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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/348 & 350 /2007 –SM [BR] Date 01/04/2008

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

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant

Vs

M/S AVTAR KRISHAN KHOSLA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 534 -535 /2008 –SM[BR] dated 27.3.2008 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
   M/S AVTAR KRISHAN KHOSLA
   C-23A, GANGOTRI APARTMENTS, ALAKNANDA, NEW DELHI
   110019

   [2] M/S JUGAL ARORA & COMPANY
   E-36, IST FLOOR NEHRU GROUND. FARIDABAD
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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

SERVICE TAX APPEAL No. 348 & 350 OF 2007-SM

[Arising out of Order-in-Appeal No. 5/ST/DLH/2007 & 09/ST/DLH/2007 both dated 9.3.2007 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

For approval and signature:

Hon'ble Mr. S.S. Kang, 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 would 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?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

CCE/CST, Delhi-I — Appellant

Vs.

M/s. Avtar Krishan Khosla,
M/s. Jugal Arora & Company — Respondents

Appearance:

Shri Sumit Kumar, SDR for the Revenue,
None for the respondents

Coram:

Hon'ble Mr. S.S. Kang, Vice President,

Date of Hearing: 27th March, 2008

FINAL ORDER NO. 534-35/08-SM(BR) dated 28.3.08

Per S.S. Kang:

When the matter was called none appeared on behalf of the respondents in spite of notice. Notices issued to the respondents were received back with the postal remarks 'Left'. Therefore, appeals are being taken up for hearing in the absence of the respondents. Since the issue involved is common, both the appeals are taken together.

2. Heard learned SDR. Revenue filed these appeals against the impugned orders whereby penalties imposed under Section 76 of the Finance Act were set aside on the ground that there was no proposal in the show cause notice to impose penalties under the said section. Penalty under section 76 of the Finance Act was set aside on the ground that amount of service tax along with interest had been paid prior to issuance of show cause notice.

3. Learned SDR submitted that in the show cause notices there were specific proposal to impose penalty under Section 77 of the Finance Act. I have gone through show cause notices and I find that there was specific averment as to why penalty should not be imposed under Section 77 & 76 of the Finance Act. In view of this finding of the Commissioner (Appeals) that there was no proposal to impose

penalty under Section 77 of the Finance Act is not sustainable, hence, set aside.

4. In respect of setting aside of penalties imposed under Section 76 contention is that the Commissioner (Appeals) relied upon the decision of the Tribunal wherein facts are different. The Commissioner (Appeals) relied upon the decision in the case of Sieger Spintech Equipments Pvt. Ltd. vs. CCE, Coimbatore, reported in 2006 (3) STR 736 (Tri.-Chennai). In the case the Tribunal has followed its earlier decision in the case of CCE, Mumbai vs. Top Detective & Security Services Pvt. Ltd., reported in 2005 (180) ELT 363 (Tri.-Mumbai). In the case of Top Detective & Security Services Pvt. Ltd. (supra) finding of the Commissioner (Appeals) was that there was no deliberate intention to evade payment of duty, hence penal action is not warranted. In view of this finding the Tribunal upheld the order passed by the Commissioner (Appeals) setting aside the penalty. Contention in the present case is that there was no such finding in the impugned order and, therefore, setting aside of penalty is not sustainable.

5. In this case penalty under Section 76 was set aside on the ground that duty has been paid prior to issuance of show cause notice. I find that the Commissioner (Appeals) relied upon the decision of the Tribunal wherein finding of the Commissioner that there was no deliberate intention on the part of the assessee to evade payment of

duty was upheld. In the present case there was no such finding. Further, the Tribunal in the case of Mett Machdonalt Ltd. vs. CCE, Jaipur, reported in 2006 (2) STR 524 (Tri.-Del.) held that in case of failure to furnish service tax return in time, penalty under Section 76 & 77 are imposable. Accordingly, appeals are remanded to the Commissioner (Appeals) for afresh decision after affording opportunity of hearing to the respondents. Appeals are disposed of by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 28th March, 2008

RK