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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/361 /2006 Date 09/04/2008

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

To :
M/S BLOOD CARE COLLECTION CENTRE.
USHA TOWERS,G.E.ROAD,BHILAI,DISTT-DURG.

M/S BLOOD CARE COLLECTION CENTRE. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/62/08 **Customs** dated 31.03.08 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
   C.C.E. RAIPUR
   DHAMTARI ROAD,TIKRAPARA,RAIPUR.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI, COURT NO.1

SERVICE TAX APPEAL NO.361 OF 2006

Date of Hearing/Decision: 31.3.2008

[Arising out of Order-in-Revision No. Commissioner/RPR/ST/1/2006 dated 19.4.2006 passed by the Commissioner of Central Excise,Raipur]

Date of Hearing/Decision: 31.3.2008

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 Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	No Yes

Blood Care Collection Centre — Applicant
[Rep. by: Mr. V. Vasudevan, Advocate]

Versus

CCE, Raipur — Respondent
[Rep. Shri A. Jain, DR]

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

Final **ORDER** No ST/62/08

Per Justice S.N.Jha:

The assessee has come in appeal against the order of the Commissioner of Central Excise dated 28.2.2005 enhancing the penalty from Rs.5000/- to Rs.21,153/- in exercise of the revisional power under Section 84 of the Finance Act, 1994. Section 84 of the Act provides that "the Commissioner of Central Excise may call for the record of a proceeding under this Chapter in which the adjudicating authority sub-ordinate to him has passed any decision or order and may make such inquiry or cause such inquiry to be made, and subject to the provisions of this Chapter, pass such order thereon as he thinks fit".

2. The Assistant Commissioner by order dated 28.2.2005 assessing the taxable services provided by the appellant at Rs.2,64,415/- determined the service tax liability at Rs.21,153/-. He also imposed a penalty of Rs.5000/- under Section 76 of the Finance Act and further penalty of Rs.500 under Section 77 of the said Act. The appellant preferred appeal before the Commissioner (Appeals) who upheld the first part of the order in terms of which the appellant had been held liable to pay service tax of Rs.21,153/- but reduced the amount of penalty to Rs.1,500/- under Section 76. The penalty imposed under Section 77 of the Act was waived. The appellant approached this Tribunal in Appeal Nos.ST/149,24,142 & 154/2005. A Bench of this Tribunal by order Nos.289-292/2006-ST dated 30.8.2006 reported in 2006 (4) STR 527 (Tri.-Del.) held that the service provided by the appellant did not fall under the category of business auxiliary service and therefore, they are not liable to pay service tax at all. The appeals of the appellant were thus allowed and the impugned orders were set aside. Meanwhile, the Commissioner of Central Excise had taken up the matter suo motu exercising ~~of~~ power under Section 84 of the Finance Act. After an opportunity of hearing he enhanced the penalty from Rs.5000/- to Rs.21,153/- under the impugned order.

3. Learned counsel for the appellant raised a short point. He submitted that the orders of the Assistant Commissioner/ Commissioner (Appeals) holding that the appellant is liable to pay service tax having been set aside

by the Tribunal holding that the service provided by the appellant is not covered under 'Business Auxiliary Service', penalty could not be imposed on the appellant, and therefore, the impugned order of the Commissioner revising the amount of penalty must be set aside on this ground alone.

4. We find force in the submission of counsel. In our opinion, the appeal involves many issues but having regard to the limited submission of the appellant it is not necessary to go into other issues. We are satisfied that the appellant having been absolved of the tax liability, it could not be saddled with any penalty and therefore, on this ground alone, the impugned order of the Commissioner is fit to be set aside.

5. In the result, the impugned order is set aside and the appeal is allowed.

[Dictated and pronounced in the open Court]

[Justice S.N.Jha]
President

[M. Veeraiyan]
Member (Technical)

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