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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/209 /2009 – SM[BR] Date 09/10/2009

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

To :
C.C.E. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8, PANCHKULA
(HARYANA) 134119.

C.C.E. PANCHKULA Appellant

Vs

M/S SHARAD PROJECTS (INDIA) LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1201 / 2009 –SM[BR] dated 16.9.2009 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 SHARAD PROJECTS (INDIA) LTD.,
SCO-95-B, SWASTIK VIHAR, MANSA DEVI
COMPLEX, SECTOR-5, PANCHKULA.

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 209 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 02/ST/PKL/2008 dated 29.12.2008 passed by Commissioner (Appeals), Central Excise, New Delhi]

For approval and signature:

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

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1. Whether Press Reporters 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 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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Central Excise
Panchkula — Appellants

Vs.

M/s. Sharad Projects (India) Ltd. — Respondent

Appearance:

Mr. S.Gautam, SDR for the Appellant
None for the Respondent

Date of Hearing/decision : 16.9.2009

ORAL ORDER NO. 1201/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 02/ST/PKL/2008 dated 28.12.08 in so far as the same relates to setting aside the penalty Rs.35,116/- under section 76 of the Finance Act imposed by the original authority.

2. The respondents were apparently a provider of consulting engineering services and they have defaulted in payment of service tax for the months of October, 2004, November, 2004, December, 2004, January, 2005, April, 2005 June, 2005 and August, 2005. The service tax involved relating to the period October, 2004 to January, 2005 admittedly stands paid on 31.3.2005; the tax for the month of April, 2005 was paid on 28.6.2005 as against the due date of 5.5.2005 and the tax for June, 2005 was paid on 7.10.05 as against the due date of 5.7.05 and the tax for August, 2005 was paid on 7.10.05 as against the due date of 5.8.05. The original authority imposed the penalty for Rs.35,116/-. The Commissioner (Appeals) has invoked the provisions under section 80 and held that they have shown reasonable cause for non-deposit of service tax before the stipulated date and are entitled for waiver of penalty.

3. Learned SDR submits that the reasoning adopted by the Commissioner is not factually sustainable. Even if the party has pleaded

ignorance of law, having paid service tax due for the months of October, 2004 to January, 2005 on 31.3.05, they cannot plead ignorance about the liability for subsequent months. He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

4. No one appeared on behalf of the respondent. However, they have filed an application for written submission seeking consideration of appeal on merits.

5. I have carefully considered the submissions of the learned SDR and perused the written submissions dated 1.6.09 filed on behalf of the respondents. Apparently, the levy was new and the plea of ignorance of the legal position may be justified. However, the same is justified only in so far as the same relates to delayed payment of tax relating to the period October, 2004 to January, 2005. Having paid the service tax on 31.3.05, I am unable to appreciate how they were not aware of the liability for the subsequent months namely April, June and August, 2005, and how they can entertain any doubt about the liability to service tax. In view of the above, therefore, the reasoning contained in the order of the Commissioner (Appeals) in setting aside the penalty in respect of delay in payment of service tax for the months of April, 2005, June, 2005 and August, 2005 are not valid and accordingly the order to that extent is set aside. In so far as the setting aside penalty for the earlier period is concerned, the same is upheld. In view of

the above, the appeal is partially allowed and the penalty under Section 76 in respect of delay in payment for months of April, 2005, June, 2005 and August, 2005 is restored.

(M. Veeraiyan)
Member(Technical)

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