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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/32 /2008-SM[BR] Date 06/06/2008

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

To :
M/S MODERN MACHINERY STORES
STATION ROAD, ALWAR (RAJASTHAN)

M/S MODERN MACHINERY STORES Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 878 /2008 –SM[BR] dated 11.4.2008

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
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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)

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.32 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.206(RKS)ST/JPR-I/2007 dated 28.11.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur-I]

Date of Hearing/ Decision:11.4.2008

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? :

M/s. Modern Machinery Store ...Appellants
[Rep. by Shri Atul Gupta, Co. Secretary]

Vs.

CCE, Jaipur-I ...Respondent
[Rep. by Shri B.S. Suhag, Authorized Departmental Representative (DR)]

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

Final Order No. 278/08-SM(BR)/Dated:11.4.2008

Per P.K. Das:

The Appellant filed this appeal against the imposition of penalty under Section 76 and 78 of the Finance Act, 1994. The relevant facts of the case, in brief, are that the Appellant is rendering the services under the category of "Authorised Automobile Service Station". The Appellant was helping their clients to get loan through Financial Institutions, for which they received commission from Financial Institutions. The Central Board of Excise & Customs vide Circular No.87/05/2006-S.T. dated 6.11.2006 clarified that the Service Tax is leviable on such activity. Accordingly, the Appellant paid the tax on 6.2.2007 and paid interest on 19.3.2007. The Adjudicating Authority confirmed the demand of tax and appropriated the amount as deposited by them and also imposed penalty under Section 76, 77 and 78 of the Finance Act, 1994. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Counsel on behalf of the Appellant submits that there was a confusion regarding leviability, which was settled by the Board Circular dated 6.11.2006 and thereafter the Appellant paid the tax before issue of the show cause notice. He submits that the Appellant acted in a bona fide manner and, therefore, the Section 80 of the Act is required to be invoked. He relied upon the decision of the Tribunal in the case of Vipul Motors (P) Ltd. Vs. CCE, Jaipur-I – 2008 (9) S.T.R. 220 (Tribunal-Delhi) and The Financiers Vs. CCE, Jaipur – 2008 (9) S.T.R. 136 (Tribunal-Delhi).

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that there was no confusion on the levy of the tax on such activity. He also submits that Board's Circular is of dated 6th November, 2006 and

they paid the tax on 6.2.2007. Therefore, the imposition of penalty on various Sections of the Act is justified.

4. After hearing both the sides and on perusal of the records, it is revealed from the Board's Circular dated 6.11.2006 that there were certain doubts have arisen in respect of activities undertaken by authorised motor vehicle dealers and service stations and as to whether the commission received by the automobile dealers from Banks/Non Banking Financial Companies (NBFC) for introducing the customers seeking finances/loans to such banks/NBFCs is to be subjected to service tax? The Board clarified, in such cases, that the tax is payable on the commission received by the Automobile dealers. The Commissioner observed that the Appellant was registered under Service Tax on 14.8.2001 as Authorised Service Station. It is also observed that the Central Excise Authorities by letter dated 22.11.2006 directed them to pay the service tax and thereafter they have paid the tax on 6.2.2007. I find from the record that by letter dated 22.11.2006, the Appellant was directed to inform the Superintendent of Central Excise the gross amount of the commission received by them from the Financial Institutions. It is seen ~~then~~ that there was a confusion in the trade about leviability of tax on such activity. After the Board's Circular dated 6.11.2006, the appellant voluntarily deposited the tax before issue of the show cause notice. The Tribunal in the case of Vipul Motors (P) Ltd. (supra) held that penalty is not imposable for delay of payment of tax on the business of arranging

loans and Section 80 of the Act would be attracted in such situation. There is no mala fide on the part of the Appellant for delay on payment of tax.

5. In view of the above, I find that the penalties are not warranted. Accordingly, the penalties are set aside and the appeal is allowed.

Order dictated & pronounced in the open court on 11.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.