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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/571 /2007 – SM [BR]   Date 02/01/2009

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

To :
M/S PRAGIYOTI SYNTEX LTD

S-P-498, RIICO INDUSTRIAL AREA, PHASE-I,
BHIWADI,RAJASTHAN.

M/S PRAGIYOTI SYNTEX LTD   Appellant

Vs

C.C.E. JAIPUR I   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1629 / 2008- **SM[BR]** dated 11.12.2008

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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

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 - 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. IV

Service Tax Appeal No. 571 of 2007-SM

(Arising out of Order-in-Appeal No. 128-129 (GRM)/CE/JPR-I/2007 dated 29.6.2007 passed by the Commissioner (Appeals), Central Excise & Customs, Jaipur)

For approval and signature

HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

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 would 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 Pragjyoti Syntex Ltd. Appellant

Vs.

CCE, Alwar Respondent

Appearance:

	-	For appellant
Shri Sansar Chand, DR	-	For respondent

CORAM:
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 11.12.2008

Final Order No. 1629/08-SM(BR) dated 11.12.08

Per Rakesh Kumar :

The appellants are a spinning unit and manufacture of spun acrylic yarn. They have taken a Central Excise Registration. Service Tax on services provided by goods transport agency was introduced with effect from

1.1.2005 and as per the provisions of Rule 2 (1)(d)(v) of Service Tax Rules, 1994 read with notification No. 36/2004-ST dated 31.12.2004 in case of service of goods transport agency service received by a manufacturer, the tax liability is on the manufacturer. The appellants were receiving goods transport service but they did not pay the Service Tax for the period from January 2005 to November 2005 which was paid only on 8.12.2005. The Service Tax for the period December 2005 to Feb. 2006, was paid on 31.3.2006. The department subsequently issued a show-cause notice for imposition of penalty on the appellant under Section 76 of the Finance Act 1994 for delay in payment of Service Tax by the due date. The Assistant Commissioner vide order-in-original dated 28.2.07 holding that the appellants have failed to deposit the Service Tax by its due dates and thereby contravened the provisions of Rule 6 of Service Tax Rules 1994 imposed penalty of Rs. 100 per day under Section 76 ibid. for the period of delay. The appellant filed appeal and the Commissioner (Appeals) dismissed the appeal.

2. Heard both sides. The appellant Shri R.K. Goenka, Managing Director of the appellant company when

appeared in person, pleaded that delay in payment of Service Tax was due to their ignorance as the Service Tax on GTA service had been reduced with effect from 1.1.05 and they were not aware that in case of this service, the tax liability is on the manufacturer availing the service and that as soon as they came to know that they are liable to pay Service Tax on the GTA service received by them, they took Service Tax registration and paid the Service Tax for the period up to November 2005 on 8.12.2005 along with interest and subsequently the tax for the period up to February 2006 on 31st March, 2006 along with interest. He pleaded that their unit is a sick unit and in spite of this they have paid the Service Tax and reason for delay its initial payment of Service Tax was their ignorance of the law. He, therefore, pleaded that this is fit case for invoking Section 80 of the Finance Act for waiving the penalty.

3. Ld. DR reiterating the Commissioner (Appeals) finding in the impugned order pleaded that since there is a delay not on one but on several occasions in payment of Service Tax, the penalty under Section 76 has been rightly imposed.

4. I have carefully considered the submissions from both sides and have perused the record. The Service Tax on GTA was reduced from 1.1.05 and as per the provisions of the notification issued in this regard in case of GTA service received by a manufacturer, the tax liability was on the manufacturer not on the Goods Transport Agency. It is also seen that the appellant paid the Service Tax on their own and it is not that the department first pointed out the non-payment and then they paid the Service Tax. From the conduct of the appellant, I am of the view that their plea that delay in payment of Service Tax was on account of their ignorance of the law, is acceptable. I, therefore, of the view that in this case Section 80 of Finance Act should have been invoked for waiving the penalty. Ordered accordingly. The impugned order therefore is set aside and the appeal is allowed with consequential relief.

(Dictated & pronounced in open Court)

(RAKESH KUMAR)
TECHNICAL MEMBER

RM
15.12.08