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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/762 /2007-SM[BR] Date 22/05/2008

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

To :
ELECON CARGO PVT. LTD.

N-264, RAGHUBIR NAGAR, NEW DELHI

110027

ELECON CARGO PVT. LTD. Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 803 /2008 –SM[BR] dated 14.3.2008

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

   C.S.T. DELHI

   17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
2. Adv. / Consult
   MR.S.K.JUNEJA,FCA

   3424 FIRST FLOOR, MAHINDRA PARK, MAIN ROAD, RANI BAGH, DELHI.110034

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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No. 762/07-SM

(Arising out of order in appeal No.46/VKG/07 dated 6.11.07 passed by the Commissioner of Central Excise (Appeals), New Delhi)

For approval and signature:

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

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?

No.

M/s Elecon Cargo Pvt Ltd — Appelalnts
(Rep. by Shri S.K. Juneja, C.A)

Vs

CST, Delhi — Respondent
(Rep. by Ms. Archana Pandey Mittal, Jt. CDR)

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

Date of Hearing: 14.3.08

Final Order No. 803 /2008-SM(BR)

Per P.K. Das:

The Appellants field this appeal against the revised order of the Commissioner of Central Excise whereby penalty of Rs.8,911/- was imposed under Section 76 of the Finance Act, 1944.

2. After hearing both the sides and on perusal of the record, I find that the Adjudicating Authority did not impose any penalty in exercise of power under Section 80 of the Finance Act. He observed that the appellants paid the tax with interest of Rs.736/- before issue of show cause notice and there is reasonable cause for delay in payment of tax. The Commissioner of Central Excise revised the Adjudication Order and imposed penalty. The learned Counsel produced the letter dated 24.4.04 of the appellant addressed to the Superintendent of Service Tax which indicates that the appellants firm was proprietorship concern and it was transferred to a Private Limited Company. It is also noticed that the appellants are filing the returns regularly since 2005. I find that the Adjudicating Authority has recorded the ~~remarks~~ reasons for non-imposition of penalty in exercise of discretion conferred on him under Section 80 of the Act. The Commissioner revised the Adjudication order on the ground that the appellant is a private limited company and they cannot ignore responsibility for late payment of tax and filing of return.

3. After considering the facts and circumstances of the case, I find the finding of the Adjudicating Authority is reasonable and has rightly dropped the penalty under Section 80 of the Finance, Act, 1994. Accordingly, the impugned order of Commissioner ~~(Appeals)~~ is set aside and the order of the Adjudicating Authority is restored. The appeal is allowed with consequential relief.

Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*