TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/462 /2007 – SM[BR] Date 08/09/2009

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

To :
M/S BUREAU OF IDIAN STANDRADS
NATIONAL INSTITUTE OF TRAINING AND
STANDARDIZATIN A-20-21, INISTUTIONAL AREA,
SECTOR 62, NOIDA
M/S BUREAU OF IDIAN STANDRADS Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1137 / 2009 –SM[BR] dated 25.8.2009

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
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult MRS. LALITHA KRISHNAMURTHY
708, SURYA KIRAN BUILDING
19, KASTURBA GANDHI MARG NEW DELHI-1.

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 25.8.2009

Service Tax Appeal No.462 of 2007-SM

Arising out of the order in appeal No.55/CE/APPL/NOIDA/07 dated 24.5.07 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut II, Noida.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Bureau of Indian Standards ... Appellant

Vs.

C.C.& C.Ex., Noida .... Respondent

Appearance:

Mrs. Lalitha Krishnamurthy,Advocate for the appellants
Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1137/2009 SM (Br)

Per M. Veeraiyan :

This is an appeal against the order of the Commissioner (Appeals) No. 55/CE/APPL/NOIDA/07 dated 24.5.07. The COD clearance is limited to contesting the imposition of penalty.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The appellant is a national standard body constituted under the BIS Act, 1986 coming under the administrative control of the Ministry of Consumer Affairs, Food & Public Distribution, Government of India. They are reportedly availing the benefits under Income Tax Act as an institution established for charitable purposes. They have undertaken training programme for the development and implementation of quality , environment, occupational health and safety etc. and they have charged fees from the participants who participated in the training programme. The original authority confirmed the demand of service tax of Rs.8,11,074/- relating to the period 1.7.03 to 28.2.06 under the Head "Commercial Coaching Training" and i~~mposed penalty and~~ also imposed penalty under various Sections. Commissioner (Appeals) sustained the demand and reduced the penalty to Rs.1 lakh under Section 78 as against the originally imposed penalty of Rs.8,11,074/-.

4. The learned Advocate for the appellants submits that the entire amount of service tax along with interest stands paid and the dispute is not being pursued in view of limited clearance of the Committee on Dispute granting permission for pursuing appeal only in respect of penalty. She submits that as a no-profit making institution, the training was only a part of their other activities and the fees collected was to defray the expenses involved in the training programme., they were under the bona fide belief that the activities could not attract the service tax. They have taken up the matter with their Ministry who in turn, took up the matter with the CBEC who clarified vide their letter dated 29th December 2005 that service tax is payable by the appellants and the said clarification was communicated to them vide their Ministry's letter dated 16.2.2006.Immediately, after receipt of the clarification obtained through their Ministry, they have paid the entire service tax amount and the interest.

5. Learned SDR reiterates the finding and reasoning of the original authority.

6. I have carefully considered the submission from both sides. The dispute relating to the taxability and recovery of interest is not before me and the limited issue before me is whether penalty under Section 78 should be sustained or not. It is noticed that the appellant was mainly engaged in discharging various statutory functions having welfare of consumers in mind and that the training programme was aimed towards the same purpose. Their claim that they had a bona fide belief that their activities will not attract service tax appears acceptable. It is also seen that the BIS has taken up the matter with the CBEC through their own Ministry and obtained clarification in Feb. 1986 and thereafter, paid the service tax along with interest involved. They have also registered themselves for discharging service tax liability thereafter. Taking the entire facts and circumstances of the case, I hold that the appellants had reasonable cause for their failure in registering themselves for paying service tax and subsequently, on coming to know of the legal position they have complied with the provisions of law. Considering the nature of the organisation, nature of activities undertaken by them and absence of any intention to evade service tax, it is a fit case for invoking the provision of Section 80 of the Finance Act, 1994.

7. In view of the above, appeal is allowed by setting aside the penalty.

(M. Veeraiyan)
Member (Technical)

scd/