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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/688 /2007-SM[BR] Date 04/04/2008

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR I Appellant

Vs

M/S TARGET INSTITUTION OF COMPETITION Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 558 /2008 –SM[BR] dated 25.2.2008

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 TARGET INSTITUTION OF COMPETITION
JYOTI NAGAR, PIPRALI ROAD, SIKAR,RAJASTHAN
2. Adv. / Consult SHRI.B. K. SHARMA ADV.
M/S RESPONDENT-------

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh.
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. 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. III

Excise Appeal No. 688 of 2007 –SM (BR)
[Arising out of order in appeal No. 160 (GRM) ST/JPR-I/207 dated 5.9.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

Date of Hearing/ Decision: 25.2.2008

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.	:	No.
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?	:	

CCE, Jaipur-I .....Appellant
[Rep. by Mr. A. K. Rastogi, DR for the appellant/Revenue]

Vs.

M/s Target Institution of Competition Respondent
[Rep. by Mr. B.K. Sharma, Advocate]

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

Final **ORDER No.....558/2008-SM../Dated: 25/2/2008**

Per P.K. Das:

The Revenue filed this appeal against the Order of the Commissioner (Appeals) whereby penalty under Sections 76 and 78 of the Finance Act, 1994 was set-aside in exercise of power under section 80 of the said Act.

2. After hearing both the sides and on perusal of the records, it is seen that the Commissioner (Appeals) set-aside the penalty on the ground that appellants were providing coaching service and were not aware the service tax liability on them. But, they recorded all the fees in their accounts and admitted the service tax liability subsequent to visit of officer and discharged service tax liability before issue of the show cause notice.

3. Learned DR submits that the respondent obtained registration on 27.07.2004 and the officers conducted search on 9.2.2005 and thereafter, the respondent paid the tax for the period 8.12.2003 to 21.12.2004 in the month of February 2005 and March 2005. The learned Advocate submits that service tax was levied on coaching centre and there was dispute of levy of service tax on certain commercial coaching centre. I find that the respondent obtained the registration on 27.7.2004 and did not pay the tax and failed to file return. But they recorded the fees in their records. So, there is no material for suppression of facts with intent to evade payment of tax and penalty under section 78 of the Act is not justified.

4. However, I find force in the submission of the learned DR regarding imposition of penalty under section 76 of the Act. It is seen that the respondent had not paid tax in spite of the fact registration certificate obtained on 27.07.2004 and therefore the finding of the Commissioner (Appeals) is not proper. I find that it is a new levy on coaching centre and there was a dispute regarding availability of the exemption benefit and the respondent paid the tax before issue of the show cause notice and the imposition of penalty under section 76 of the Act is excessive. The Tribunal in the case of Alliance Inc. vs. CCE, Nashik reported in 2008 (84) RLT 557 (CESTAT-Mum.) held that authorities have discretion to impose penalty less than that prescribed under section 76 of the Act.

5. In view of the above, the Order of the Commissioner (Appeals) is modified in so far as the penalty of Rs. 10,000/- under section 76 of Finance Act, 1994 is upheld and the appeal is otherwise rejected.

Order dictated & pronounced in open court on 25.2.2008.

(P.K. Das)
Member (Judicial)

Pant