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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/106 /2008-SM[BR], ST/ STAY/ 404 /2008 –SM[BR] Date 20/06/2008

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

To :
M/S KOCHAR ENTERPRISES
VILL- DOSANJH KHURD, PHILLAUR

M/S KOCHAR ENTERPRISES Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 982 /2008 –SM[BR]& S/ 382 /2008 dated 3.4.2008 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
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

ST/Stay 404/2008-SM, ST/Appeal No.106/2008-SM

(Arising out of order in original No.ROM/46/CE/Jal/07 dated 4.7.07 passed by the Commissioner of Central Excise, Chandigarh)

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 Kochhar Enterprises — Appellant
(Rep. by Shri Dharender Kumar, Rep)

Vs

CCE, Chandigarh — Respondent
(Rep. by Shri Rajmal, DR)

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

Date of Hearing: 3.4.2008

Final Order No. 982 /2008-SM(BR)

Stay order No: 382/08-SM(BR)

Per P.K. Das:

After hearing both the sides and on perusal of the record, I find that the issue involved in this case is in a narrow compass, and therefore, after granting the stay, the appeal is taken up for disposal.

2. The appellant was providing service as C & F Agent of M/s M & M Ltd. A show cause notice dated 1.7.2004 was issued proposing recovery of service tax alongwith interest and penalty. Adjudicating Authority observed that the appellants had paid the service tax and the interest on 6.11.2003 as per their own calculation and also filed ST-3 return after obtaining registration on 5th March, 2003 and no penalty was imposed on the appellant The Commissioner of Central Excise revised the order of the Adjudicating Authority. By Order dated 20.11.2006, the Commissioner imposed the penalty of Rs.37,800/- for delay in payment of service tax for 378 days. The appellant filed an application before the Commissioner for rectification of mistake in the Order in terms of Section 74(2) of Finance Act, 1994 contending that the appellants deposited the tax on 6.11.2003 instead of 6.11.2004 as erroneously recorded in the revised order. By the impugned order, the Commissioner dismissed the application for rectification of mistake.

3. The learned Representative on behalf of the appellant submits that the appellants deposited the tax on 6.11.2003 as it is evident from the challan and the return submitted to the Central Excise authority on 11th December, 2003. He submits that this fact was recorded in the Adjudication Order. He further submits that by mistake in reply to show cause notice, they mentioned date of deposit on dated 6.11.2004 and the Commissioner

proceeded on that basis. The learned DR reiterates the findings of the Commissioner of Central Excise.

4. After hearing both the sides and on perusal of the record, it is seen that Section 74 of the Finance Act, 1994 provides rectification of mistake of the Order. The relevant portion of the said Section is reproduced below:-

"Section 74. Rectification of mistake – (1) With a view to rectifying any mistake apparent from the record, the (Central Excise Officer) who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order."

5. In the present case, it is revealed from the Adjudication order that the Assistant Commissioner observed that the appellants had paid the service tax and interest on 6th November, 2003 and obtained registration on 5.11.2003. The appellant also produced the copy of the return alongwith TR-6 challan before the Bench. It is the contention of the appellant that due to clerical mistake, they mentioned 6th November, 2004 in the reply to show cause notice. The Commissioner rejected the contention of the appellant on the ground that the plea taken by the appellants in rectification of mistake should have been taken in the revision proceedings. Section 74 of the Finance Act, 1994 provides to rectify any mistake in Order apparent from the record. I find that the mistake of mentioning the date of deposit is apparent from the record. It appears that the Commissioner while passing the impugned order had not considered the records properly. Therefore, the impugned order is set aside and the matter is remanded back to the Commissioner to examine the record and to pass order afresh after giving

proper opportunity to the appellant. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*