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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/640 /2007-SM[BR]

Date 19/03/2008

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

To :
SH L.N.GUPTA,PROPRIETOR
3 D CONSTRUCTION, MOTI DOONGARI,
ALWAR(RAJ)

SH L.N.GUPTA,PROPRIETOR — Appellant

Vs

C.C.E. JAIPUR I — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 432 /2008-SM[BR]** dated 6.2.2008 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 I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
   JAIPUR 302005.
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 Publictions (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

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.640 of 2007-SM (BR)

[Arising out of order in appeal no.08/2007/Service Tax order dated 26.4.2007 passed by the Commissioner of Central Excise, Bhopal]

Date of Hearing/ Decision:6.2.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? :

No

Shri L.N. Gupta, Proprietor ...Appellants
[Rep. by None.]

Vs.

CCE, Jaipur-I
Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

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

Final Order No...432/.08-SM Dated:6.2.2008

Per P.K. Das:

None appeared on behalf of the appellant. By letter dated 30.1.2008, the appellant requested to decide the case on merits in their absence on the basis of the submission.

2. Heard the ld. DR on behalf of the Revenue and perused the records. The appellants are providing the services under the category of "Consulting Engineer Service". They obtained registration in the year 1997. During the period 1st April, 2005 to 30.9.2005, the appellant failed to deposit the tax within the stipulated period. The adjudicating authority appropriated the tax of Rs.14,550/- as deposited by them before the issue of show cause notice by TR-6 Challan dated 21.1.2006 and also imposed penalty of equal amount under Section 78 of the Finance Act, 1994. He dropped the penalty under Section 76 and 77 of the said Act in exercise with his power under Section 80 of the Finance Act, 1994. The Commissioner (Appeals) upheld the adjudication order but reduced the penalty of 25% of duty amount as the tax was deposited before issue of the show cause notice. Thereafter, the Commissioner of Central Excise revised the adjudication order and imposed penalty under Section 76 and 77.

3. It is seen from the adjudication order that the appellant's accountant was part time employee and had been entrusted the work of Service Tax deposit and filing the returns of Service Tax, who had withdrawn the total amount of Service Tax and interest thereon of Rs.13,855 on 2.10.2005 for deposit in the Bank. So, they presumed and had bona fide belief that the Service Tax amount had been deposited by the Accountant in time. It was stated that the Accountant had left the service without any information to them. Thereafter, they were informed by the Central Excise Officers that the Accountant had not deposited the tax. Accordingly, the appellant immediately deposited the tax. The

adjudicating authority after considering the bona fide of the appellants waived the penalty under Section 76 and 77 of the Act in exercise of the powers of Section 80 of the Act. The Hon'ble Karnataka High Court in the case of Commissioner of Central Excise, Bangalore Vs. Samita Sethi reported in 2006 (3) STR 404 held that the adjudicating authority had exercised the powers conferred on him under Section 80 of the Act having regard to the facts and circumstances of the case and revision of such order is not justified. In the present case, I find that the adjudicating authority, after considering the facts and circumstances of the case as stated above, waived the imposition of penalty under Section 76 and 77 in exercise of the powers under Section 80. The Commissioner in the revision order had not disputed the facts and circumstances of the case as narrated in the adjudication order. Therefore, I do not find any justification to impose penalty under Section 76 and 77 of the Act. ~~Therefore,~~ The impugned order of the Commissioner is not sustainable and it is set aside. The appeal is allowed.

Order dictated & pronounced in open court on 6.2.2008.

(P.K. Das)
Member (Judicial)

ckp.