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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/35 /2009 – SM[BR] Date 24/11/2009

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S VISHAL CABLE NETWORK, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1460 / 2009 –SM[BR] dated 20.10.2009 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 VISHAL CABLE NETWORK,

EWS-4/102, AWAS VIKAS NO. 3, KALYANPUR, KANPUR.

2. Adv. / Consult SHRI K.K. ANAND ADV.
A-5, BASMENT LAJPAT NAGAR-III
NEW DELHI

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

SERVICE TAX APPEAL NO. 35 of 2009-SM

[Arising out of Order-in-Appeal No. 427-ST/APPL/KNP/2008 dated 21.10.2008 passed by the Commissioner (Appeals), Central Excise, Kanpur]

Dated of hearing/decision: 20th October, 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 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 Departmental authorities?	

CCE, Kanpur — Appellant

Vs.

M/s. Vishal Cable Network — Respondent

Appearance:

Shri R.K. Saini, SDR for the Revenue;
Ms. Asmita Nayak, Advocate for the respondents

Coram:

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

FINAL ORDER NO. 1460/2009 dated 5/11/09

Per P.K. Das:

Revenue filed this appeal against Order of the Commissioner (Appeals) whereby penalty imposed under Section 76 and 77 of the Finance Act, 1994 was set aside.

2. The relevant facts of the case, in brief, are that the respondents are engaged in providing taxable service under the category of Multi System Operator (M.S.O.) which was brought under service tax net w.e.f. 10.9.2004. It has been alleged that the respondents have wrongly availed credit of Rs. 37,077/= on the basis of documents of service tax paid by their subscriber cable operator during the period October, 2004 to September, 2005. Original authority confirmed the denial of credit along with interest and also imposed penalty under Section 76 and 77 of the Finance Act, 1994. Commissioner (Appeals) set aside the penalties. Hence, the department filed this appeal.

3. Learned D.R. on behalf of the department reiterates the grounds of appeal. He submits that the Commissioner (Appeals) dropped the penalties by invoking Section 80 of the Act, 1994 on the basis of bonafide belief. He submits that the respondent had not paid the tax even after issue of show cause notice and contested the demand of tax and, therefore, it is not a fit case to invoke Section 80 of the Act, 1994. It is

his contention that Commissioner (Appeals) while setting aside the penalties had not considered the facts of the case properly.

4. Learned Advocate on behalf of the respondents submits that levy of tax on M.S.O. was introduced on 10.9.2004 and the period of dispute is October, 2004 to September, 2005. She submits that it is a new levy and there was confusion on levy of tax on M.S.O. She further submits that the respondents reversed the credit and also deposited the tax and, therefore, Commissioner (Appeals) rightly invoked Section 80 of the Act. She relied upon the decision of the Tribunal in the case of CCE vs. Home Entertainment Network vide Final Order No. 179/09(SM)(BR) dated 10.2.2009.

5. After hearing both sides and on perusal of the records, I find that the respondent availed inadmissible credit on payment of tax on M.S.O. The respondents are securing signal from the Broadcaster and re-transmitting it to the Subscriber Cable Operator. The respondents wrongly availed credit of Rs. 37,077/- on the basis of the tax paid by their Subscriber Cable Operator. For the purpose of proper appreciation of the case, finding of the Commissioner (Appeals) is reproduced below:-

"In this regard, the appellants have pleaded that they were under bonafide belief of misinterpretation of chain of service tax credit moving from cable operator to M.S.O. and M.S.O. to Broadcaster. As there was no clarity in the mind of general public about the payment of service tax liability through Cenvat credit. I find that the appellants had paid the service tax through TR-6 challan and their Service Tax credit account by virtue of misinterpretation of Cenvat credit and done nothing to evade service tax. I observe that the offence is of technical nature. I am of the opinion that the appellants had not done anything to avoid payment of service tax. I observe that it is a fit case for allowing benefit of Section 80 in light of the facts and circumstances of the case. Accordingly, I hold that no penalty is imposable on the appellants under Section 76 & 77 of the Finance Act, 1994."

6. The main contention of the department is that the respondents contested the demand of tax and, therefore, Section 80 can not be invoked. On perusal of the order of the Commissioner (Appeals), I find that there was a confusion on the new levy of tax on M.S.O. and availment of Cenvat credit. Commissioner (Appeals) had given detailed finding to come to the conclusion that there was a reasonable cause for failure to pay the tax. It is a case, where the respondents paid the tax by way of availing Cenvat credit, which was ascertained as irregular, and was reversed by them subsequently.

7. In view of the above discussion, I find that there is no reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK