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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/779 /2008 – SM [BR] Date 22/05/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant
Vs
M/S J.R. SINGH, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 454 / 2009 –SM[BR] dated 19.3.2009 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 J.R. SINGH,
   SWAROOP PUR, JAINPUR, KALPI ROAD, KANPUR(DEHAT)

2. Adv. / Consult
   NONE;----------------

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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Appeal No.779 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.325-ST/APPL/KNP/2008 dated 09.07.2008 passed by the Commissioner of Customs & Central Excise (Appeals) Kanpur]

Date of Hearing/ Decision:19.03.09

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : NA
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CCE, Kanpur ...Appellants

[Rep. by Shri R.K. Saini, DR.]

Vs.

M/s. J.R. Singh ...Respondent

[Rep. by None.]

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

Final Order No. 454/09/Dated:19.3.2009

<u>Per P.K. Das:</u>

Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the respondent.

2. The relevant facts of the case, in brief, are that the respondents were engaged in providing services under a category of "Manpower Recruitment Agency Services". During the inquiry conducted on M/s. Goodlass Nerolac Paints Ltd., it came to the knowledge of the Department that the respondents were providing manpower services to the said Company. In response to the summon dated 14.03.2006, the proprietor of the respondent admitted that they were supplying manpower to the said company. He also stated that he had no knowledge of the applicability of the service tax on such activities. Thereafter, the respondent obtained service tax registration and paid the service tax of Rs.4,32,352/- vide TR-6 Challan dated 31.07.2006. A show cause notice dated 7.5.2007 was issued proposing to appropriate the amount deposited by the respondent with interest and to impose penalties. The Original Authority confirmed the demand of tax of Rs.4,32,352/- along with interest and appropriated the said amount as deposited by them. He also imposed penalties of equal amount to tax under Section 78 and penalties under Section 76 & 77 of the Finance Act, 1994. The Commissioner (Appeals) set aside the penalties in exercise of the powers under Section 80 of the Finance Act, 1994. Hence, the Revenue filed this appeal.

3. Ld. DR on behalf of the Revenue submits that the respondent failed to deposit the tax as they have no knowledge of the applicability of the tax. He submits that ignorant of law is not a reasonable cause and,

therefore, imposition of penalty is justified. He relied upon the decisions of the Tribunal as under:-

(a) HI-TECH Calibration Centre Vs. CCE, Coimbatore 2006 (2) S.T.R. 357 (Tribunal-Chennai)

(b) Continental Advertising Services Vs. CCE, Kolkata-I 2006 (1) S.T.R. 191 (Tribunal-Kolkata)

4. After hearing the ld. DR and on perusal of the records, I find that respondents is a proprietorship firm. They are labour contractors. They supplied the labours to the said company. It is seen from the impugned order that they were not aware of the applicability of the service tax. They have also not collected the tax from the said company. However, they have deposited the tax as soon as it came to their knowledge. The Commissioner (Appeals) extended the benefit of Section 80 of the Act as the respondents proved that there was a reasonable cause for the said failure. It is also noted that the respondent deposited the tax with interest long before issue of the show cause notice. So, the Commissioner (Appeals) rightly set aside the penalties exercising the powers under Section 80 of the Act.

5. Ld. DR relied upon the case laws. In the case of Continental Advertising Services (supra), the Tribunal held that in certain case, tax was deposited 10 times less than the actual liability of the tax and penalty is imposable. In the present case, the respondent provided the services to M/s. Goodlass Nerolac Paints Ltd. on the basis of the proper documents, which were duly recorded in their records. Thus, it appears

that they have acted in a bona fide belief. At the request of the Bench, ld. Advocate Shri Hemant Bajaj placed the decision of the Tribunal in the case of Commissioner of Central Excise Vs. reported in 2006 (1)STR 101 (Tribunal-), wherein it has been held that Service Tax and interest therein deposited before issue of show cause notice, order of the Commissioner (Appeals) setting aside penalty was upheld. Further, in the case of Flyingman Air Courier Pvt. Ltd. Vs. CCE, Jaipur reported in 2006 (3) STR 283 (Tribunal-Delhi), it has been held that the appellant under a bona fide belief of being not covered under definition of 'courier' services failed to pay the tax, imposition of penalty is not sustainable under Section 80 of the Act.

6. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in the open court on 19.03.2009.

(P.K. Das)
Member (Judicial)

Ckp.