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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/1 /2009 – SM[BR] Date 11/08/2009

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)

C.C.E. LUDHIANA — Appellant

Vs

M/S TEJ TELECOM, — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 908 / 2009 –SM[BR] dated 29.7.2009 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 TEJ TELECOM,
   22, ACRE AREA,NEAR LIC, BARNALA.
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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

SERVICE TAX APPEAL NO. 01 OF 2009-SM

[Arising out of Order-in-Appeal No. 276/CE/Ldh/2008 dated 23.9.2008 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?	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, Ludhiana — Appellant

Vs.

M/s. Tej Telecom. — Respondent

Appearance:

Shri S. Gautam, D.R. for the Revenue;
None for the respondents

Coram:

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

Date of hearing/decision: 29th July, 2009

FINAL ORDER NO. 908/2009 SM (BR) **dated** ____________

Per P.K. Das:

Heard learned D.R. on behalf of the Revenue. None appeared on behalf of the respondents. The respondents requested to decide the matter in their absence on the basis of records available.

2. Learned D.R. submits that the Commissioner (Appeals) set aside the penalty under Section 76 of the Finance Act, 1994 on the ground that penalties under Section 76 & 78 cannot be imposed simultaneously. He submits that the Hon'ble Kerala High Court in the case of Asst. Commissioner of Central Excise vs. Krishna Poduval, reported in 2006 (10) STR 185 (Ker.) held that penalties can be imposed under both the sections simultaneously.

3. The respondents contended in their written submissions that as per amendment of Section 78 by Srl. No. 90 of Finance Act, 2008 (18 to 2008), if the penalty is payable under Section 78, the provision of Section 76 shall not apply.

4. After hearing learned D.R., I find that the matter is required to be examined in the light of the decision of the Hon'ble Kerala High Court in the case of Krishna Poduval (supra) and the amendment of Section 78 as contended by the Respondents. Hence, the impugned order passed by the Commissioner (Appeals) is set aside. Matter is remanded back to the Commissioner (Appeals) to decide afresh, after considering the

submissions of both sides. Appeal filed by the Revenue is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK