

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/478 /2007 WITH CROSS OBJECTION 244/2007-SM[BR]

Date 24/01/2008

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD

M/S STATE BANK OF INDIA

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 143/2008-SM[BR] dated 20.12.2007
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

M/S STATE BANK OF INDIA
ASSI BRANCH, BHADAINI, VARANASI (UP)


2. Adv. / Consult

NONE----

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.I**

**Service Tax Appeal Nos. 478 of 2007 with Cross Objection 244
of 2007-Single Member Branch**

[Arising out of Order-in-Appeal No.24-ST/ALLD/2007 dated 24.5.2007
passed by the Commissioner (Appeals), Customs and Central Excise,
Allahabad]

Date of Hearing/Decision: 20.12.2007

Hon'ble Ms. Jyoti Balasundaram, Vice-President

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1. Whether Press Reporters 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 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? | : Seen |
| 4. Whether Order is to be circulated to the Departmental authorities? | : Yes |

Commissioner of Central Excise, Allahabad	Appellant
Vs.	
State Bank of India	Respondent

Appearance:

Mr.B.S. Suhag, Authorized Representative(DR) for the Appellant
None for the Respondent

CORAM: Ms. Jyoti Balasundaram, Vice-President

Final Order No 143 JCB-SM(BR)

Per Jyoti Balasundaram:

In this case the Commissioner (Appeals) has reduced the penalty imposed on the respondents herein for delay in payment of service tax from Rs.11,179/- to Rs.5000/-. It is against this reduction that the Revenue has

come up in appeal. The assessee is in appeal against the reduction, contending that no penalty is called for at all.

2. I have heard the learned DR and perused the records and none appears for the respondents inspite of notice. I find that the Commissioner (Appeals) has relied upon the provisions of Section 80 for reduction of penalty while recording a finding that the major delay relates to initial months, namely September and October 2004 when the banking and financial services were included in the service tax net with effect from 10.9.2004. In other words, he has held that, the assessee had explained that there was a reasonable cause for the delay in payment of service tax. It is already settled that the provisions of Section 80 will have overriding effect over the provisions of Section 76 of the Finance Act . Therefore, no ground has been made out by the Revenue for enhancement of the penalty to the amount as imposed originally by the adjudicating authority and the impugned order is, therefore, upheld and the appeal dismissed. In the cross-objections the prayer of the respondents is setting-aside of the penalty. However, there is no merit in the prayer for the reason that although the major delay in payment of service tax was during the initial months for levy of service tax on the services rendered by the respondents, the fact remains for the delay continued and there was no reasonable cause for the delay after the initial period, therefore, some penalty was definitely required to be retained. I dismiss the cross-objections.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice-President