

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

Appeal No. ST/280 /2007-SM[BR]

Date 16/01/2008

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

To :
M/S GOLDEN PRINCE WINE INDIA PVT. LTD.
116AB, SECTOR-B, INDUSTRIAL AREA SIRGITIL,
BILASPUR (C.G)

M/S GOLDEN PRINCE WINE INDIA PVT. LTD.

Appellant

C.C.E. RAIPUR

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 84/2008-SM[BR] dated 6.12.2007
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI. ATUL GUPTA CO.SECTY.
B-1/1289-A, VASANT KUNJ NEW DELHI-110070
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co. Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Service Tax Appeal No. 280 of 2007 –SM (BR)

[Arising out of order in Appeal No. 28/ST/RPR-I/2007 dated 30.03.2007 passed by the Commissioner (Appeals-I) Central Excise & Customs, Raipur]

Date of Hearing/ Decision: 06.12.2007

For approval and signature:

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? | : | M |
| 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 Golden Prince Wine India Pvt. Limited Appellant
[Rep. by Mr. Atul Gupta, Co. Secretary for the appellant]

Vs.

CCE, Raipur Respondent
[Rep. by Mr. S. L. Meena, Authorised Representative (DR) for the respondent]

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER No. 24/08-SM(BR)

Per P.K. Das:

The appellant filed this appeal against imposition of penalty under Section 76, 77 and 78 of the Finance Act, 1994.

2. The relevant facts of the case in brief are that the appellants are receiver of transport service by road. Service tax was introduced on 01.01.2005. By letter dated 31.10.2005, the Superintendent of Central Excise informed the appellant levy of tax on such service. Accordingly, the appellant applied for registration on 30.12.2005. They also paid tax of Rs. 76,847/- and education cess of Rs. 1537/- on 31.12.2005 for the period April 2005 to December 2005. But for the period 01.01.2005 to 31st March 2005, they paid tax of Rs. 12,803/- and education cess of Rs. 256/- on 22nd March 2006 due to non availability of the figures during the material period. The adjudicating authority confirmed the tax already deposited before issue of the show cause notice. He imposed penalty of Rs. 89,650/- under section 76 and penalty of Rs. 1,000/- under sections 77 and further penalty of Rs.89650/- for suppression of fact with intent to evade payment of tax. Commissioner (Appeals) rejected the appeal of the appellant. The learned Counsel on behalf of the appellant submits that it is a new levy on GTA service. He submits that the CBEC vide letter No. 341/18/2004-TRU (PT) dated 17.12.2004 clarified that in case of omission in payment of tax or procedural lapse by persons liable to pay service tax on the goods transported by road before 31.12.2005, no penal provision should be invoked. He also relied upon the decision of the Tribunal in the case of CCE, Mumbai vs. Gamma Consultancy Pvt. Ltd., reported in 2006 (4) STR 591 (Tri. Mumbai).

4. Learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellant paid the tax on 31.12.2005 for the period April 2005 to December 2005 and there is a long delay for payment of tax for January 2005 to March 2005. He further submits that the appellant opted registration after the letter issued by the Superintendent of Central Excise and therefore there is suppression of facts with intent to evade payment of tax.

5. After hearing both the sides and on perusal of the record, I find that levy was introduced on 01.01.2005. The appellant paid the tax for the period April 2005 to December 2005 on the very next day of registration and, therefore, imposition of penalty for this period is not justified. Further, no material was produced by the Revenue in support of suppression of facts with intent to evade payment of tax and imposition of penalty under section under Section 78 of the Act is not warranted. However, I find force in the submission of the learned DR in respect of imposition of penalty of Rs. 13059/- for delayed payment of tax for the period January 2005 to March 2005. After considering the facts and circumstances of the case, I reduce the penalty to Rs. 13059/- under Section 76 of the Finance Act, 1994 and Rs. 500/- under Section 77 of the Finance Act. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court)

(P.Ā. Das)
Member (Judicial)

[Pant]