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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

Date 04/06/2009

Appeal No. ST/89 /2009 – SM[BR]

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB) Appellant
Vs
C.C.E. LUDHIANA Respondent

M/S SAFAL CONSTRUCTION

I am directed to transmit herewith a certified copy of **Final order No**. 528 / 2009 –SM[BR] dated 26.5.2009 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 SAFAL CONSTRUCTION
102, KARTAR NAGAR, MODEL GRAM, LUDHIANA.
2. Adv. / Consult SHRI RUPENDER SINGH ADV.
DSK, LEGAL, 46 ARADHNA
CHANAKYAPURI NEW DELHI

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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 89 OF 2009-SM

[Arising out of Order-in-Original No. 340/CE/Ludh./2008 dated 16.10.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	N
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, Ludhiana — Appellant

Vs.

M/s. Safal Construction — Respondents

Appearance:

Shri Sansar Chand, D.R. for the Revenue;
Shri Rupender Singh, Advocate for the respondents

Coram:

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

Date of hearing/decision: 26th May, 2009

FINAL ORDER NO. 529/09-SM(BR) **dated** 26.5.09

Per P.K. Das:

Revenue filed this appeal against Order-in-Appeal passed by the Commissioner (Appeals) whereby penalty under Section 78 of the Finance Act, 1994 was set aside.

2. After hearing both sides and on perusal of the records, it is seen that the respondents had provided service of Commercial or Industrial Construction. Tax was demanded for the period from 2005 to 2007 vide Show Cause Notice dated 6.9.2007. Original authority confirmed the demand of tax and imposed penalty under Section 76, 77 & 78 of the Act. Commissioner (Appeals) dropped the demand under Section 78.

3. On perusal of the impugned order, I find that the demand of tax is for the extended period of limitation. Commissioner (Appeals) observed that penalties under Section 76 & 77 are attracted and, therefore, penalty under Section 78 was set aside. Learned Advocate submits that Commissioner (Appeals) observed that there is no suppression of facts with intent to evade payment of duty and, therefore, Commissioner (Appeals) rightly dropped the demand under Section 78. In my view, demand of tax for the extended period was confirmed as there is a suppression of fact with intent to evade payment of duty and,

accordingly, penalty under Section 78 of the Act is imposable. Therefore, Commissioner (Appeals) upheld the demand of duty for the extended period and dropped the penalty under Section 78, is contradictory. So, the matter is required to be examined on the facts. It appears from the impugned order that the respondents have neither replied to the Show Cause Notice, nor attended personal hearing before the original authority. Therefore, impugned order is set aside and the matter is remanded back to the original authority to decide afresh after considering the submissions of the respondents. Needless to say that the original authority shall give proper opportunity of hearing to the appellants before passing order. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK