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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

Date 28/08/2008

Appeal No. ST/123 /2008 & ST/ 165 / 2008 –SM[BR]

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

To :
C.C.E ALLAHABAD / C.C.E LUCKNOW
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
SHRI MUNIR UDDIN Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1199- 1200/ 2008 –SM[BR] dated 1.8.2008 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

SHRI MUNIR UDDIN
12, ELGIN ROAD,
ALLAHABAD. (U.P)

[2] SMT. KETKI DEVI, LIG – 180,
AVAS VIKAS COLONY , FATEHPUR. [U.P]

2. Adv. / Consult
NONE;---------

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)

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

ST/Appeal Nos.123 & 165/2008 -SM

(Arising out of order in appeal No.79/ST/Alld/2007 dated 22.12.2007 No.191/ST/07 dated 27.12.07 passed by the Commissioner of Central Excise (Appeals), Allahabad)

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?

M

CCE, Lucknow	Appellant (Rep. by Shri S. Kumar, DR)
Vs	
1. Shri Munir Uddin 2. Smt. Ketki Devi	Respondent (Rep. by none)

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

Date of Hearing: 1.8.08

Final Order No. 1199 - 1200 /2008-SM(BR)

Per P.K. Das:

Common issue is involved in both the appeals and therefore, these are being taken up together for disposal.

2. Heard the learned DR on behalf of the Revenue. None appeared on behalf of the respondents despite issue of notice.

3. The relevant facts of the case, in brief, are that the respondents are owners of 'Rent a Cab Scheme Operator' to BSNL under proper contract. There was delay in payment of tax. The respondents deposited the tax with interest. The Adjudicating Authority confirmed the payment of tax in the case of Munir Uddin of Rs.20,219/- and imposed penalty of Rs.500/-, Rs.20219/- , Rs.5,000/- and Rs.40,438/- under Section 75(A) 76, 77 and 78 of the Finance Act, 1994 and in the case of Ketki Devi payment of tax of Rs.10,892/- and imposed penalty of Rs. 10,890/-, Rs.500/- under Sections 76 and 77 of the Act respectively. The Commissioner (Appeals) set aside the penalties in both the cases. Hence the Revenue filed these appeals.

4. The learned DR on behalf of the Revenue reiterates the grounds of appeal. He submits that admittedly the respondents delayed payment of tax. He relied upon the decision of the Hon'ble High Court of Kerala in the case of Assistant Commissioner of Central Excise Vs Krishna Poduval reported in 2006 (1)STR 185 (Ker).

5. He also relied upon the decision of the Tribunal in the case of Mett Macdonald Ltd Vs CCE Jaipur reported in 2006 (2) STR 524 (Tri.-Del.). He strongly urged that the Commissioner (Appeals) proceeded on the basis of ignorance of law which is not acceptable.

6. After hearing the learned DR and on perusal of the record, the finding of the Commissioner (Appeals) in the case of Smt. Ketki Devi, which is similar to the other appeal, is reproduced below:-

"I thus hold that the appellant had no malafide intention in not depositing service tax in time. They were ignorant about the provisions of

Service tax and even the company of the stature of M/s BSNL, Fatehpur neither informed the appellants about the service tax leviable on the amount paid to the appellants for the services of under Rent-a-Cab Scheme nor their contract contained any clause regarding service tax. The appellant has paid the service tax for the period March, 2003 to February 2004 alongwith interest amounting to(Rs.10,890/- + Rs.5,392/-) vide TR-6 No.1 dated 22.3.2007 after they came to know about their service tax obligation. I am, therefore, of the opinion that there was reasonable cause for failure to pay service tax and file returns. Hence the benefit of section 80 of the Finance Act, 1984 is applicable to them. Accordingly, I fully waive off the penalties imposed on her under Sections 76,77 and 78 of the Act.)

7. The Revenue in the appeal contended that ignorance of law is of no excuse. However, it is not disputed by the Revenue that there was no malafide intention in depositing the tax in time by the respondent. I also find that both the respondents are individual owners of vehicles and providing the vehicles to M/s BSNL Ltd, a Public Sector undertaking and IFFCO under the contract. So, the case laws cited by the learned DR are not applicable in the present case.

8. After considering the facts and circumstances of the case, I do not find any reason to interfere with the order of Commissioner (Appeals). Accordingly, both the appeals filed by the Revenue are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*