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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/489 /2006 Date 07/07/2008

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

To :
M/S SHARVIN
C/O PLOT NO 182,SECTOR A,INDUSTRIAL
MANDIDEEP,DISTT-RAISEN(MP)
M/S SHARVIN Appellant

Vs

C.C.E.BHOPAL Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/ 102/08 Customs dated 20-6-08 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.BHOPAL
   48,ADMINISTRATIVE AREA,AREA HILLS,BHOPAL
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. 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)

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

COURT – II

SERVICE TAX APPEAL NO. 489 OF 2006

[Arising out of Order-in-Appeal No. 75/ST/Appl/BPL dated 21.7.2006 passed by the Commissioner (Appeals), Central Excise & Service Tax, Bhopal]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. SHARVIN — Appellants

Vs.

CCE, Bhopal — Respondent

Appearance:

Shri P.C. Kashiv, Consultant for the appellants,
Shri R.K. Verma, JDR, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 20th June, 2008

FINAL ORDER NO. ST/102/08 **dated** 20/6/08

Per S.S. Kang:

Heard both sides. The appellants filed this appeal challenging confirmation of demand of service tax and imposition of penalty.

2. During the arguments the appellants fairly conceded demand of service tax. The appellants are only challenging the penalty imposed under section 76, 77 & 78 of the Finance Act on the ground that service tax on out-door catering was levied w.e.f. 10.9.2004 to 15.5.2005 and they were under the bona-fide belief that as the place to provide eatables is provided by the manufacturer hence they are not providing service of catering. Contention is that the appellants were under bona fide belief that the factory canteen do not fall under the taxable category of outdoor caterer.

3. In these circumstances contention of the appellants is Section 80 of the Finance Act provides that notwithstanding ~~any point~~ anything contained in the provisions of Section 76 and 77 or Section 78, no penalty shall be imposable on the assessee for any failure referred to ~~any other~~ in the said provision, if the assessee proves that there was reasonable cause for the said failure.

4. Contention of the Revenue is that the appellants had not registered with the revenue authorities in spite of the fact that service tax was leviable on outdoor catering and during the survey it is noticed that the appellants are covered under service tax, therefore, they are liable to penalty.

5. We find that the appellants are contesting imposition of penalty. Service tax in respect of outdoor catering was levied w.e.f. 1-.9.2004 and the period in dispute is initial period and as per the appellants as the place for canteen is provided by the service recipient, therefore, they were under bona fide belief that they were not providing outdoor catering service at a place other than their own. We find that the appellants have sufficient cause for waiver of penalty. Accordingly, penalty is set aside and the impugned order is modified to this extent. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 25th June, 2008
RK