

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/159 /2007

Date 23/01/2008

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

To :
GANESH AUTOMOBILES
NH-8, GOVARDHAN VILAS, UDAIPUR

GANESH AUTOMOBILES

Appellant

Vs

Respondent

C.C.E, JAIPUR-II

I am directed to transmit herewith a certified copy of Final order No.116/2008-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, JAIPUR-II

NEW CENTRAL REVENUE BUILDING, 'C'SHEME,
JAIPUR-302005

2. Adv. / Consult SHRI. ATUL GUPTA CO. SECY.

B-1/11289-A, VASANT KUNJ NEW DELHI-70

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)

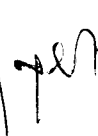
**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Service Tax Appeal No. 159 of 2007 –SM (BR)
[Arising out of order in Appeal No. 425(HKS) ST/JPR-II/2006 dated 10.07.2006
passed by the Commissioner (Appeals-II) Customs & Central Excise, Jaipur]

Date of Hearing/ Decision: 06.12.2007

For approval and signature:

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

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|--|---|--|
| 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? | : | |

M/s Ganesh Automobiles

Appellant
[Rep. by Mr. Atul Gupta, Co. Secy. for the appellant]

Vs.

CCE, Jaipur-II

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

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

Final ORDER No 116 /08-SM(BR)

Per P.K. Das:

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

2. The relevant facts of the case in brief are that the appellants are engaged in providing service under the category of "Authorised Service Station". They obtained registration in the year 2001. Proceeding was initiated by show cause notice dated 21.8.2003 for non filing of ST-3 return for quarter ending September

2002 and March 2003. Thereafter, the appellant deposited the tax and filed the returns. Another show cause notice dated 29th June 2005 was issued, proposing the demand of tax and ~~the~~ appropriate the amount of tax as already deposited by them and to impose penalty under Section 76, 78 and 77 of the Act, 1994, which is the subject matter in the present appeal. The adjudicating authority confirmed the demand of tax of Rs. 1,61,128/- and appropriated the same as deposited by them before issue of the show cause notice. He also directed recovery of interest. He further imposed penalty of Rs. 1,52,330/- under section 76 for not depositing the tax on time and also imposed penalty of Rs. 1,61,120/- under section 78 of the Finance Act, 1994 for suppression of facts with intent to evade service tax and a penalty of Rs. 2,000/- was imposed under section 77 for non-filing of ST-3 return.

3. Learned Counsel on behalf of the appellant submits that the appellant deposited the entire amount of tax before issue of the show cause notice. He further submits that the appellant was registered in the year 2001 and paid the tax before issue of the show cause notice and therefore, the allegation of suppression of facts with intent to evade payment of service tax is not sustainable. He further submits that due to crunch of fund the appellant failed to deposit the tax within the stipulated period. So, imposition of penalty in the facts and circumstances of the case is unwarranted.

4. Learned DR on before of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellant deposited the tax on 9.6.2004 and 31.10.2004 for the period 2001-2002 to 2003-04. He further submits that after the issue of show cause notice for non filing the return; appellant deposited the tax and there is suppression of fact with intent to evade payment of tax.

5. After hearing both the sides and on perusal of records, I find that Commissioner (Appeals) observed that the appellants had taken service tax registration in the year 2001 and after issue of the show cause notice dated 21.8.2003 for non-filing of ST-3 return; the appellant deposited the tax and filed

the returns. He further observed that the appellant acted in defiance of Central Excise law with intent to evade payment of tax. It is seen from the record that the appellant declared the taxable value in their ST-3 return and deposited the tax before issue of the show cause notice. In any event, there is a delay in filing the return and deposit the tax which cannot be treated as suppression of fact with intent to evade tax and therefore the imposition of penalty under section 78 of the Act, 1994 is not sustainable and the same is set-aside. But the imposition of penalty under section 76 and 77, I find force in the submission of the learned DR. It is seen that on 9.6.2004, the appellant deposited the tax for the period 2003-04 and on 31.10.2004 for the period 2001-02. It is also noted that the appellant paid the tax before issue of the show cause notice but they have not paid the interest alongwith tax. Thus, it is a clear case of failure to file the return within the stipulated period and to pay tax. Accordingly, the imposition of penalty under section 76 and 77 of the Finance Act, 1994 is upheld. The impugned order is modified in the above terms.

(Order dictated and pronounced in the open Court)

[Pant]

(P.K. Das)
Member (Judicial)