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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/581 /2009 – SM[BR] WITH ST/ CO/ 198/2009 Date 16/10/2009

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S TIRUPATI TRADING CO Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1278 / 2009 –SM[BR] dated 24.9.2009 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 TIRUPATI TRADING CO
   NEAR NOVELTY TALKIES, ALIGARH.
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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/581/09-SM with ST/CO/198/09

(Arising out of Order-in-Appeal No.92-ST/LKO/09 dt.22.4.09 passed by the Commissioner(Appeals), Lucknow)

CCE, Lucknow — Appellant

Versus

M/s. Tirupati Trading Co. — Respondent

Appearance
Sh. Sansar Chand, DR For Appellant

None for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final
Date of Hearing: 24.9.09
Order No. 1278/2009 SM(BR)

Per Rakesh Kumar:

Heard Shri Sansar Chand, the Ld. DR. None appeared for the respondent.

2. The short point for decision in this appeal of the Revenue is as to whether penalty under Section 76 for non-payment of service tax by the due date is imposable when penalty under Section 78 has been imposed. The period of dispute about 2005-05, when there was no specific provision that penalty under both Sections 76 & 78 can not be imposed. I find that on this very issue, there is judgment of Hon'ble

Kerala High Court in the case of Asstt. Commissioner of Central Excise vs Krishna Poduval reported in 2006(001)STR.185(Kerala) which is in favour of the Department. Same view has been taken by the Tribunal in the case of Bajaj Travels Ltd. vs CCE, Chandigarh reported in 2009(21)STR-412(New Delhi - Cestat). In view of this, the impugned order is not sustainable and the same is set aside. The penalty under Section 76 is restored and the Revenue's appeal is allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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