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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/1464/2010 - SM   Date **20/09/2011**

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

To :
M/S R.B. CABLE NETWORK,
BEHIND ROOPSHRI BHAWAN,
VIGYAN NAGAR SPECIAL,
KOTA, (RAJ.)

M/S R.B. CABLE NETWORK, Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 616 / 2011-SM[BR]** dated 2.9.2011 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 I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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 (Harvana)
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. 2, R.K. Puram, NEW DELHI

COURT NO. II

Service Tax Appeal No. 1464/2010-SM

Date of hearing/decision: 2nd September, 2011

M/s. R.B. Cable Network — Appellant
Reptd. By Shri A. Jaju, Advocate

Versus

CCE, Jaipur-I — Respondent
Reptd. By Shri B.L. Soni,D.R.

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

FINAL ORDER NO. 616/2011-SM (BR) DATED

Per D.N. Panda:

Learned Counsel vehemently opposed the appellate order on the ground that small cable operator should not face penalty in view of waiver of penalty in similar cases vide Order-in-Original No. 10/2008(ST) dated 25.3.2008 and Order-in-Appeal No. 11-13(DK)ST/JPR-I/2009 dated 23.2.2009 as appearing in the impugned order. He further submits that there was no suppression nor evasion made by the appellant for which he is not liable to penalty under Section 76, 77 & 78 of the Finance Act, 1994. He also submits that the appellant was under bonafide belief that as a client of MSO who provided service to this appellant has paid service tax. When the department required the appellant to pay tax the appellant challenged the basis of levy and got partial relief by way of reduction due to wrong basis of levy adopted in show cause notice. Similarly Authority also considering tenability of Cenvat credit allowed relief. The appellant was partly successful in getting relief in so far as levy is concerned for which there is no further agitation on liability to service tax. Registration was obtained and returns were filed when the legal position was ascertained by the appellant. All these circumstances suggest that there is good reason for the appellant to be exonerated from penal consequence of law under all the three sections invoked in adjudication. He prayed that when there is existence of reasonable cause, the appellant deserves to be dealt leniently. Also his submission is that the appellant was cooperative to Departament. Law being implemented from 16.8.2002, this is the first adjudicating relating to early period covering September, 2003 to March, 2008. When Jaipur Commissionerate has already allowed relief to other small cable operators, this appellant should not be discriminated.

2. Learned D.R. on the other hand does not agree to the propositions of the appellant and prays to confirm appellate order on penalties.

3. Heard both sides and perused the record.

4. Appellant's argument aforesaid appears to be reasonable for consideration under section 80 of the Finance Act, 1994. The appellant no doubt came forward for registration and filed returns but for the impugned period there is a negative finding

against it. The appellant's submission is that it should not be dealt discriminately causes anxiety to justice. His averment basing on Para 7(e) of appellate order granting waiver of penalty in respect of different cases of Jaipur Commissionerate deserve consideration. Learned Counsel placed following mitigating factors:

1) Early stage of implementation of law.

2) Appellant's ignorance about law.

3) Grant of similar benefit to other small cable operators.

5. When the appellant's prayer is that it deserve consideration under Section 80 of the Finance Act, 1994 in respect of penalties imposed under different sections of that Act, it would be desirable to grant fair opportunity of hearing to the appellant when mitigatings factor as aforesaid are said to be present as per averments of the learned Counsel.

6. Learned Adjudicating Authority shall record reason and finding as to existence of reasonable cause if any and shall pass a reasoned and speaking order in respect of penalty imposed under all the three sections afresh and de novo adjudication order on the limited issue of penalty may be passed as possible by end of December, 2011.

7. In the result service tax demand is confirmed and penalty aspect is remanded to original authority.

(D.N. PANDA)
JUDICIAL MEMBER

RK