TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Date 04/01/2011

Appeal No. ST/83 /2007 – SM[BR]

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

To :
M/S JAI DRINKS PVT. LTD.
J.L.N. MARG, TONK ROAD, JAIPUR (RAJ.)

M/S JAI DRINKS PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 2 / 2011 –SM[BR] dated 15.12.2010 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. JAIPUR I
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registra
(SM Appeal Branch

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

Date of Hearing/Decision:15.12.2010

Service Tax Appeal No.83/2007-SM

[Arising out of Order-in-Appeal No.300 (GRM)ST/JPR-I/2006 dated 14.12.2006 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur].

M/s.Jai Drinks (P) Ltd. ...Appellant

Vs.

CCE, Jaipur-I ... Respondent

Present for the Appellant :Shri.Saurabh Yadav, Advocate
Present for the Respondent:Shri.A. Khanna, JDR

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

Final **ORDER NO.** 02/2011 SM (Br) **DATED:15.12.2010**

PER: D.N.PANDA

Ld. Counsel submits that it appears the appellant has no cause to press the appeal further. The appeal is dismissed accordingly.

2. Later ld. Counsel submits that because of non-availability of judgement in the case of Agauta Sugar & Chemicals vs. Commissioner of Central Excise, Noida reported in 2010 (19) S.T.R. 849 (Tri.-LB), the appellant although has no cause to press the Service Tax demand in view of the law settled in the above case, it should not suffer penalty and other consequence of law, when the law was in debatable stage.

3. Ld. DR also is of the view that the matter of levy travelled so long till the issue was settled by the Larger Bench in the aforesaid case. For the default to pay taxes there shall be penalty.

4. Heard both sides and appreciated the reason of debatable stage of law travelling long period, certainly confusion is likely to occur among the tax payer about the levy itself. Such a mitigating factor may not be ruled out to be a reasonable cause under section 80 of the Finance Act 1994 to waive the penalty levied under section 76 of the said Act in absence of any malafide on the part of the appellant. Even the first appellate authority did not make any finding on the levy of penalty under section 76 of the Finance Act 1994, but merely confirmed the adjudication order.

5. In view of the aforesaid reasons, confirming the service tax demand, the penalty imposed under section 76 of the Finance Act, 1994 is waived and the order of dismissal passed aforesaid is recalled with the consequence indicated later.

6. The order aforesaid has been passed on the peculiar facts and circumstances of the case as stated above.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita