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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/554 /2009 – SM[BR]& ST/ STAY/2037/2009 –SM[BR] Date 12/10/2009

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

To :
M/S TAJINDERA DISTRIBUTORS,
29, LINK ROAD, JALANDHAR.

M/S TAJINDERA DISTRIBUTORS, Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1214 / 2009 –SM[BR]& S/ 573 /2009 dated 28.8.2009 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block-2, R.K. Puram, New Delhi.
Principal Bench, New Delhi

Date of hearing: 28.8.2009

ST/Stay/2037/09-SM(BR) in
Appeal No. ST/554/09-SM(BR)

(Arising out of Order-in-Appeal No.478/CE/APPL/JAL/2008/388 dated 02.02.2009 passed by the Commissioner (Appeals) Central Excise, Chandigarh)

For approval and signature:

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

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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?
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?

No.

yes

M/s Tajindera Distributors — Appellants/Applicants

vs.

C.C.E., Chandigarh — Respondent

Appearance:

None for the Appellants/Applicants and
Shri S. Gautam, SDR for the Revenue

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

Final Order No. 1214/2009 SM(BR)

STAY ORDER - 573/2009 SM(BR)

Per: P.K. Das

None appears on behalf of the appellant. By letter dated 24.8.2009, the appellant requested to decide the matter on merits in their absence. After hearing the LD. S.D.R. on behalf of the Revenue and on perusal of the records, I find that the issue involved in this case is narrow compass and, therefore, after granting stay, the appeal is taken up for hearing.

2. The appellant was providing services of loading, stacking and unloading of cement in the godowns of M/s Sarav Shaktiman Traders (P) Ltd. and M/s J.K. Cement Works on contract basis. They received notice from the Service Tax Department that they are liable to pay service tax under the category of "Cargo Handling Services." On 11.6.2004, the appellant deposited an entire amount of Tax of Rs.43,081.00 alongwith interest of Rs.4,991.00. A show cause notice dated 04.8.2004 was issued proposing to impose penalty on various Sections of the Finance Act, 1994. Original Authority imposed penalty of Rs. 90,662.00 under the provisions of Section 75 A, 76, 77 and 78 of the said Act. ~~Hence,~~ The appeal was dismissed for non-compliance of stay order.

3. After hearing the Ld. D.R. and on perusal of the records, it is seen that the appellant pleaded before the Commissioner (Appeals) that they are a small entrepreneur and deposited the entire amount of Service Tax alongwith interest as soon as it came to their knowledge. They also pleaded financial hardship. Prime-facie, I find that the appellant provided "Cargo Handling Services" to the company as per contract. It appears that the appellant acted in a bona fide manner and deposit~~an~~ entire amount of Service Tax alongwith interest before issue

of the show cause notice. Thus, it is a fit case for waiver of pre-deposit of entire amount of penalty for the purpose of hearing appeals for merits. As the Commissioner (Appeals) has not decided on merits, it is appropriate to send back the matters to Commissioner (Appeals) to decide on merits.

4. Hence the impugned order of Commissioner (Appeals) is set-aside and the matter is remanded to Commissioner (Appeals) to decide on merits. It is made clear that the observation in this order would not influence the decision of the Commissioner (Appeals) on merit. The appeal is allowed by way of remand, needless to say that the Commissioner (Appeal) shall give reasonable opportunity of hearing before decision. Stay application is disposed of.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta