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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/566 /2009 – SM[BR] Date 06/10/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant
Vs
M/S GREWAL TRADING CO. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1178 / 2009 –SM[BR] dated 10.9.2009 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 GREWAL TRADING CO.
   V& P.O. CHATHE SENKHWAN , TEHSIL & DISTT. SANGRUR.
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Service Tax Appeal No. 566 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 01/CE/CHD-II/2009 dated 09/4/2009 passed by The Commissioner (Appeal), Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Chandigarh — Appellant

Versus

M/s Grewal Trading Co. — Respondent

Appearance

Shri S. Gautam, Authorized Representative (DR) – for the appellant.

None (request for on merit) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 10/09/2009.

Final Order No. 1178/2009-SM(BR)Dated : ___________

Per. Rakesh Kumar :-

This is appeal by the Revenue against order-in-appeal No. 01/CE/CHD-II/2009 dated 13/4/2009 passed by CCE (Appeals), Chandigarh by which the Commissioner (Appeal) while upholding the service tax demand and penalty under Section 78 of the Finance Act 1994, set aside the penalty under Section 76 on the ground that penalty both under Section 76 and 78 cannot be imposed.

2. The respondent have also filed cross objection vide their letter dated 30/8/09 addressed to the Assistant Registrar, SM Appeal Branch and have requested for decision of this appeal on merit.

3. Heard the learned Departmental Representative. He pleaded the issue involved in this case has been decided in the Department's favour by Hon'ble High Court of Karnataka in

the case of **CCE & ST, Bangalore vs. First Flight Couriers Ltd.** reported in **2007 (8) S.T.R. 225 (HC-KAR-ST)** and also recently by Division Bench of the Tribunal in the case of **Bajaj Travels Ltd. vs. CCE, Chandigarh** reported in **(2009) 21 STT 412 (New Delhi – CESTAT).**

4. I have carefully considered the submissions of the learned Departmental Representative and also gone through the cross objection of the respondent.

5. The period of dispute of this case is 2002 to 2005 and during this period, for non-payment of service tax with intent to evade the same, penalty were imposable under Section 78 and as well as 76 and there was no specific provision that when penalty under Section 78 is imposable, the penalty under Section 76 would not be ~~impossible~~ imposable. I find that , this issue stands decided in the Department's favour by Karnataka High Court in the case of CCE & ST, Bangalore vs. First Flight Couriers Ltd. (supra) and also by the Division Bench of this Tribunal in the case of Bajaj Travels Ltd. vs. CCE, Chandigarh (supra). In view of this, the impugned order setting aside the penalty under Section 76 is not sustainable

and the same is set aside. The Assistant Commissioner's order with regard to imposition of penalty under Section 76 is restored. Revenue's appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK