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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/761 /2008 – SM [BR] Date 29/06/2009

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 PRADEEP ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 635 / 2009 –SM[BR] dated 3.6.2009

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 PRADEEP ENTERPRISES
   SWAROOPPUR, 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)
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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.761 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.326-ST/APPL/KNP/2008 dated 09.07.2008 passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing/ Decision:3.6.2009

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.		No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	
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 ...Appellant
(Rep. by Shri Sansar Chand, DR)

Vs.

M/s. Pradeep Enterprises ...Respondent
(Rep. by None.)

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

Final Order No. 635/2009 SM (BR)/Dated:03.06.2009

Per P.K. Das:

Heard the ld. DR on behalf of the Revenue. None appears on behalf of the Revenue.

2. The relevant facts of the case, in brief, are that the respondents were providing maintenance and repair service to M/s. Goodlass Nerolac

Paints Ltd. The respondent is a proprietorship firm. Shri Pradeep Kumar, Proprietor of the respondent firm appeared before the Central Excise Officers in response to summon along with Bill Books and Bank Statements and accepted the tax liability, which they deposited along with interest, on ~~On~~ 31.07.2006 and 24.04.2007. A show cause notice dated 7.5.2007 was issued to appropriate the amount as deposited by them and to impose penalties. The Original Authority confirmed the demand of tax of Rs.2,12,907/- and appropriated the same as deposited by them. He also appropriated the demand of tax of Rs.41,553/-. He further imposed penalty of equal amount on each under Section 76 and 78 of the Finance Act, 1994 and a penalty of Rs.1,000/- under Rule 77 of the Act. The Commissioner (Appeals) set aside the penalties. Hence, Revenue filed this appeal.

3. Ld. DR submits that they have not deposited the tax and filed the return within the stipulated period and, therefore, the Original Authority rightly imposed penalty under Section 76 of the Act. He further submits that the Commissioner (Appeals) erroneously observed that to impose penalty mens rea is essential. It is his submission that the ignorance of law cannot be an excuse.

3. After hearing the ld. DR and on perusal of the records, I find that Section 80 of the Finance Act, 1994 provides that, "notwithstanding anything contained in the provisions of Section 76, Section 77 or Section 78, no penalty shall be imposable on the assessee for any failure referred

to in the said provisions, if the assessee proves that there was reasonable cause for the said failure." In the present case, the respondent was providing services to M/s. Goodlass Nerolac Paints Ltd. and raised the bills from time to time. They have maintained proper records of the transactions. It appears that M/s. Goodlass Nerolac Paints Ltd had not guided the respondent's Proprietorship firm. It further appears that the Proprietor of the respondent firm in respect of the response to the summons immediately appeared and disclosed the entire transactions as recorded in the Bill Book, Bank Statement, etc. They have also paid the tax with interest.

4. After looking into the conduct and facts and circumstances of the case, in my view, the respondent proved that there was a reasonable cause for the said failure. Therefore, the Commissioner (Appeals) rightly set aside the penalties. Hence, I do not find any reason to interfere the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 3.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.