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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/327 /2007 - CU[DB] Date 12/11/2009

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

To :
M/S THAKUR TOURS & TRAVELS
SHOP NO. 102, FIRST FLOOR, DHARMA CLOTH
MARKET, SECTOR - 27, NOIDA, G.B. NAGAR, U.P.

M/S THAKUR TOURS & TRAVELS Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/265/ 2009 CU[DB]** dated 26.10.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.BRAHMADUTTA CHAMBERS OF LAW
   111-112, G.C. COMPLEXS, NAYA BANS, SECTOR-15, OPPOSITE NIRULA'S HOTEL, NOIDA.
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise, I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal No.327/2007-Cus(Br)

(Arising out of order in original No.11/Ayukt/2007 dated 12.3.2007 passed by the Commissioner of Central Excise, Noida)

M/s Thakur Tours & Travels — Appellant

Vs

CCE, Noida — Respondent

Appeared for the Appellant : None
Appeared for the Respondent : Shri Sunil Kumar, DR

Coram: **Hon'ble Mr. M. Veeraiyan, Technical Member**
Hon'ble Mr. D.N. Panda, Judicial Member

Date of Hearing: 26.10.09

Final Order No. 57/265/09 /2009

Per D.N. Panda:

None is present for the appellant.

2. Show cause notice in this case was issued on 27.8.2004 proposing levy of service tax of Rs.1,90,555/- as well as interest on the allegation that the appellant had provided renting a cab service provided w.e.f. 1.4.2000 which was registered with Service tax Authority w.e.f. 15.1.20024. Adjudication was made upon gathering of information from the premises of appellant by surprise visit on 19.2.2004. Penalty was proposed by show cause notice under Sections 75-A, 76, 77 and 78 of the Finance Act, 1994.

Allegations in show cause notice was adjudicated by an order dated 31.3.2005 levying service tax demand of Rs.1,90,555/- followed by interest also. Added to that, penalty of Rs.1,000/- was levied under Section 75-A and penalty of Rs.10,000/- under Section 76 followed by a further penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994 holding that service provided by the appellant was liable to tax. Revenue, upon examination of adjudication order found that there was no levy of penalty under Sections 76 and 78 of the Finance Act, 1994, for which power for *suo-moto* revision of adjudication was considered to impose equal amount of penalty to the tune of Rs.1,90,555/- under the provisions of both the Sections in terms of order.

3. The appellant came before the Tribunal submitting that the service tax has already been paid alongwith penalty for which Tribunal passed order staying realization of the balance demand.

4. None being present for the appellant, we asked for proper assistance of Revenue and perused record. Record reveals that penalty of Rs.10,000/- imposed under Section 76 was enhanced to Rs.1,90,555/- by revision order dated 12.3.2007 and because there was no penalty imposed under Section 78, that was also done.

5. We have gone through the written submissions filed by the appellants to ascertain strength of pleadings of the appellant. Appellant has made several pleadings including the plea for non-levy and imposition of penalty. We have found from the adjudication order that the appellant was not cooperating with the Revenue. This is exhibited by page 40 of the appeal folder dealing with discussion and finding. There was no reply to show cause

notice nor also the appellant appeared before the Reviewing authority inspite of opportunity given to plead defence if any. This is coming from page 43-44 of appeal folder where the learned Commissioner has recorded his finding.

6. Learned DR submits that when the appellant has not cooperated, their appeal should be disposed of confirming the demand.

7. We are not in agreement with the proposal of learned DR for the reason that the appellant deserves a fair trial so as to consider all the pleadings that is appearing in written submission filed by the appellant and also to permit him to lead defence according to law. It may be stated that Section 80 of the Finance Act, 1994 permits consideration of grievance relating to penalty imposed under Section 78 also. We have gone through the judgment of Hon'ble High Court of Delhi in the case of K.P. Pouches reported in 2008 (228) ELT 31 (Del) where it has been held that if the litigant discharges tax liability within the prescribed period, concessional penalty shall be leviable. But there was no proposal to grant such concession, if any permissible in the present case in the impugned order. Therefore, the matter requires to be set aside for re-determination of penalty following the law laid down by Hon'ble High Court of Delhi and following due process of law.

8. The appellant is entitled to fair opportunity of hearing and the adjudicating authority is required to pass a reasoned and speaking order taking into consideration the allegation in the show cause notice which was foundation for the original proceeding proposing consequence of penalty and the averments of the appellant as well as the law of the land.

9. In order to resolve the dispute expeditiously, we consider it proper to direct the appellant to file reply if any on the matter in controversy so that the learned adjudicating authority shall fix a date of hearing at the earliest. In the result, we set aside both the orders of the learned authorities below and remand the matter to the learned adjudicating authority to decide the matter of levy of penalty afresh in accordance with law.

(Order dictated and pronounced in the open Court).

(M. Veeraiyan)
Technical Member

(D.N. Panda)
Judicial Member

MPS*