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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/366 /2009 – SM[BR] Date 30/10/2009

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 AMKAP MARKETING (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1344 / 2009 –SM[BR] dated 21.10.2009 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 AMKAP MARKETING (P) LTD.
   AMAWAN ROAD, RAEBARELI.
2. Adv. / Consult SHRI R. KRISHNANADV.
   297, POCKET-II
   MAYUR VIHAR [PHASE-I] DELHI-91.
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 No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 21.10.2009

Service Tax Appeal No.366 of 2009-SM

Arising out of the order in appeal No.17-ST/LKO/2009 dated 30.1.2009 passed by the Commissioner(Appeals), Customs, Central Excise & Service Tax, Lucknow.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.E., Lucknow .... Appellant

Vs.

M/s Amkap Marketing Pvt. Ltd. .... Respondents

Appearance:

Shri Mahesh Rastogi, Authorized Departmental Representative (SDR) for the Revenue and none for the respondents

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

Oral Order No. 1344/2009 SM(BR)

Per P.K. Das:

After hearing Shri Mahesh Rastogi, learned SDR on behalf of the Revenue and on perusal of the records I find that respondents delayed to deposit the service tax. The respondents deposited the tax before issue of show cause notice. The original authority confirmed the demand of duty of Rs.35/- and imposed penalty of Rs.29,321/- under Section 76 of the Finance Act, 1994 for delayed payment of tax. Commissioner (Appeals) reduced the penalty to Rs.35/- as per Section 76 of the Act.

2. Learned SDR submits that the respondents failed to deposit the service tax on due date and therefore, the original authority rightly levied the penalty as per the provisions of the Finance Act, 1994.

3. For proper appreciation of the case, the relevant portion of the finding of the Commissioner (Appeals) is reproduced below:

> " ***The main issue to be decided is imposition of penalty under Section 76 of the Finance Act, 1994. In this matter, I observe that the appellant had suo moto deposited service tax and interest due thereon before issue of the show cause notice, thus, there is no deliberate attempt by the appellant to contravene the provisions of law. The Hon'ble Tribunal in the case of C.C.E., Mumbai vs. Top Detective & Services Pvt. Ltd. held that if service tax and penalty have been deposited before issue of the adjudication order, penalty under Section 76 and 77 of the Finance Act, 1994 is not imposable.***
>
> ***In view of the above, I hold that appellants are not liable for penal action for late payment of service tax, however, they are liable for penal action equal to the amount of service tax short paid i.e. Rs.35/- as per the provisions of Section 76 of the Finance Act, 1994."***

4. I find that the demand of tax is Rs.35/-, and the Commissioner (Appeals) reduced the penalty to Rs.35/-, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(P.K. Das)
Member (Judicial)

scd/