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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/647 /2008 – SM[BR] Date 28/05/2009

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 KANPUR DEVELOPMENT AUTHORITY, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 524 / 2009 –SM[BR] dated 15.4.2009 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 KANPUR DEVELOPMENT AUTHORITY,
MOTIJHEEL, KANPUR.
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
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.647 of 2008-SM (BR)

Arising out of Orders-in-Appeal No.250-ST/APPL/KNP/2008 dated 16.06.2008 passed by the Commissioner of Customs & Central Excise (Appeals-I), Kanpur]

Date of Hearing/ Decision:15.04.2009

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? : No.
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 S. Gautam, DR]

Vs.

M/s. Kanpur Development Authority ...Respondent

[Rep. by None]

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

Final Order No. 524/09-SM (BR)/Dated:15.04.2009

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty imposed under Section 76 and 77 upon the respondent was set aside.

2. After hearing ld. DR and on perusal of the records, I find the relevant portion of the findings of the Commissioner (Appeals) is as reproduced below:-

> " Regarding the penalty, I observe that the appellants are a State Government organisation who had already deposited the entire amount of service tax along with interest. The allegation regarding intention to evade payment of service tax has not been established by any corroborative evidence. I agree with the appellant's submission that they had committed mistake due to ignorance of factual position and find that in the circumstances, the ingredients of mens-rea are absent. Under these circumstances, I hold that the penalties imposed upon the appellants under Section 76 of the Act read with Rule 15 of the Cenvat Credit Rules, 2004 and under Section 77 of the Act are not maintainable and liable to the set aside."

2. Ld. DR on behalf of the Revenue submits that Section 76 of the Finance Act, 1994 does not require mens rea for imposition penalty. He also submits that ignorance of law is no excuse. I find that Section 80 of the Finance Act provides that no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was a reasonable cause for that said failure. I find that the Commissioner (Appeals) had given the detailed finding for setting aside penalty, which was not disputed by the Revenue in the Grounds of Appeal. Therefore, 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 open court on 15.04.2009.

(P.K. Das)
Member (Technical)

Ckp.