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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/392 /2009 – SM[BR] Date 16/07/2009

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 YOGESH KAUSHAL, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 704 / 2009 –SM[BR] dated 13.7.2009 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 YOGESH KAUSHAL,
43-BHARATPUR HOUSE, KHANDARI, AGRA.
2. Adv. / Consult SHRI K.K.ANAND ADV.
A-5, BASMENT LAJPAT NAGAR-III
NEW DELHI-24.

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

Service Tax Appeal No.392 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.18-ST/APPL/KNP/2009 dated 10.02.2009 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision: 13.07.2009

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 ...Appellants

(Rep. by Shri Istikhar Baig, SDR)

Vs.

M/s. Yogesh Kaushal ....Respondent

(Rep. by Shri Hemant Bajaj, Advocate)

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

Final Order No..704../2009 SM (BR)......./Dated:13.07.2009

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

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty of Rs.9,400/- imposed under Section 76 of the Finance Act, 1994 was set aside.

2. The main contention of the ld. DR on behalf of the Revenue is that the Respondent deposited the interest after issue of the show cause notice, which was erroneously recorded by the Commissioner (Appeals) as the interest was deposited before issue of show cause notice. He also submits that the Commissioner (Appeals) wrongly proceeded on the basis that mens rea is essential for imposition of penalty, which is not correct position of the law. He further submits that the respondent failed to prove any reasonable cause for the failure to pay the tax within time.

3. After hearing both the sides and on perusal of the records, I find that the respondent is a proprietorship concern. They paid the tax before issue of show cause notice and also deposited the interest of Rs.323/- after receipt of the show cause notice.

4. On perusal of the order of the Commissioner (Appeals), I find that the Commissioner (Appeals) set aside the penalty under Section 80 after considering the conduct and circumstances of the case.

5. In view of the above, 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 13.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.