.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/382 /2008 – SM [BR] Date 06/01/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR Appellant

Vs

M/S VISHAL AGENCIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1679 / 2008 - **SM[BR]** dated 31.12.2008

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
   M/S VISHAL AGENCIES
   MAIN ROAD,KONDAGAON-494226 DISTT- BASTAR (C.G)
2. Adv. / Consult SHRI S.C. KAMRA ADV.
   B2/210, [BASEMENT]
   SAFDARJUNG ENCLAVE NEW DELHI -110029.

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 AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Service Tax Appeal No. 382 of 2008-SM
[Arising out of Order-in-Appeal No. 07/RPR-II/2008 dated 07.03.2008 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur]

Date of Hearing/Decision : 26.12.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Raipur — Appellant

Vs.

M/s Vishal Agencies — Respondent

Appearance:

Mr. A.K. Rastogi, DR for the appellant
Mr. S.C. Kamra, Advocate for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1679/08-SM(BR)

Per Jyoti Balasundaram:

In this case, the Deputy Commissioner of Central Excise confirmed service tax of Rs. 45,468/- and education cess of Rs. 909/-, and also imposed penalty of Rs. 100/- per day under Section 76 for non payment of service tax and penalty of

Rs.1,000/- under Section 77, but did not impose any penalty under Section 78 of the Finance Act on the ground that he was satisfied that the noticee had not resorted to fraud, collusion, willful mis-statement, suppression of facts or contravention of rules with intent to evade payment of service tax as there was no malafide on their part. The assessee challenged the demand before the Commissioner (Appeals) and against setting aside the penalty under Sections 76 and 77 of the Act. The lower appellate authority set aside the service tax demand on the ground of limitation; hence this appeal by the Revenue against the setting aside of the demand of service tax as well as penalty under Section 76 of the Finance Act against non-imposition of penalty.

2. I have heard both sides. Once the penalty proposed to be imposed under the provision of Section 78 was set aside and the ingredients of the section had not been made out, the question of confirming the demand for the extended period of limitation does not arise. The Revenue has not challenged the finding of the Deputy Commissioner with regard to fraud, collusion etc. which was not committed by the assessee with intent to evade payment of service tax. In these circumstances, there is no erroneous finding in the order of the lower authority holding that the extended period of limitation is not attracted against the assessee. Therefore, I uphold the impugned order and reject the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]