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/480 /2006 - CU[DB] Date 11/12/2008

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

To :
M/S KAMDHENU AIR SERVICES

C-6,LOWER GROUND, MADHAV TOWER, TORAN
BAORI, STATION ROAD, UDAIPUR
313001

M/S KAMDHENU AIR SERVICES Appellant

Vs

C.C.E.JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/412/08 dated 01.12.08

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.JAIPUR

NCRB,STATUE CIRCLE,C-SCHME,JAIPUR.

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

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), Thyagarava 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, COURT NO. III

Service Tax Appeal No. 480 of 2006

[Arising out of Order-in-Appeal No. 419/HKS(CE)JPR-II/2006 dated 10.7.2006 passed by Commissioner of Customs & Central Excise, Jaipur, Rajasthan]

For approval and signature:

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

---

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 should 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? : Yes

No.

M/s. Kamdhenu Air Services — Appellant

Vs.

Commissioner of Customs & Central Excise, Jaipur — Respondent

Appearance: Mr. Atul Gupta, Company Secretary , for the Appellant
Mr. Sunil Kumar, DR for the Respondent

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

Date of Hearing/Decision: 1.12.2008

Final **ORDER NO. 57/4/12/08**

Per P.K.Das (for the Bench):

The appellant filed this appeal against the order in Appeal No. 419/HKS(CE)JPR-II/2006 dated 10.7.2006 passed by the Commissioner (Appeals), Jaipur.

2. Relevant facts of the case in brief are that the appellant is providing services under the category of courier service. Central Excise officers visited their business premises and detected the non-payment of tax. There was confusion as to whether proprietary firm would be treated as commercial concern. However, the applicant deposited the tax of Rs.60,127/- immediately and the balance amount of Rs.15,200/- was deposited after issue of show cause notice before adjudication order. The adjudicating authority confirmed the demand of tax of Rs.75,327/- and appropriated the same as deposited by them alongwith interest. He also imposed penalties. Commissioner (Appeals) upheld that adjudication order.

3. Heard both sides and perused the records. The main contention of the learned counsel on behalf of the appellant is that there was dispute on levy of tax on proprietary firm as to whether it would be treated as commercial concern. He placed on record a decision of the Tribunal in the case of CCE, Jaipur vs. R.S. Financial Services [2008 (9) STR 231 (Tri-Del)] held that proprietary concern and proprietary synonymous and it would be treated as commercial concern. In view of that learned counsel submits that the appellant had already

deposited the entire amount of tax with interest before issue of show cause notice and therefore, penal provision should not be invoked. He is not disputing the demand of tax with interest.

4. We find that the appellant is a small entrepreneur, engaged in the business of courier service. The appellant has already deposited the tax with interest before issue of adjudication order. It is seen that there was confusion regarding the levy of tax. Hence the penalties imposed on the appellant are not warranted. Accordingly, the penalties are set aside. Demand of tax and interest are upheld. The appeal is allowed in the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

ss