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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/840 /2011 – SM[BR] **Date 15/11/2011**

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

To :
M/S H.M.T.LIMITED, (TRACTOR DIVISION)
PINJORE, PANCHKULA (HARYANA)

M/S H.M.T.LIMITED, (TRACTOR DIVISION) Appellant
Vs
C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 767/2011-SM[BR]&S/756/2011** dated 3.10.2011 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. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8,
PANCHKULA (HARYANA) 134119.

2. Adv. / Consult
MR.JOY KUMAR
FLAT NO 261/1,SEC 45-A,CHANDIGARH.

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 No. II

Stay Application No.1788 of 2011
Service Tax Appeal No.840 of 2011(SM)

Date of Hearing / Decision : 3.10.2011.

M/s HMT Ltd. — Appellant
Versus
CCE, Panchkula — Respondent

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

Present for the Appellant - Shri Jay Kumar, Adv.
Present for Respondent - Shri A.Khanna, DR

Final **Order No.** 767/2011 SM (BR) **Dated :**___________

Per D.N. Panda: S - 756/2011 SM (BR)

Ld. Counsel says that the appellant has deposited Rs.1,41,956/- towards the service tax and Rs.90,222/- towards interest. The detailed particulars are submitted by him today with a copy to ld. DR. The appellant also expresses that it does not intend to litigate the matter further if relief is granted in respect of penalty. Considering fair submission, the merit is looked into. In the course of adjudication, the adjudicating authority has not found out whether the appellant has willful intention to evade the service tax. In absence of findings to that effect against this appellant, there cannot be levy of penalty ipso facto. Appellate Authority has simply confirmed the adjudication order. But ld. DR supports order of the Appellate Authority below.

2. When the factual position is as above, waiving the requirement of pre-deposit, appeal is disposed with the consent of both sides by this common order. Ld. Counsel at this juncture prays that if cum tax benefits is allowed, the appellant's liability

towards service tax shall be reduced to Rs.1,41,956/-. Interest thereon shall be leviable. He vehemently opposes the levy of penalty.

3. When the order of both the authorities below does not disclose presence of element of section 78 of Finance Act, 1994, appellant's conduct cannot be said to be blemished one at this stage. Consequently no penalty survives on this appellant u/s 78 of Finance Act, 1994. So far as penalty u/s 77 is concerned, there is failure to register and also to file the returns. Therefore, the penalty of Rs.2,000/- u/s 77 is confirmed.

4. Adjudicating Authority has to re-compute the service tax demand taking into consideration of the plea of cum tax benefit and ~~advise~~ inform the appellant if there is shortfall in payment made. Only to this extent, this appeal is technically remanded. While re-computing, the Authority shall also look into interest liability to ascertain whether that shall be reduced to Rs.90,222/- as has been pleaded to have been paid. If variation arises, he shall issue notice for payment. The adjudication is confirmed in so far as service tax is concerned and there is partial relief of cum tax benefit ~~and~~ Total waiver of penalty u/s 78 is granted while confirming penalty u/s 77 of Finance Act, 1994. Payments stated to have been made as above needs verification at ~~his~~ the end of adjudicating authority.

5. In the result, both stay application and appeals are disposed.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I