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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/663 /2009 – SM[BR] Date 08/03/2010

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

To :
SH. RAJEEV SHARMA PROPRIETOR OF
M/S SHARMA CABLE TV NETWORK, C-26, PURU APARTMENT, PLOT NO. 26, SECTOR-13, ROHINI, DELHI-110085

SH. RAJEEV SHARMA PROPRIETOR OF — Appellant

Vs

C.C.E. DELHI I — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 286 / 2010 –SM[BR] dated 4.3.2010 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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.PRADEEP JAIN,ADVOCATE
   34 GUJRAT VIHAR, VIKAS MARG, DELHI-92
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.ST/663 of 2009- SM (BR)

[Arising out of Order-in-Appeal No.35/ST/DLH/2009 dated 28.05.2009 passed by the Commissioner of Central Excise (Appeals), New Delhi]

**Date of Hearing/ Decision:04.03.2010**

For approval and signature:

**Mr. M. Veeraiyan, Member (Technical)**

| | | |
|---|---|---|
| 1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. | : | Yes |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | Yes |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | Seen |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | Yes |

Shri Rajeev Sharma, Proprietor of M/s. Sharma Cable T.V. Network ...Appellants
(Rep. by Shri Rohit Raju, Advocate)

Vs.

CCE, Delhi-I ...Respondent
(Rep. by Shri S.N. Srivastava, SDR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final

Order No..286/2010../Dated:04.03.2010
SM(BR)

***Per M. Veeraiyan:***

This is an appeal against the order of the Commissioner (Appeals) No.35/ST/DLH/2009 dated 28.05.2009.

2. Heard both sides.

3. The appellant is a provider of taxable services as a Cable T.V. Operator. They have collected service tax from their clients and the value of the taxable services declared to the Department was lower than

the value of the service charges received by them. This factual position came to the notice of the Department on investigation with the Multi System Operators (MSO). As a result, it was found that they have paid only Rs.76,456/- as against the amount payable amounting to Rs.1,35,389/-. They paid the balance of service tax subsequently. The Original Authority apart from confirming the demand of duty imposed penalty of Rs.83,638/- under Section 78 of the Finance Act for wilfully concealing the value of taxable services. The Original Authority also imposed a penalty of Rs.41,819/- under Section 76 of the Finance Act for the delay in payment of service tax.

4. Ld. Advocate for the appellant submits that the proprietor of the appellant firm was busy in looking after his ailing father and employee has committed mistakes in not properly calculating the service tax liability and that they are a small time service provider and imposition of maximum penalties both under Sections 76 and 78 is very harsh on them. He seeks vacating the penalties.

5. Ld. SDR reiterating the findings of the Commissioner (Appeals) submits that it is a clear case of suppressing the value of taxable services with intent to evade payment of service tax due and he seeks upholding the order of the Commissioner (Appeals). He also submits that the provisions envisaging penalty either under Section 76 or 78 only came from 13.05.2008 and the present demand relates to earlier

period and during the said period simultaneous penalties under Section 76, and Section 78 are imposable.

6. I have carefully considered the submissions from both sides. It is a clear case of suppression of value of taxable services to the Department. The explanation given for short payment of tax attributing negligence to the employee is clearly not acceptable. It is seen that the appellant has collected the service charges from the clients along with service tax and true service charge figures were available from the records of MSO. Therefore, the penalty under Section 78 is warranted. However, considering the quantum of service tax evaded and taking the entire facts and circumstances into account, the penalty imposed on the appellant appears very harsh and calls for some leniency.

7. In view of the above, the appeal is partly allowed by reducing the penalty imposed under Section 78 to Rs.41,819/- (Rupees Forty One thousand eight hundred nineteen only) and setting aside the penalty imposed under Section 76.

9. The demand of service tax and the interest involved is upheld as uncontested.

Order dictated & pronounced in open court on 04.03.2010.

( M. Veeraiyan )
Member (Technical)

Ckp.