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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/90 /2007-SM[BR]

Date 25/08/2008

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

To :
M/S BHILAI ENGG. CO. LTD.
INDL. ESTATE, HATHKHOJ, DISTT-DURG

M/S BHILAI ENGG. CO. LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1191 / 2008 –SM [BR] dated 18.7.2008 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. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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

In Service Tax Appeal No.90 of 2007-SM (BR)

[Arising out of common Order-in-Review No.Commissioner/RPR/ST/86/2006 dated 23.11.2006 passed by the Commissioner of Central Excise & Customs, Raipur (CG)]

Date of Hearing/ Decision:18.07.2008

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. Bhilai Engineering Co. Ltd. ...Appellants
[Rep. by Shri H. Bajaj, Advocate]

Vs.

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

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

Final Order No...1191/2008 SM (BR)/Dated:18.07.2008

Per P.K. Das:

The Appellant filed this appeal against imposition of penalty of Rs.1,35,100/- imposed under Section 76 of the Finance Act, 1944 by the revised order of the Commissioner of Central Excise.

2. Ld. Advocate submits that the Appellant is engaged in the manufacture of various engineering goods. He further submits that the activities undertaken by the Appellant are not within the purview of the definition of "Consulting Engineering" under Finance Act, 1994. However, the Appellant deposited the tax before issue of show cause notice in order to avoid legal complicity. He further submits that the Asstt. Commissioner of Central excise confirmed the demand of duty and appropriated the amount as deposited by them and refrained from imposition of penalty under Section 76 and 78 of the Act. By Revised Order, Commissioner of Central Excise imposed penalty of Rs.1,35,000.00 under Section 76 of the Act. In support of his contention that the Appellant is not within the definition of "Consulting Engineering", the ld. Advocate relied upon the decision of the Tribunal as under:-

(a) 2006 (4) STR 567 (T-D)

(b) 2007 (8) STR 191 (T-D)

3. Ld. DR reiterates the findings of the Commissioner. He submits that the Appellant had not disputed the payment of tax at any point of time and the submission of the ld. Advocate, at this stage, has no effect. He further submits that he Appellant delayed the payment of tax and the Commissioner rightly imposed the penalty.

4. After hearing both the sides and on perusal of the records, it is seen that the Commissioner of Central Excise revised the Adjudication Order and imposed penalty under Section 76 following the decision of the

Tribunal in the case of ETA Engineering Ltd. Vs. Commissioner of Central Excise – 2004 (174) ELT 19 (Tribunal-LB), wherein it has been held that penalty under Section 76 of the Act shall not be less than Rs.100/- per day but which may extend to Rs.200/- per day. It is noted that the Commissioner had not discussed the facts and circumstances of the case before imposing penalty. It is well settled that the imposition of penalty is based on the facts and law of the case. In the present case, the Commissioner passed the order without considering the submission of the Appellant. So, the impugned order is not sustainable. Accordingly, the impugned order is set aside and the matter is remanded back to the Commissioner of Central Excise, Raipur to decide afresh after considering the submission of the Appellant. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 18.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.