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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/1738/2010 – SM[BR] **Date 30/11/2011**

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

To :
M/S ANKITA CONSTRUCTION

CIVIL&MECHANICAL GOVT, A-2, CONTRACTOR,
MAIN MARKET, KIRANDUL DISTT-
DANTEWADA(CG)

M/S ANKITA CONSTRUCTION Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 849 / 2011-SM[BR]** dated 17.11.2011 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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult **SHRI H.V. GHIRIKAR ADV.**
B-6, HIG, HOUSING BOARD COLONY, RAIPUR
NAKA, DURG-491001.

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)

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. IV
Service Tax Appeal No. 1738 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 22 (ST)/RPR-II/2010 dated 15/09/2010 passed by The Commissioner (Appeals–II), Customs & Central Excise, Raipur.]

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 Ankita Constructions — Appellant

Versus

CCE, Raipur — Respondent

Appearance

Shri H.V. Ghirikar, Advocate – for the appellant.

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

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

DATE OF HEARING : 17/11/2011.

Final Order No. 849/2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant were providing taxable services of manpower recruitment and supply agency, maintenance and repairs of the building and cleaning services to National Mineral Development Corporation, in terms of their contract with them with NMDC. They had started providing the service sometime in 2005 and had applied for and obtained the service tax registration in that year. However, they did not pay any service tax even though they were providing the taxable services to NMDC and were regularly receiving the payment for the same. In March 2007, the Department finding that the appellant having obtained registration in 2005 have not filed any return and not paid service tax conducted inquiry with Shri Ravindra Soni, Proprietor of the appellant firm who admitted that though they had provided the taxable service to

NMDC and had also received payment from them, no service tax had been paid. He also accepted his service tax liability and agreed to pay service tax alongwith interest his service tax liability was determined as Rs. 5,16,821/-. A show cause notice dated 3/2/09, therefore, issued to the appellant for recovery of non-paid service tax amount of Rs. 5,16,821/- alongwith interest and also for imposition of penalty on them under Section 76, 77 and 78. The show cause notice was adjudicated by the Jurisdictional Additional Commissioner vide order-in-original dated 25/3/10 by which the service tax demand as made in the show cause notice was confirmed alongwith interest and beside this, penalty of Rs. 200/- per day under Section 76, penalty of Rs. 1,000/- under Section 77 for non-filing of ST-3 return and penalty of Rs. 5,16,821/- under Section 78 was imposed. On appeal to CCE (Appeals), while the service tax demand and penalty under Section 77 and 78 were upheld, the penalty under Section 76 was set aside. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

2.1 Shri H.V. Ghirikar, Advocate, the learned Counsel for the appellant pleaded that the appellant is a very small service provider, that in terms of the appellant's contract with NMDC they were providing the services of manpower recruitment and supply agency, maintenance and repairs of the building and cleaning, that as per the practice it is the NMDC, who on the basis of the work performed were issuing the bills and making payment to the appellant and appellant as such were not issuing any bills, that the appellant had no control over the amount to be received by them, which was being determined by NMDC, that since the contract did not provide for reimbursement of service tax and NMDC were not paying any amount towards service tax, the appellant were under impression that no service tax is payable, and that bonafide of the appellant is evident from the fact that they had obtained service tax registration in 2005 itself, and only because of their ignorance and in view of the fact that no service tax was paid by NMDC they had not paid the service tax. He, therefore, pleaded that there is no case for imposition of penalty under Section 78.

2.2 Mrs. R. Jagdev, the learned Senior Departmental Representative defended the impugned order and emphasized that the fact that the appellant had taken service tax registration in 2005 shows that they were aware of their service tax liability, but in spite of this, the appellant neither filed any ST-3 return not paid any service tax, and that the conduct of the appellant does not show their bonafide and in view of this, penalty under Section 78 has been correctly upheld.

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

4. The appellant do not dispute their service tax liability. Since during the period of dispute the ST-3 returns had not been filed, penalty under Section 77 would be attracted and, hence, the same has been correctly upheld. As regards penalty under Section 78, I find that though the appellant had taken service tax registration in 2005, and subsequently they were regularly receiving payment from NMDC for the services provided, neither any service tax paid nor any returned was filed. Even if the appellant had any doubt about their service

tax liability, at least they should have sought clarification from the department or disclosed the amount received by them for taxable services provided by filing ST-3 return. From the totality of the circumstances in this case, I am of the view that the provisions of Section 78 are attracted and, hence, I do not find any infirmity in the impugned order upholding the penalty under Section 78. The appeal is, therefore, dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK