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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/651 /2008 – SM[BR] Date 02/03/2009

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

To :
M/S SUPERIOR MANPOWER SERVICES PVT LTD
JINDAL CAMPUS, VILLAGE- PATRAPALI, KHARSIA ROAD, RAIGRH(CG)

M/S SUPERIOR MANPOWER SERVICES PVT LTD — Appellant
Vs
C.C.E. RAIPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 206 / 2009 - **SM[BR]** dated 26.2.2009 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. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.

2. Adv. / Consult SHRI L.P. ASTHANA ADV.
R – 163, SECOND FLOOR G.K. PART-I
NEW DELHI -110048

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Service Tax Appeal No. 651 of 2008-SM

(Arising out of Order-in-Appeal No. 15(ST)RPR-I/2008 dated 30.6.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

M/s Superior Manpower Services Pvt. Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appeared for Appellant : Shri A. Jaju, Advocate
Appeared for Respondent : Shri R.K. Verma, DR

Date of Hearing: 20.2.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 206/09-SM(BR) dated 26.2.09

Per D.N. Panda:

Ld. counsel Shri Abhishek Jaju, submits that these Appellants were made liable in the early stage of implementation of law. The Appellant is a Manpower Recruitment Agency and obtained registration for the same under Finance Act 1994. There was no deliberate breach of law made by the Appellant. The Appellant having financial constraint could not discharge tax liability duly. That has compelled to the Adjudicating Authority to make a chart under para-4 of the order of adjudication. This is also concrete finding by ld. Appellate Authority below in para-7 of the appellate order. Learned counsel does not dispute the delay. But he disputes reason of decision confirming penalty. He therefore prays for lenient consideration of penalty.

2. Ld. DR submits that there is no dispute about the tax liability at all since the appellant voluntarily took registration and liability has arisen from the date of implementation of the law. Law has come into force on 16.6.05. The appellant chose to undertake liability making application for registration. Registration was also granted on 5.9.05. On this count of delay penalty should be levied, apart from other penalties that arose under other provisions of law. There is an admitted liability found by both the authorities below for which there is clear depiction of the delayed period in the order itself. Hence no interference to the order appeal is warranted.

3. Heard both sides and perused the record.

4. The order does not reveal whether there was a reasonable cause and whether that was considered by the authorities below. The appellant submitted that there was financial constraint to discharge the admitted liability. Such averment should have entered into consideration by the ld. Appellate Authority to examine whether the case falls under Section 80 of the Finance Act 1994. No doubt the Appellant was dealt under law in early stage of implementation thereof. There is admitted delay as depicted in the

chart prepared by both the authorities below in their order. The Appellant has chosen to discharge the due tax liability from June 2005 to February 2006 on one day i.e. 31.3.2006. The Appellant should not get any immunity from levy of interest. Therefore the levy of Service Tax and interest is confirmed.

4. So far as the penalty is concerned, considering that the appellant was dealt under law at the early stage of implementation of law, levy of harsh penalty of Rs. Three lakhs shall be disproportionate. Finding that there was a delay of less than one year in an average, I reduce the penalty from Rs. 3,89,148/- to Rs. 50,000/- (Rs. Fifty thousand) and consider the same to be just and proper as a preventive dose to protect interest of justice. Accordingly, the penalty is reduced to Rs.50,000/-.

5. Consequently there is confirmation of demand relating to tax and interest except penalty aspect modified as above. The appeal is partly allowed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM