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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/148 /2008- SM[BR] Date 05/09/2008

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

To :
M/S LALOOJI DERAWALA PVT. LTD.
HIG 218, PREETAM NAGAR,
ALLAHABAD (U.P.)

M/S LALOOJI DERAWALA PVT. LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1290 / 2008 –SM[BR] dated 11.8.2008 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 ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
   MR.S.P. OJHA
   299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)
3. S.D.R.
4. ~~J.C.D.R~~.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Appeal No.148 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.62/ST/Appl/Alld/2007 dated 20.12.2007 passed by the Commissioner of Central Excise (Appeals), Allahabad]

Date of Hearing/ Decision:11.08.2008

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? : No.
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.

M/s. Lalooji Derawala Pvt. Ltd.

...Appellants
[Rep. by Shri S.P. Ojha, Advocate]

Vs.

CCE, Allahabad

...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No...1290/08.../Dated:11.08.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in providing taxable service viz. Pandal and Shamiyana

Contractor Service. They entered into an agreement with Executive Engineer, U.P. Jal Nigam, Police Authorisation for supply of tent, furnitures, etc. for Magh Mela 2004-2005, Allahabad and it was specified that Service Tax would be payable @ 10.2%. The Police Authorities initially informed that no service tax is payable on such services provided by the Appellants, which was subsequently paid them. There is delay in payment of tax. Show cause notices were issued proposing demand of tax and penalty along with interest. The Appellant deposited the tax along with interest before issue of show cause notice. The Adjudicating Authority confirmed the demand of tax of Rs.1,10,918/- and appropriated the said amount as deposited by the Appellants. He also imposed a penalty of Rs.1,10,910/- under Section 76 of the Finance Act, 1994. the Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Counsel on behalf of the Appellant submits that the amount of service tax was not released by the Police Authorities, which was released in March, 2006. Thereafter, the Appellants immediately deposited the tax with interest. He further submits that there is no mela fide intention on the part of the Appellant and therefore, penalty is not sustainable. He relied upon the decision of the Tribunal in the case of CCE, Kolkata-I Vs. Malancha Photographer reported in 2006 (1) STR 101 (Tribunal-Kolkata).

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Appellant was aware of liability of payment of Service Tax as revealed from the Agreement and, therefore, they are liable to penalty for failure to pay the tax within the stipulated period. He further submits that payment of tax is not depending upon the release of funds by the Police Authorities

4. After hearing both the sides and on perusal of the records, I find that the Appellant in their Agreement with the Police Authorities mentioned that Service Tax is payable. Even that there was confusion on the payment of tax as revealed from the correspondence, which was settled by letter dated 5.4.2005 of the Addl. Commissioner of Central Excise, Allahabad. On a query form the Bench, the ld. Counsel submits that they have received the payment in respect of their service excluding service tax, which was paid by the Police Authorities in the month of March, 2006. They deposited the tax on 31.03.2006. I find that the liability of payment of tax is on the Appellant. There is no dispute that the Appellant was well aware of the payment of tax. It is also noted that in the month of April, 2005, the Additional Commissioner of Central Excise informed them to pay the tax, but they have not paid the same as the Police authorities had not released the amount of tax. I agree with the submissions of the ld. DR that after the letter of the Addl. Commissioner of Central Excise, the Appellants took one year for payment of tax. In

view of that, I find that imposition of penalty is justified. In the facts and circumstances of the case, the imposition of penalty of equal amount of tax is not justified. The Tribunal in the case of J.K. D. Popat & Co. Vs. CCE, Nashik reported in 2008 (85) RLT 117 (CESTAT-MUM.) held that imposition of penalty under Section 76 is not mandatory. It is noted that the Appellant deposited the tax with interest before issue of show cause notice and delay in payment was caused due to delay in payment of tax by the Police Authorities. Keeping in view overall facts and circumstances of the case, the penalty is reduced to Rs.20,000/- (Rupees Twenty Thousand only). The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 11.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.