court held that *"penalty under Section 76 may not be justified if penalty under Section 78 has been imposed even if technically penalties under both sections could be imposed and that the appellate authority was well within its jurisdiction not to levy*



penalty under Section 76 having regard to the fact that penalty under Section 78 has been imposed." In the wake of the said judgements of Punjab & Haryana High Court we are of the view that the impugned order does not suffer from such a grave illegality/impropriety as to warrant our interference. Therefore, we dismiss Revenue's appeal.

3. Since Revenue's Appeal is dismissed, the Respondents' cross-objections stand disposed of as infructuous.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

SSK