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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/77 /2008 – SM[BR] WITH C.O. NO.144 / 2008 Date 17/02/2009

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 HOME ENTERTAINMENT NETWORK Respondent

I am directed to transmit herewith a certified copy of **Final order No 179 / 2009 –SM[BR]** dated 10.2.2009 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 HOME ENTERTAINMENT NETWORK
   A-8, SECTOR-H, AROHI MARKET, ALIGANJ,
   LUCKNOW. (U.P.)
2. Adv. / Consult
   MR.S.N. SIVASTAVA, ADV.,
   C-5, SECTOR - B, ALIGANJ, LUCKNOW.

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,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 10.2.2009

Service Tax No.77 of 2008 with
Cross-Objection No.144 of 2008

Arising out of the order in appeal No.154-CE/LKO/2007 dated 31.10.07 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Appellant | Respondent

C.C.E., Lucknow vs. M/s Home Entertainment Network

Appearance:

Shri S.Gautam, Authorized Departmental Representative (DR) for the Revenue and none for the respondent

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 179/09-SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No. 154-CE/LKO/2007 dated 31.10.07 by which invoking the provisions of Section 80 of the Finance Act, 1994, he set aside the penalty of Rs.96,194/- imposed on the respondent.

2. Heard the learned DR. There was a representation on behalf of the respondent seeking to decide the appeal on merits taking into account the submissions in the cross-objection filed by the respondent against the said appeal.

3. During the period from April 2002 to March, 2003, the respondent who was rendering services as cable operator has collected totally of Rs.18,05,185/- from the customers and discharged duty liability only a on value of Rs.13,55,590/- and he did not pay duty on the amounts collected from the subscribers towards pay channels which was paid to the pay channels. When this was pointed out by the Department, the respondent paid the entire amount of disputed tax. The original authority apart from confirming service tax imposed by the original authority penalty of Rs.96,194/-. However, no penalty was imposed under Section 78 of the Finance Act. Commissioner (Appeals) however, set aside the penalty under Section 76 also.

4. The finding and reasoning of the Commissioner (Appeals) are as follows:

> ***"6. I have gone through the records. This issue to be decided in this case is whether the appellant is entitled for benefit of Section 80 of the Finance Act, 1994 as claimed by them. I find that the appellant has got themselves registered in the year 2002 and started paying service tax and filing service tax returns ever since the cable operator service was brought under service tax net w.e.f. 16.8.2002; that they were paying service tax regularly on the amount received by them towards taxable value. However, the amount of Rs.6,41,335/- which was received by them from their customers and reimbursed /paid to the pay channels was not includible for payment of service tax on it as they felt that since reimbursement of the amount collected from their customers and passed on to the pay channels is not liable for inclusion and on this they have relied on two Board's Circulars dated 6.6.97 and 9.7.2001 (supra) issued in the context of service tax on***

steamer agent and insurance auxiliary service. In the said Circular dated 6.6.97, the Board has clarified that other expenses incurred by the steamer agent on behalf of shipping line shall not be taken into account. Similarly, in respect of insurance auxiliary service the Board has clarified vide Circular dated 9.7.2001 that amount billed to the client on account of out of pocket expenses which are reimbursable on actual basis are not subject to service tax. No doubt, these clarifications were issued not in the context of cable operators but the appellant's contention that it created doubt in their mind and therefore, they did not include this amount reimbursed/paid to the pay channels for discharging their service tax liability appears to be acceptable. Hence, I hold that they had bona fide belief that the amount collected from their customers and paid to the pay channels is not liable for inclusion in the assessable value. I therefore, hold that there existed reasonable cause for failure on the part of the appellant for not paying service tax on taxable value on Rs.6,41,335/- collected from their customers and reimbursed/paid to the pay channels on which service tax worked out to Rs.96,194/-. I therefore, hold that appellants are entitled for benefit of Section 80 of the Finance Act, 1994 and accordingly, no penalty is imposable on them under Section 76 of the Finance Act, 1994".

5. The Department has filed an appeal on the following grounds:

- *If there was doubt as claimed by the party, they could have approached the department for a clarification, which they have not done.*
- *Their intention was , therefore, malafide and they would have succeeded in the evasion, if timely action had not been taken by the Department.*
- *The of the party is an after-thought having no basis of it. It is only a view to avoid penalty."*

6. I have carefully considered the submissions by the learned DR and the submissions on behalf of the party in the cross-objection. I find that the original authority has not imposed any penalty under Section 78 of the Finance Act, 1994. He has imposed penalty under

Section 76 for the delay in paying service tax. It is not a case where the respondents did not pay any service tax at all. They have paid service tax, as per their understanding, on the value, excluding the amounts received by way of reimbursement amounts paid to the pay channels. Commissioner (Appeals) has recorded the reasoning for his coming to the conclusion that there was sufficient cause on the part of the respondents in not paying the differential service tax which has been subsequently paid. He has recorded that the Board's clarification in respect of Steamer Agent service and Insurance Auxiliary Service has been misunderstood by the respondent. I find that the reasoning adopted by the Commissioner (Appeals) is legal and proper and no valid grounds have been adduced to interfere with the order of the Commissioner (Appeals).

7. Appeal is, therefore, rejected. Cross-Objection is also disposed of.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

scd/