TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. ST/589-90 /2007 Date 10/04/2008

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

To :
M/S DARMANIAN ENTERPRISES
LIBRARY ROAD, GURDASPUR (PUNJAB)

M/S DARMANIAN ENTERPRISES Appellant
Vs
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/72-73/08 **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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   Sh S.Mahajan , CA
   C/O Appellant
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

M/S DARMANIA TELECOM
AWAMWARA BAZAR, GURDASPUR (PUNJAB)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI, COURT NO.1
SERVICE TAX APPEAL NOS. 589 TO 590 OF 2007

[Arising out of Revision Order Nos.38&39/CE/Jal/2007 dated 31.5.2007 passed by the Commissioner of Central Excise, Jalandhar (Hqrs. at Chandigarh]

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
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? : Yes

Darmanian Enterprises
Darmania Telecom — Appellants
[Rep. by: Shri S.Mahajan Chartered Accoutant]

Versus

CCE, Jalandhar — Respondent
[Rep. Shri B.K. Singh, DR]

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

Final **ORDER** No ST/72-73/08

Per M. Veeraiyan:

These appeals are by two sister concerns and involve a common issue and accordingly dealt with by a common order.

2. Heard both sides.

3. The appellants are appointed as distributors in terms of an agreement dated 9.2.2004 for the marketing of "spice post paid products". They have received commissions for the services rendered during the period from February 2004 to February 2005. There was a communication from the

Central Excise authorities in February 2005 and immediately thereafter they have registered themselves and paid the service tax involved along with interest. The original authority taking the entire background into account confirmed the service tax and interest (which would have already been paid) but invoked the provisions of Section 80 of the Finance Act, 1944 and accordingly imposed nominal penalties under Sections 75A, 77, 76 and 78.

4. Commissioner in exercise of his revision powers in terms of Section 84 of the Finance Act issued notice and passed orders in revision. He imposed enhanced penalty of Rs.1,27,683/- under Section 76 and Rs.78000/- under Section 78 on M/s. Dharmanian Enterprises. Similarly he imposed enhanced penalty of Rs.31,652/- under Section 76 and Rs.31602/- under Section 78.

5. The learned advocate appearing for the appellants submits that the appellants are from rural area; they are not much educate and they were not aware of the provisions of Service Tax laws. They were also not informed about the service tax liability by M/s. Spice Telecom whose products they were selling. As soon as the Central Excise authorities informed them about the service tax liability, they immediately took out registration and paid the duty and interest. They have recovered so far only part of the amount from M/s Spice Telecom and yet to recover the balance from them. The original authority has rightly taken a lenient view and imposed token penalty. Under these circumstances, he seeks to set aside the orders in revision by the Commissioner. He also relies on the decision of the Hon'ble High Court of Katnataka in the case of **CCE, Bangalore Vs. Sunitha Shetty**, reported in 2004 (174) ELT 313(Kar.) wherein in similar circumstances the exercise of

powers of revision by the Commissioner and imposition of penalty was set aside.

6. We have carefully considered the submissions from both sides. We have perused the order in revision. No ground adduced and no evidence has been relied upon to come to a conclusion different from the one taken by the original authority. In our opinion, the leniency shown by the original authority in terms of Section 80 of the Finance Act is reasonable and does not require to be interfered with. In the light of the above, we set aside the orders in revision by the Commissioner and restore the orders of the original authority.

7. The appeals are allowed with consequential relief.

[Dictated and pronounced in the open Court]

[Justice S.N.Jha]
President

[M. Veeraiyan]
Member (Technical)

nk