TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/288 /2008 – SM[BR]   Date 24/11/2008

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW   Appellant
Vs
M/S ORBIT TRAVELS   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1495 / 2008- **SM[BR]** dated 20.11.2008 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 ORBIT TRAVELS

B-178/B, BEHIND LAXMI X-RAY CLINIC, NIRALA NAGAR,LUCKNOW (U.P.)

2. Adv. / Consult SHRI S.N. SARVASTAVA ADV.
C-5, SECTOR –B, ALIGANJ , LUCKNOW -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 - 3
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
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-1
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 No.288/2008 -SM

(Arising out of order in appeal No.15/CE/LKO/08 dated 31.1.2008 passed by the Commissioner of Central Excise (Appeals), Lucknow)

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 ?

no

4. Whether Order is to be circulated to the Departmental authorities?

yes

CCE, Lucknow — Appellant
(Rep. by Shri R.K. Verma, DR)

Vs

M/s Orbit Travels — Respondent
(Rep. by Shri S.N. Srivastava, Advocate)

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

Date of Hearing: 29.8.08
Date of Decision: 21.11.08

Final Order No. 1495 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents had been providing service under the category of 'Rent-a-Cab' under the

Finance Act, 1994. It has been alleged that the respondents failed to discharge the service tax liability and suppressed the fact with intent to evade payment of tax. A show cause notice dated 23.5.2007 was issued proposing demand of tax and imposition of penalty. The respondents deposited the tax during investigation. They filed the reply to show cause notice on 7.8.2007. Thereafter, corrigendum to show cause notice was issued on 21st August, 2007 proposing imposition of penalty under Section 76 of the Finance Act, 1994. The Adjudicating Authority confirmed the demand of tax of Rs. 11,75,049/- and appropriated the said amount as paid by them. He also imposed penalty of equal amount under Section 78 of the Act and penalty of Rs. 4,48,400/- under Section 76 of the Act alongwith penalty under Section 77 of the Act. The Commissioner (Appeals) set aside the penalty under Section 76 of the Act. Hence the Revenue filed this appeal.

2. The learned DR submits that the incidence of imposition of penalty under Sections 76 and 78 of the Act are distinct and separate under the two provisions and even if offences are committed in the course of the same prosecution or arise out of the same act, penalty can imposable for both the offences under both the sections separately. He relied upon the decision of the Hon'ble Kerala High Court in the case of Assistant Commissioner of Central Excise Vs Krishna Poduval reported in 2006 1 STR 185 (Ker).

3. The learned Advocate on behalf of the respondents submits that penalty under Section 76 is not warranted in view imposition of penalty

under Section 78 of the Act. He relied upon the following decisions of the Tribunal:

a) CCE Ludhiana Vs Silver Oak
   2008 (9) STR 481 (Tri.-Del)

b) Kamal Photo Studi & Colour Lab Vs CCE Mumbai-I
   2007 (7) STR 307 (Tri.- Mum.)

c) The Financers Vs CCE Jaipur
   2007 (8) STR 7 (Tri.-Del)

He also submits that the Revenue has not challenged the other finding of Commissioner (Appeals) and appeal is liable to be dismissed.

4. After hearing both the sides and on perusal of the record, it is seen that the respondents discharged the entire tax liability alongwith interest and penalty of 25% of tax under Section 78 of the Act. The Commissioner (Appeals) set aside the penalty under Section 76 on two counts. Firstly, after filing reply to show cause notice, the corrigendum to show cause notice was issued on 21st August, 2007 proposing to impose penalty under Section 76 which is not sustainable in view of the Tribunal decision in the case of Mahindra & Mahindra Ltd Vs CCE, Mumbai-V reported in 2006 (196) ELT 62 (Tri.-Mumbai). Secondly, there is no scope to impose double penalty under Section 76 and 78 when a person is found guilty of evasion of tax by reason of suppression of fact with intent to evade payment of tax.

5. It is seen that the Revenue filed this appeal on the ground as to whether penalty is simultaneously imposable under both the sections 76 and 78 of the Act. The Revenue has not challenged the other ground in so far as to whether the proposal to impose penalty under Section 76 of the Act by Corrigendum to Show Cause Notice is permissible ~~make~~ under the

law. So, I agree with the submission of the ld. Advocate that the Order of the Commissioner (Appeals) is sustainable without going into the submission of the ld. DR So, the issue raised by the Revenue in present appeal is merely academic as the Revenue had not challenged the impugned order is counts. In other words, the impugned order is sustainable even if the contention of the ld. DR is accepted as the other finding of the Commissioner (Appeals) was not disputed by the Revenue.

6. In view of that, I find that the appeal filed by the Revenue is liable to be rejected without going into the issue as raised by ~~of~~ the learned DR. The appeal is rejected.

(Order ~~dictated~~ and pronounced in the open Court) on 20/11/08

(P.K. Das)
Member(Judicial)

MPS*