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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/100 /2010 – SM[BR]** Date **23/08/2011**

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

To :
M/S. SHAMLI STEELS P. LTD.
SHAMLI, DISTT. SAHARANPUR

M/S. SHAMLI STEELS P. LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 498/2011-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.C.E. MEERUT I
EXCISE CHOWK,OPPOSITE
CHOUDHARY CHARAN SINGH
UNIVERSITY MANGAL PANDAY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD
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 Appeal No. 100 of 2010 (SM)

[Arising out of the Order-in-Original No. 29/COMMR./MRT-I/2009 dated 14/10/2009 passed by The Commissioner, Central Excise, Meerut.]

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 Shamli Steels P. Ltd. Appellant

Versus

CCE, Meerut – I Respondent

Appearance

Shri Rajesh Chhibber, Advocate – for the appellant.

Mrs. R.K. Jagdev, Authorized Representative (SDR) – for the respondent.

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

DATE OF HEARING : 21/07/2011.

Final Order No. 498/2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant are manufacturers of Steel Ingots and in addition to manufacturing activity they were providing a number of other services – business auxiliary service of commission agents/ stock broker service, clearing and forwarding agent service. The allegation against the appellant is that during the period of dispute, they have not paid service tax on the amount received by them from a main commission agent Shri Rajiv Sanghi, for whom the Appellant were functioning as a sub-agent, as on inquiry with the main commission agent Shri Rajiv Sanghi, it was learnt that he was not paying service tax on the amount which was being paid to the appellant. It is on this basis that service tax demand of Rs. 53,291/- was confirmed against the appellant alongwith interest and penalty of equal amount was imposed on them under Section 78 of the Finance Act, 1994. Against this order of the Commissioner, the present appeal has been filed challenging the penalty. The confirmation of service tax demand has not been challenged on which they have already paid without any protest.

2. Heard both the sides.

2.1 Shri Rajesh Chhibber, Advocate, the learned Counsel for the appellant, pleaded that during the period of dispute there was doubt as to whether the appellant who was a sub-agent of the main agent Shri Rajiv Sanghi was liable to pay service tax or not, as in terms of the Circular issued by the Board, the sub-contractor were not required to pay service tax, that in this case, the appellant paid the service tax only when on inquiry with the main agent, it was learnt that the main agent has not paid service tax on the amount received from the Appellant, that there was no intention to evade the service tax which was a small amount as compared to amount of Central Excise Duty paid by them and that in view this, the impugned order imposing penalty on the appellant under Section 78 is not correct, as penalty under this section is attracted only when there is non-levy or short-levy of service tax on account of fraud, wilful mis-statement or suppression of fact or contravention of the provisions of the Finance Act, 1994 or of the Rules made thereunder with intent to evade the payment of duty.

2.2 Mrs. R.K. Jagdev, the learned Senior Departmental Representative defended the impugned order by reiterating the findings of the Commissioner (Appeals).

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

4. The appellant is manufacturer of Steel Ingots and is also providing the service of procuring orders for sale of other party's goods as a sub-agent of main agent Shri Rajiv Sanghi. It is not disputed that there is a circular issued by the Board according to which the sub-contractors do not require registration as service tax is to be paid by the main service provider. In the background of this Circular, I am inclined to accept the appellant's contention that they were under impression that they were not required to pay service tax on the amount received by them from the main agent Shri Rajiv Sanghi. It is not disputed as soon as it was pointed out that

Shri Rajiv Sanghi had not paid the service tax on the amount received by them from the appellant, they (the Appellant) immediately paid the service tax. In view of this, I hold that no wilful misstatement, suppression of fact or contraventions of the provisions of the Finance Act, 1994 or the Rules made thereunder is involved and, hence, penalty under Section 78 is not called for. The same is, therefore, set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK