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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/385 /2009 AND ST/ 193 / 2009 –SM[BR] Date 15/10/2009

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

To :
M/S AVS ASSOCIATES
C/O VINDHYACHAL DISTELLERIES (P) LTD., 269-270,
ZONE II, M.P. NAGAR, BHOPAL 462011
M/S AVS ASSOCIATES Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1251 – 1252 / 2009 –SM[BR] dated 18.8.2009 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 BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult SHRI ARUN MALHOTRA C.A.
M/S APPELLANT;-----------------

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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[2] M/S AVS ASSOCIATES
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Appeal No.ST/385/2009

[Arising out of Order-in-Appeal No.03/BPL/2009 dated 12.01.2009 passed by the Commissioner, Central Excise, Bhopal].

Date of Hearing:18.08.2009
Date of decision: 18.08.2009

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	N
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, Bhopal ...Appellant

Vs.

M/s.AVS Associates ... Respondent

AND

Appeal No.ST/193/09-SM

[Arising out of Order-in-Appeal No.03/BPL/2009 dated 12.01.2009 passed by the Commissioner, Central Excise, Bhopal].

M/s. AVS Associates ...Appellant

Vs.

CCE, Bhopal ...Respondent

Present for the assessee :Shri.ArunMalhotra, C.A.
Present for the Department:Shri R.K.Saini, SDR

CORAM: HON'BLE MR. P.K.DAS, MEMBER (JUDICIAL)

Final **ORDER NO.** 1251 - 1252/2009 SM (Br) **DATED:18.08.2009**

PER: P.K. DAS

The relevant facts of the case as per record, in brief, are that M/s. AVS Associate (hereinafter referred to the "assessee") in a partnership firm managed by Shri Alok Khanna, Partner. The assessee provided service to M/s. Vindhyachal Distilleries Pvt. Ltd. (hereinafter referred to as the "Company") under the category of "Rent-a-Cab services" and "Business Auxiliary services". Shri Alok Khanna is also Director of M/s.Vindhyachal Distilleries Pvt. Ltd. Superintendent of Central Excise, Range-Sehore while scrutinizing the record of the Company noticed that the assessee had not paid tax in respect of Rent-a-Cab services and Business Auxiliary Services. In the month of January, 2007, the Superintendent of Central Excise directed the assessee to deposit the tax alongwith interest. The assessee on 24th January, 2007 paid service tax of Rs.1,90,902/- and Rs.2,56,833/- for the period from 01.04.2000 to November, 2006 in respect of Rent-a-Cab services and for the period from 1.4.2004 to 31st March, 2006 in respect of Business Auxiliary Services. They also paid the interest of Rs.1,38,140/- on 31st May 2006. A show-cause-notice dated 24th September, 2007 was issued proposing to impose penalty under section 76, 77 and 78 of Finance Act 1994. The Original Authority imposed penalty of equal amount of tax of Rs.4,44,735/- under section 76, Rs.1,000/- under section 77 and equal amount of tax of Rs.4,44,735/- under section 78 of the Act. Commissioner (Appeals) set aside the penalties under section 76 of the Act and upheld penalty under section 77 & 78 of the Act. Hence, the assessee filed appeal against imposition of penalty under section 77 & 78. Revenue filed appeal against setting aside of penalties under section 76 of the Act.

2. The ld. Chartered Accountant on behalf of the assessee submits that the assessee entered into a lease agreement with M/s. M/s.Vindhyachal Distilleries Pvt. Ltd. in respect of rent-a-cab services. He submits that they were under impression that the rent-a-cab services would not be covered on lease agreement. He also submits that business auxiliary service in respect of commission was exempted prior to 1.4.2004. The assessee had no knowledge of the withdrawal of the exemption Notification. He further submits that the assessee duly recorded the entire transaction in their statutory accounts and therefore there is no intention to evade payment of tax. He submits that no show cause notice should be issued under section 73(3) of Finance Act 1994 as they deposited tax before show cause notice. He relied upon various decision of the Tribunal. It is contented that they have not collected the tax from the M/s.Vindhyachal Distilleries Pvt. Ltd. It is also submitted that Shri Alok Khanna merely signed the challan of M/s.Vindhyachal Distilleries Pvt. Ltd. which cannot be treated that he had knowledge of the levy of the tax. It is a case of non-payment of tax due to bonafide belief and therefore Section 80 of the Act is liable to be invoked.

3. Ld. DR on behalf of the Revenue reiterates the grounds of appeal in respect of setting aside the penalty under section 76 of the Act. He also reiterates the findings of the Commissioner (Appeals) in respect of upholding penalty under Section 78 and 77 of the Act. His contention is that Shri Alok Khanna, Partner of the assessee and Director of M/s.Vindhyachal Distilleries Pvt. Ltd., is registered under the Service Tax Authority. He also submits that the assessee had not enquired the levy of the tax even Shri Alok Khanna was the Director of the other Company. Thus, the plea of bonafide belief

cannot be accepted. It is his contention that the Central Excise Officers detected the non-payment of tax and there after they are deposited the tax. He further submits that there is a delay of paying tax of about 7 years and section 80 cannot be invoked in this case. He also submits that it is a case of suppression of fact with intent to evade tax and section 73 (3) of the Act cannot be applied. He further submits that the case law relied upon by the ld. Counsel would not apply in the facts of this case.

4. After hearing both the sides and on perusal of records, I find that M/s.Vindhyachal Distilleries Pvt. Ltd. registered with Service Tax Authorities in respect of payment of GTA Services. It is seen that Shri Alok Khanna, Director of the said Company had signed the service tax documents, namely, TR-6 Challans. It is noted that about 7 years elapsed; no enquiry was made by Shri Alok Khanna in respect of levy of the tax of the assessee. The ld. Counsel drew the attention of the Bench on various case laws wherein penalty was set aside on the rent-a-cab services as under a bonafide belief as well as no tax was recovered by the assessee. But, in the present case, the partner of the assessee is also Director of the other Company, which was registered with the Service Tax Authority. Thus, the case laws as relied upon by the ld. Counsel are not applicable to the present case. Taking into account the overall facts and circumstances of this particular case, I find that there is a contravention of the provisions of the Act with intent to evade payment of tax, so, the Commissioner (Appeals) rightly upheld the penalty under section 77 and 78 of the Act. The appeal filed by the assessee has no merit.

5. It is seen that the assessee duly recorded the transactions in their records and also filed the returns after detention by the Officers

and therefore, imposition of penalty under section 76 are not warranted and order of the Commissioner (Appeals) is proper.

6. However, 1st proviso to section 78 of the Act provides that where service tax and the interest as determined under section 73 is paid within 30 days from the date of communication of the order, the amount of penalty liable to be paid by such person shall be 25% of the service tax so determined. In the present case, the assessee deposited the entire amount of tax and interest before issue of the show cause notice and, therefore, an option should be given to the assessee by the adjudicating authority in terms of the said proviso before imposing penalty of equal amount. Hence, the penalty would be Rs.1,11,184/- (i.e. 25% of the tax), if it is paid within 30 days from the date of communication of order, failing which, the assessee is liable to pay penalty of equal amount of tax so determined.

7. In view of the above observations, Appeal filed by the assessee is disposed of in the above terms. The appeal filed by the Revenue is rejected.

[Dictated & Pronounced in the open Court].

(P.K.DAS)
MEMBER (JUDICIAL)

Anita