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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/1350 – 1352 / 2010-SM[BR] **Date 18/08/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S KAMAL & ASSOCIATES (P) LTD
2. M/S KAMAL & ASSOCIATES [P] LTD
3. M/S KAMAL & ASSOCIATES [P] LTD
PLOT NO 1, IIIRD FLOOR LSC MARKET, MAYUR
VIHAR, PHASE-II, DELHI.-110091.

M/S KAMAL & ASSOCIATES (P) LTD Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. 471 – 473 / 2011-SM[BR]** dated 21.7.2011 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.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.N.K.GUPTA
C/O S.S.KOTHARI MEHTA & CO, 146-149,TRIBHUVAN COMPLEX,ISHWAR
NAGAR, MATHRUA ROAD, N DELHI-110065

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Service Tax Appeals No. 1350-1352 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 268,266 & 269/S. Tax/D-II/2010 dated 24/06/2010 passed by The Commissioner (Appeals) of Service Tax, New Delhi.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities? :

M/s Kamal & Associates (P) Ltd. Appellant

Versus

CST, New Delhi Respondent

Appearance

Shri N.K. Gupta, Advocate – for the appellant.

Shri B.L. Soni, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 21/07/2011.

Final Order No. 471 - 473/2011 SM (BR) Dated :

Per. Rakesh Kumar :-

The appellant provides the service of industrial construction and residential construction. The allegation against them is that during the period from July 2005 to September 2005, October 2005 to March 2006 and October 2006 to March 2007 they did not discharge their service tax liability by the due date. For this reason, the Assistant Commissioner by three different orders, in addition to confirming the demand of non-paid service tax alongwith interest, has imposed penalty on them under Section 76 of the Finance Act, 1994. The penalty imposed on them for July 2005 to September 2005, October 2005 to March 2006 and October 2006 to March 2007 are Rs. 35,990/-, Rs. 2,36,800/- and Rs. 62,000/- respectively. On appeal to Commissioner (Appeals), the Commissioner (Appeals) by the impugned order-in-appeal dismissed their appeals. Though before the

Commissioner (Appeals), it was pleaded by the appellant that delay in payment of service tax was due to genuine reasons and, therefore, the penalty under Section 76 may be waived in terms of the Section 80 of the Finance Act, 1994, This plea was not ~~cannot be~~ accepted by the Commissioner (Appeals). Against this order of the Commissioner (Appeals), the present appeals have been filed.

2. Heard both the sides.

2.1 Shri N.K. Gupta, Advocate, the learned Counsel for the appellant, pleaded that during the period of dispute there was confusion as to whether the appellant who is a contractor was liable to pay the service tax or builder is liable to pay service tax, that there was also confusion about the value of the service on which the service tax was payable – whether service tax payable on the value including the material or only on the service charges, that only after these issues were sorted out, the service tax was paid, that delay in payment of the service tax was, therefore, due to genuine reasons and, therefore, the Commissioner (Appeals)'s order holding that the appellant have not been able to give reasonable cause for failure to pay the service tax by the due date and, hence, Section 80 of the Finance Act, cannot be invoked, is not correct.

2.2 Shri B.L. Soni, the learned Senior Departmental Representative defending the impugned order pleaded that Section 80 can be invoked only when the assessee proves that there was reasonable cause for failure to pay the service tax by the due date, that in this case while the industrial construction service was chargeable from July 2004 residential construction service July, 2005 but the registration was obtained by the appellant only in June 2006, that no reasonable cause for failure to discharge the service tax liability by the due date has been given while it is seen that long after the introduction of service tax on these services failure of the appellant to discharge from service tax liability had continued, that in view of the appellant's failure to prove that there was reasonable cause for failure to pay the service tax, under Section 80 cannot be invoked and there is no infirmity in the impugned order.

3. I have carefully considered the submissions from both the sides and perused the records.

4. There is no dispute that about the appellants did not discharge the service tax liability by the due date and this has happened during considerable period – from July 2005 to September 2005, October 2005 to March 2006t and thereafter October 2006 to March 2007. The only reason for failure to discharge service tax liability by the due date given by the appellant is that there was dispute as to whether the suppliers would discharge the service tax liability or whether the appellant or contractor would be liable to pay the same and also there was confusion about the value of the taxable service. Under Section 80 of the Finance Act, 1994, the penalty under Section 76, 77 or 78 can be waived if the assessee proves that there was reasonable cause for failure to discharge the service tax liability. In my view, the reasons given by the appellant for delay in discharge of service tax liability cannot be accepted as valid reasons for their failure to discharge the

services by the due date. In view of this, I do not find any merit in these appeals, The same are dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK