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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/787 /2011 – SM[BR] ST / STAY/1630 /2011-SM[BR] **Date 19/10/2011**

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

To :
M/S BESTILO PACKAGING PVT. LTD.,
FOCAL POINT, CHANALON, KURALI, DISTT. MOHALI.

M/S BESTILO PACKAGING PVT. LTD., Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.713/2011-SM[BR]&S/624/2011 dated 30.9.2011** 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.VIKRANT KACKRIA
509, SEC-7,PANCHKULA, HARYANA

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. 2, R.K. Puram,
NEW DELHI

COURT-II

ST/Stay/1630/2011-SM in and
Service Tax appeal No. 787/2011-SM

[Arising out of Order-in-Appeal No. 09/ST/Appeal/CHD-I/2011 dated 29.03.2011 passed by the Commissioner (Appeals), Central Excise & Service Tax, Chandigarh-I]

Date of hearing/decision: 30th September, 2011

M/s. Bestilo Packaging Pvt. Ltd., Appellant

Versus

CCE, Chandigarh-II Respondent

Presence:

Shri Vikrant Kakaria, Advocate for the appellant;
Shri Fatesh Singh, DR for the Revenue

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

FINAL ORDER NO. 713/2011 SM (BR) & S-624/2011 SM (BR) **DATED**

Per D.N. PANDA:

Learned Counsel submits that the riders provided by Notification No. 34/2004-ST dated 3.12.2004 in the matter of levy of service tax relating to GTA service were in confusion. While one rider is that if the gross amount charged against consignments transported in a goods carrier does not exceed Rs. 1500/- there is liability under Finance Act, 1994, the other rider is, if gross amount charged on an individual consignment transported in a goods carrier does not exceed Rs. 750/- there shall be liability. The appellant was under a bonafide belief that individual consignment was basis for liability of the appellant. Therefore, there was confusion in the understanding of notification for which the Audit viewed that there was short payment of service tax. To buy peace, the appellant discharged service tax amount to be payable as was raised by the Audit. There was no suppression of facts and there was only a bonafide construction of the riders of Notification. Had there the appellant made suppression it would not have recorded the receipts made from different consignments for detection by audit. When the facts and figures are available on record there was absence of suppression. The facts and circumstances does not warrant levy of penalty under Section 76 and 78 of the Finance Act, 1994. Therefore, not only requirement of pre-deposit may be waived but appeal may also be decided.

2. Learned D.R. on the other hand says that penalty is imposable under Section 78 of Finance Act.

3. Heard both sides and perused the record.

4. Learned Appellate Authority while disposing the appeal has no independent finding about the behavior of the appellant. The Audit observation was only basis to issue show cause notice. This is apparent from Para 6.1 of the appellate order. When the authority fails to examine the issue independently, the appellate order suffers from legal infirmity. So also when the notification No. 34/2004 relied upon by Revenue is read, it can be construed that a common man may find it difficult to understand riders

described by that notification. Although the riders are independent in nature, but very difficult to understand by a common man. So also noticing no contumacious conduct of the appellant discovered by the department, the appellant cannot be asked to suffer penalty. All these observations require the appeal to be allowed. Therefore, dispensing with pre-deposit, appeal is also allowed. Accordingly, both stay application and appeal are allowed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK