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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/1461/2010 – SM[BR] ST /STAY / 3059 / 2010 ST/COD /420/10-SM[BR] Date **07/01/2011**

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

To :
M/S SWEETY CABLE NET-WORK,

MAVA WALI GALI, (TEACHER COLONY), NEW
COLONY, GUMANPURA, KOTA (RAJ.)

M/S SWEETY CABLE NET-WORK, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 29/2011-SM[BR]&S/27/2011&M/8/2011 dated 10.12.2010

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
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult
MR.RAJ KUMAR YADAV & OTERS
R/O SONU VILLA, D-200,
KARDHANI YOJNA,
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 Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM,
NEW DELHI-110066.

COURT NO. II

ST/COD/420/10 & ST/STAY/3059/10-SM
Service Tax Appeal No. 1461 of 2010-SM

[Arising out of Order-in-Appeal No. 105(DST/JPR-I/2010 dated 26th March, 2010 passed by the Commissioner (Appeals), Central Excise, Jaipur-I]

Date of Hearing/decision: 10th December, 2010

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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 should 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?	

M/s. Sweety Cable Net-work — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance:

Present for the Appellant :Shri Raj Kumar Yadav,Advocate
Present for the Respondent :Shri K.P. Singh, SDR

Coram: Hon'ble Shri D.N. Panda, Judicial Member

Final **ORDER NO.** 29/2011 SM(BR) & S-27/2011 | SM(BR) M-8/2011 | **DATED**

PER D.N. PANDA:

Since the dispute is in narrow compass both sides agrees for disposal of the appeal itself dispensing with pre-deposit.

ST/COD/420/10-SM

2. Learned Counsel submits that there was only one day delay in filing the appeal and that too, neither deliberate nor malafide. Therefore, he prays for condonation of delay. There is no objection from Revenue. Accordingly, delay is condoned. COD application is allowed.

ST/1461/10-SM

3. The matter under controversy is whether the appellant is entitled to any concession on interest and penalty when Modvat credit was allowed against part of the demand resulting in balance demand along with interest and penalty. There were penalties under Section 76 & 78 of the Finance Act, 1994. Both sides having verified record state that consequent upon adjustment of Modvat credit against service tax demand, the balance

demand of service tax arose for realisation was Rs. 27,407/-. Once this is the position, the appellant has to suffer interest on the unpaid service tax of Rs. 27,407/-. Consequently, the appellate order in respect of levy of interest is modified holding that interest is to be recovered on unpaid balance of Rs. 27,407/-.

4. So far as the penalties are concerned, the record nowhere indicates any malafide of the appellant. The appellant was entitled to Cenvat credit as has been granted by the learned Commissioner (Appeals), against which there is no appeal by the Revenue. This clearly demonstrates that small tax payer should not face undue hardship for no deliberate intention of causing loss to Revenue. It would, therefore, be proper to waive the penalties imposed on the appellant. The appellant accordingly succeeds on the penalty aspect as aforesaid and partially succeeds on interest aspect to the extent indicated herein before. Appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK