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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/290 /2007-291 /2007 - CU[DB]
ST/CO/218-19/07

Date 27/11/2008

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE — Appellant

Vs

M/S RUCHI SOYA INDUSTRIES LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/367-368 2008 CU[DB] dated 21.11.08

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
   M/S RUCHI SOYA INDUSTRIES LTD
   A.B.ROAD, MANGLIYA GOAN, INDORE(M.P)
2. Adv. / Consult : Sh. R.C. Chaubey, consultant c/o Respondent
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)

M/S RUCHI SOYA INDUSTRIES LTD
A.B.ROAD, MANGLIYA GOAN, INDORE(M.P)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:21.11.2008

Service Tax Appeal Nos.290-291 of 2007 with Cross-Objection Nos.218 – 219 of 2007

Arising out of the order in appeal No.IND-I/41 & 42/2007 dated 27th February, 2007 passed by the Commissioner(Appeals), Customs & Central Excise, Indore.

For Approval and Signature:

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

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	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?	Yes

Appellant		Respondent
C.C.E, Indore	vs.	M/s Ruchi Soya Industries Ltd.

Appearance:

Shri Fateh Singh, Authorized Departmental Representative (DR) for the Revenue and Shri R.C. Chaubey, Consultant for the respondent

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

Final Order No. ST/367-368/08

Per M. Veeraiyan:

These two appeals are by the Department against the order of the Commissioner (Appeals) No. IND-I/41 & 42/2007 dated 27th February, 2007 by which the penalties imposed under Sections 77 and 78 of the Finance Act 1994 have been set aside by the Commissioner (Appeals).

2. Heard both sides.

3. The basic dispute related to levy of service tax on GTA services for the period 16.11.97 to 1.6.98 which was a matter of protracted litigation and finally settled by the judgment of the Hon'ble Supreme Court in the case of Gujarat Ambuja Cement Ltd. vs. UOI - 2005 (182) ELT 33 (SC). It was required that the entire amount of tax was to be paid within two weeks from the date of the order of the Supreme Court. However, the respondents paid the entire service tax involved along with applicable interest within 1 ½ months from the date of the order of the Hon'ble Supreme Court.

4. Commissioner (Appeals) in the light of the above circumstances, held that penalty was not imposable under Section 77 and 78 with the following findings:

> "6. *Even though the entire duty demand as well as penalty imposed on the appellants as per the impugned orders have been set aside. I would like to further state that the action on the part of adjudicating authority to consider the payments made already by the appellants for appropriation towards interest liability in the first instance and to hold that they are liable to pay certain balance amount as tax along with interest is quite improper and without any legal basis. Under the Central Excise Act/Rules, there is no provision for considering any payment of tax made by the party to be considered as interest liability first, and the balance of the payment, if any to be considered as payment of duty or tax. Further with regard to delay in payment of tax as well as delay in filing of the return under Section 71A, no penalty can be imposed on the appellants under Section 77 of the Act as Section 71A is not mentioned under the said Section 71 during the relevant period (up to 10.9.2004).Penalty under Section 76 of the Act, namely, penalty for delay in payment of tax with reference to Section 68 of the Act is however, imposable. But since there was no notice issued to them in this regard, no such penalty can be imposed at this stage. Moreover, considering the fact that the entire gamut of taxation with reference to GTO service was under dispute and that the appellants have paid not only the tax amount but also the interest on account of delay in payment of tax, no penalty may be warranted on them."*

5. From the above, it could be seen that there was dispute about payment of service tax which was settled by the Hon'ble Supreme Court and after the issue was settled, the service tax involved has been paid within a reasonable time

along with interest. Under these circumstances, the decision of the Commissioner (Appeals) in holding that there was no justification for imposition of penalty under Section 77 and 78 cannot be held unreasonable or improper. Therefore, there is no ground for interfering with the order of the Commissioner (Appeals).

6. Appeals are therefore, rejected. Cross-objections are also disposed of.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/