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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/289 /2008-SM[BR]   Date 23/07/2008

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

To :
C.S.T. DELHI

17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.

C.S.T. DELHI   Appellant
Vs
M/S CHINTPURNI SECURITIES LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1078/2008 –SM[BR] dated 24.6.2008 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 CHINTPURNI SECURITIES LTD.
   316, B.D. CHAMBERS,
   10/54, D.B.GUPTA ROAD,
   KAROL BAGH,
   NEW DELHI.
2. Adv. / Consult SHRI, R .L. LAMBA ADV.
   TP -46, MAURA ENCLAVE, PITAMPURA, 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)

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

ST/Appeal No.289/08-SM

(Arising out of order in original No.20/VKG/CST/08 dated 8.2.08 passed by the Commissioner of Central Excise, 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

CST, Delhi	Appellant (Rep. by Shri B.S. Suhag, DR)
Vs	
M/s Chintpurni Securities Ltd	Respondent (Rep. by Shri, R.L. Lamba, Advocate)

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

Date of Hearing: 24.6.08

Final Order No. 1078 /2008-SM(BR)

Per P.K. Das:

The Respondent is engaged in the business of Share Broker service. It has been alleged that there was a delay in filing of return and payment of tax for the period from April, 1999 to March, 2004. The Respondents deposited the tax of Rs. 2,32,308/- on different dates. A show cause notice was issued proposing demand of interest of Rs. 35,448/- and penalties. The respondent deposited the interest after receipt of the show cause notice. The Adjudicating Authority confirmed the demand of interest of Rs. 35,448/- and appropriated the amount deposited by the respondent. He imposed penalty of Rs. 35,000/- under Section 76 of the Finance Act, 1994 and Rs.10,000/- under Section 77 of the said Act. The Revenue issued show cause notice to revise the Adjudication order to enhance the amount of penalty. The Commissioner of Central Excise by the revised impugned order dropped the show cause notice. Hence the Revenue filed this appeal before the Tribunal.

2. The learned DR on behalf of the Revenue, reiterates the grounds of appeal. He submits that the respondents paid the tax before issue of show cause notice without interest. He further submits that they deposited the tax after detection by the Revenue. The mandatory penalty should be imposed.

3. The learned Advocate on behalf of the Respondent, reiterates the findings of the Commissioner of Central Excise. He submits that the respondents deposited the tax before issue of show cause notice. Therefore, no penalty is warranted. However, considering the facts and circumstances of the case, the Adjudicating Authority imposed penalty which is equal to the amount of interest and the Commissioner rightly dropped the show cause notice.

4. After hearing both the sides and on perusal of the record, I find that the Commissioner passed the order following the clarification issued by the Board Circular No. 137/176/06 –CX-IV dated 3.10.07 whereby it is clarified that once the due service tax alongwith interest was voluntarily deposited by

the assessee and intimated to the Department, the entire proceedings are deemed to have been concluded. In the present case, the respondents deposited the tax voluntarily and interest was paid in pursuance to the show cause notice. Therefore, the Board Circular is not applicable herein. But it is noticed that the Commissioner dropped the proceedings on the ground that there is no allegation of any malafide intention. The Revenue has not challenged this finding of the Commissioner. I also notice that taking into consideration of account of tax and interest, the Adjudicating Authority rightly imposed penalty. So, there is no reason to interfere with the order of the Commissioner of Central Excise. Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*