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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/96 /2006 - CU[DB] Date 27/11/2008

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

To :
M/S PRERNA SYNTEX
JATIYA AVENUE, 15B, RIICO INDUSTRIAL AREA,
NEEMRANA DISTT. ALWAR
M/S PRERNA SYNTEX — Appellant

Vs

THE COMMISSIONER CENTRAL EXCISE, JAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/361 2008 CU[DB] dated 10.11.08 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 CENTRAL EXCISE, JAIPUR
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult
   MR.PANKAJ MALIK
   CHARTERED ACCOUNTANTS 207-208, SHREE GOPAL TOWER, KRISHNA MARG, C-SCHEME, JAIPUR-302001
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 - 3
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
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. Office Copy
16. Guard file

Assistant Registrar

(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Appeal No.96 of 2006- DB

[Arising out of common Order-in-Appeal No.382-384(MPM)CE/JPR-I/2005 dated 19.10.2005 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:10.11.2008

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
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? :
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s. Prena Syntex ...Appellants

[Rep. by Shri Atul Gupta, C.S.]

Vs.

CCE, Jaipur ...Respondent

[Rep. by Shri A.K. Madan, DR]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. ST/361/08 Dated:10.11.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants were paying freight charges to the Goods Transport Operators during the period 16.11.97 to

2.6.98 and did not discharge the Service tax liability. The Appellants paid the tax on 31.01.2004, 11.4.2004, 3.3.2004 and 5.3.2004. Show cause notice was issued on 16.11.2004 demanding interest and penalty for delay in payment of tax.

2. After hearing both the sides and on perusal of the records, we find that the dispute relates to demand of interest and penalty. On the identical issue, the Tribunal following the decision of the Hon'ble Supreme Court held that the recipient of G.T.O. services are liable to pay interest from 29.11.2003 till date of payment of service tax in view of the date of assent of the President to Section 71 A of Finance Act, 1994, which was 16.5.2003. Reliance was placed on the following decisions:-

(1) Unikeller India Pvt. Ltd. Vs. CCE, Jaipur-I
2006 (3) S.T.R. 635 (Tribunal-Delhi)

(2) Ginni International Ltd. Vs. CCE, Jaipur
2006 (4) S.T.R. 154 (Tribunal-Delhi)

3. It is noted that the appeals of the above mentioned case laws and the present appeal are arising out of common impugned order of Commissioner (Appeals).

4. The relevant portion of the decision of the Tribunal in the case of Unikeller India Pvt. Ltd. (supra) is reproduced below:-

"4. Identical issue was considered by this Tribunal in the case of Greenply Industries wherein the Tribunal has held as under:-

> "A plain reading of Section 158 would reveal that provisions were inserted to Section 68, in order to bring the category of receiver of the services of GTO as the person liable to ay service tax. It can be seen that till this retrospective amendment the payment of service tax under Section 68 was to be made only by

the service provider. After the retrospective amendment in Finance Act, 2003, the receiver of the services from GTO was also made liable to pay service tax. Since the calculation of service tax liability would have been a bone of contention, the Finance Act, 2003, sought to insert a new Section 71A to make the receiver of services of GTO to file returns. This insertion was necessitated as the provisions of Section 69 & 70 of Finance Act, 1994 applied only to service provider. By inserting Section 71 A, the Finance Act, 2003 made the service receivers to file return to the authorities to ascertain the service tax liability. The said Section 71A also granted time of six months from the date of assent of the bill by the President. The Finance Bill 2003 received the assent of the President on 16.5.2003. This would imply that the service receivers, were required to file the returns by 17.11.2003 and discharge their service tax liability. It can be seen that by bringing this Section 71 A in the statute, the liability to discharge the service tax was extended up to 17.11.2003. In other words, if an assessee does not pay his service tax liability by 17.11.2003, the interest liability gets fastened on to the assessee till the payment of service tax.

8. The Hon'ble Supreme Court in the case of Gujarat Ambuja Cements Ltd. (supra) was seized with the challenge to the Section 71 A wherein, the Hon'ble Supreme Court in its interim order had granted the petitioner a further period of 2 weeks from 17.11.2003 to file return and discharge the service tax due. Since the Hon'ble Supreme Court has granted a further period of two weeks for filing the return and discharge the service tax liability, the interest liability, if any, on the appellants, will be from the period subsequent to the two weeks from 17.11.2003. In this case the appellants have deposited service tax liability on 13.1.2004 and 1.2.2004 and hence interest liability on the appellants will accrue from the expiry of two weeks from 17.11.2003, till the discharge of service tax liability by the appellants."

5. The ratio of the Tribunal's decision in the case of Greenply Industries squarely covers the issue before me. The interest, if at all is chargeable, it is to be chargeable after 2 weeks from 14.11.2003 till the date of payment of service tax by the appellants. As has been held in the

case of Greenply Industries, no penalty would be imposable on the appellants under Section 76 of the Finance Act, 1994."

5. We agree with the above decisions of the Tribunal. In view of that, we hold that the Appellants are required to pay interest from 29.11.2003 till the date of payment of tax. The penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 10.11.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.