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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/592 /2011 – SM[BR]ST/STAY/1158/2011 ST/COD/137/2011-SM[BR]** Date **26/07/2011**

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

To :
M/S ROLEX PROCESSORS PVT. LTD.,
14-15 KM STONE, PUR ROAD, BHILWARA, (RAJ.)
311001

M/S ROLEX PROCESSORS PVT. LTD., Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.426/2011-SM[BR]&S/399/11&M/93/11** dated 15.7.2011 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 II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A,VASANT KUNJ NEW DELHI-70.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

ST/COD/137/2011 in Appeal No.ST/592/2011
ST/Stay/1158/2011 in Appeal No.ST/592/2011

Date of Hearing/Decision: 15.07.2011

(Arsing out of Order-in-Appeal No.450(CB)ST/JPR-II/2010 dated 29.10.2010 passed by the CCE (A), Jaipur)

For approval and signature:
Hon'ble Mr.Ashok Jindal, 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 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.Rolex Processors Pvt.Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Present for the Appellant: Shri Mayank Garg, Advocate
Present for the Respondent: Shri S.K.Bhaskar, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 426/2011 SM (Br) & S-399/2011 SM, M-93/2011 SM(Br)

PER: ASHOK JINDAL

The appellants have filed appeal alongwith application for condonation of delay in filing the appeal before this Tribunal.

2. In the application for condonation of delay, the appellants have stated that the appellants have taken over the management 21.06.2010. As per MOU, any liability is to be borne by out going

management. Therefore, when the impugned order dated 27.10.2010 was received by them was sent to the out going management to take proper action but they failed to do so. As the appellants are liable to pay liability of the appellant firm, therefore, took steps for filing the appeal which caused delay of 30 days in filing the appeal. Considering the reason for causing the delay are satisfactory, the application for condonation of delay in filing the is allowed.

3. The facts of the case are that the appellants are availing the GTA service and are not paying service tax thereon. Therefore, during the course of audit, it was found that neither the appellants are paying service tax on amount of freight paid to the transporters nor they are filing the periodical returns. Therefore, the show cause notice was issued which was adjudicated and the demand was confirmed alongwith interest and equivalent amount of penalty under Section 76 of Finance Act, 1994 read with Section 11AC of Central Excise Act, 1944. The adjudication order was confirmed by the first appellate authority. Aggrieved by the said order, the appellant is in appeal before this Tribunal.

4. Shri Mayank Garg, Advocate, learned Counsel appeared for the appellants and submitted that the appellants are not challenging the liability of service tax and interest. Their prayer is their case may be dealt with under Section 80 of Finance Act, 1994 and the penalty should be waived as during the period the brother of the director who was dealing with excise matters was taking care of his brother who was undergone for kidney transplant treatment. Therefore, due to bonafide mistake, they could not deposit service

tax in time and could not file required returns. The appellants may be given the benefit of Section 80 of Finance Act, 1994. Learned Advocate further submitted that when the penalty under Section 78 is imposed then the penalty is not imposable under the provision to Section 76 of the Finance Act, 1994.

5. After hearing both sides, I find that the issue involved is in a narrow compass, therefore, after waiving pre-deposit, I take up the appeal for final disposal. I have gone through the records also where the appellants have taken the plea before the adjudicating authority due to financial crisis, they could not deposit the service tax in time and before the Commissioner (Appeals), they have taken another defence plea that as the appellant was pre occupied with the treatment of his brother for kidney failure. The appellants are not entitled for the benefit of Section 80 of Finance Act,1994. Therefore, the penalty equal to service tax is confirmed. I have seen the impugned order and the adjudication order wherein the appellants were not given an option to pay 25% of service tax as penalty as per proviso 1 and 2 of Section 11AC of the Central Excise Act, 1944 which has been extended to service tax matters. Therefore, I give an option to the appellants to pay 25% of service tax as penalty within thirty days of communication of this order, failing which the appellants shall liable to pay 100% service tax as penalty. The penalty under Section 78 is confirmed. The penalty under Section 76 is dropped as per provision to amended Section 78 of the Finance Act, 1994.

6. With these observations, the appeal as well stay petition is disposed of

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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