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

Appeal No. ST/310 /2006 Date 09/04/2008

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

To :
M/S VERMA CABLES
(PROP SMT YASHODA VERMA)
VERMA COLONY, BARELI, DISTT RAISEN, MP
464668

M/S VERMA CABLES
(PROP SMT YASHODA VERMA) Appellant

Vs

THE COMMISSIONER CUSTOMS, CENTRAL EXCISE
& SERVICE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/61/08 **Customs** dated 01.04.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   THE COMMISSIONER CUSTOMS, CENTRAL EXCISE
   & SERVICE
   HOSHANGABAD ROAD, BHOPAL (M.P)
2. Adv. / Consult
   MR.P.C.KASHIV
   E-3/49,STOP NO 10,KAMDAR MARKET,BHOPAL
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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B..NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Service Tax Appeal No. 310 of 2006
[Arising out of order in appeal No. 29/ST/APPEAL/BHOPAL/2006 dated 10.04.2006 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

Date of Hearing/ Decision: 01.04.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	:	NO
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	NO
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Yes
4. Whether Order is to be circulated to the Departmental authorities?	:	Seen

M/s Verma Cables — Appellant
[Rep. by Mr. P.C. Kashiv, Consultant]

Vs.

CCE, Bhopal — Respondent
[Rep. by Mr. Amit Jain, DR]

CORAM: **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No ST/61/08

Per M. Veeraiyan

This is an appeal against the order of the Commissioner (Appeals) dated 10.04.2006 by which Commissioner (Appeals) had upheld the order dated 28.11.2005 of original authority except reducing the penalty from Rs.20,000/- to Rs.2,000/-

2. Heard both sides.

3. The appellant is rendering services of cable operator and the Department sought for details from the appellant about the number of connections and the amounts recovered from their subscribers. As the appellant was not furnishing the details, they made enquiries from the State Excise Department who are administering entertainment tax in relation to cable operators and appears to have got details of number of customers who are availing cable connection from the appellant. It appears that the Department also conducted local enquiry and came to a conclusion that the appellant is collecting subscription at the rate of Rs.200/- per month from each customer. Accordingly, show cause notice was issued and original authority confirmed the demand of Rs. 1,11,600/- along with interest and imposed a penalty of Rs. 20,000/- under Section 76.

4. Commissioner (Appeals) has upheld the finding of the original authority on the demand of duty adopting the subscription rate from each customer as Rs. 200/- per month but reduced the penalty to Rs 2000.

5. Learned Advocate appearing for the appellant submits that the cable service is being rendered in a village about 60 Kms. away from the District Headquarter and 150 Kms. away from the Central Excise Divisional Headquarter. The villages cannot afford such high rate of charges for connections. The rate of Rs. 200/- said to be based on a local enquiry has been adopted without any documentary evidence supplied to them. The order, therefore, is not sustainable.

6. Learned DR submits that initially the appellant was not furnishing any details and when subsequently they produced certain records it was noticed that they have shown, in some cases, recovery at the rate of Rs. 80/- per month for a few months which and later at drastically reduced rates of Rs. 30/-, Rs. 25/- and Rs. 20/-. In fact, the appellant were required to pay a sum of Rs. 10/- per month as entertainment tax to the State Excise Department for every connection. Therefore the record produced by them was not reliable.

7. We have carefully considered the submissions. We do not want to comment on whether the amounts claimed to have collected could be considered reasonable or not. However, we find that the original authority has relied on certain local enquiries without disclosing the nature and outcome of enquiry and arrived at amount of tax payable. This procedure adopted is clearly in violation of principles of natural justice. Therefore, we set-aside the orders of the authorities below and remit the matter to the original authority to decide the matter afresh after furnishing details of enquiry made to the appellant. He shall also grant to the appellant a reasonable opportunity of hearing before deciding the issue.

8. Appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]