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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/173 /2008-SM[BR]   Date 03/09/2008

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

To :
M/S MULTI TRACK CABLE NETWORK
31, SOUTH MARKET,
KIDWAI NAGAR,
NEW DELHI.

M/S MULTI TRACK CABLE NETWORK   Appellant
Vs
C.S.T. DELHI   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1248 / 2008 –SM[BR] dated 6.8.2008 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
   C.S.T. DELHI
   17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
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. 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

Service Tax Appeal No.173 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.43/ST/DLH/2007 dated 20.12.2007 passed by the Commissioner of Central Excise (Appeals), New Delhi]

Date of Hearing/ Decision:06.08.2008

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. Multi Track Cable Network ....Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs.

CST, Delhi ...Respondent
[Rep. by Shri K.K. Goyal, Jt. CDR]

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

Final Order No. 1248/08-SM(BR)/Dated:06.08.2008

Per P.K. Das:

The relevant fats of the case, in brief, are that the Appellants are engaged in providing transmission of programme by Cable at the premises of the clients. The service tax was introduced on Cable Services by Notification No.8/2002-ST dated 1.8.2002 w.e.f. 16.08.2002. It has been alleged in the show cause notice that while scrutinizing the records of M/s. Win Cables, it was found that the Appellant has taken line from M/s. Win Cable, Multy System Operator. It was also found that the Appellant has not filed any Service Tax Return nor paid any Service Tax to the Government. The Appellant was summoned for appearance on 24.03.2005 and 4.4.2005.The Appellant produced the copy of the Income Tax Return for the financial year 2002-03 and 2003-2004 and on the basis of such records, demand of tax was confirmed. The Adjudicating Authority confirmed the demand of tax of Rs.95,410/- and imposed penalty of Rs.1,90,820/- under Section 78 of the Finance Act, 1994, Rs.200/- per day under Section 76, which comes to Rs.95,410/- and penalty of Rs.1,000/- per Return totalling to Rs.5,000/- under Section 77. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Advocate on behalf of the Appellant submits that it is apparent on the face of the record, that the Appellant had no intention to evade payment of tax as they produced any Income Tax Return for calculation of the tax. He further submits that the levy was introduced w.e.f. 16.08.2002 and the Appellant is a small cable operator and had no knowledge of the levy of the tax. In any event, they raised the bills to the customers and also recorded in the their register that they have no

intention to evade payment of duty. So, the extended period of limitation cannot be invoked in this case. He fairly submits that the Appellant is a small Cable Operator and tax is payable and, therefore, not contesting the tax, they paid the tax, but no penalty should be imposed.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Appellant suppressed the entire facts, which was discovered by the Revenue as evident from the show cause notice. He also relied upon the decision of the Kerala High Court in the case of Assistant Commissioner of Central Excise Vs. Krishna Poduval reported in 2006 (1) STR 185 (Kerala).

4. After hearing both the sides and on perusal of the records, I find that the ld. Advocate is not disputing the demand of tax and, therefore, the demand of tax is upheld. Regarding penalty, it is seen from the record, that levy was introduced on 16.2.2002 and the Appellant is a small Cable Pperator. It is noted that the central excise officers detected the non-payment of the tax by the Appellant on the basis of the records of M/s. Win Cable Multi System Operator. It is noted that the Appellant produced the Income Tax Return on the basis of which, demand of tax was calculated. Therefore, taking into account of levy of tax on the initial stage, the imposition of penalty under Section 78 of the Act is not proper. In the case of Krishna Poduval (supra), it has been held that the person, who is guilty of suppression deserves no sympathy under Section 80 of

the Act. In the present case, I do no find any material that that the Appellant suppressed the facts with intent to evade payment of tax.

5. In view of the above discussion, penalty under Sections 76 and 77 is upheld. It is decided by the Tribunal in the case of J.K.D. Popat & Co. Vs. CCE, Nashik reported in 2008 (85) RLT 117 (CESTAT-Mum.), penalty under Section 76, Rs.200/- per day is not the maximum. In view of that, the penalty under Section 78 is set aside and penalty under Section 76 is reduced to Rs.50,000/- (Rupees Fifty Thousand only). The impugned order is modified accordingly.

Order dictated & pronounced in open court on 6.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.