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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/284 /2009 – SM[BR] Date 08/03/2010

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

To :
M/S RIA CONSTRUCTION LTD.
HOUSE NO. 545, SECTOR-8, PANCHKULA.

M/S RIA CONSTRUCTION LTD. Appellant

Vs

C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 289 / 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. PANCHKULA
   SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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)
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Assistant Registrar
(SM Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-III**

**Date of hearing/decision: 4.3.2010**

**Service Tax Appeal No.284 of 2009-SM**

Arising out of the order in revision No.01/Commr./PKL/Rev./2009 dated 2.1.2009 passed by the Commissioner, Central Excise , Panchkula.

For Approval and Signature:

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

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | Yes |
| 2 | Whether it should be released under Rule 27 of 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 |

M/s Ria Construction Ltd. ... Appellant

Vs.

C.C.E., Panchkula ... Respondent

Appearance:

Shri Ravi Raghvan, Advocate for the appellant
Shri I. Baig , Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 289/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order in revision passed by the Commissioner under Section 84 of the Finance Act, 1994 vide No.01/Commr./PKL/Rev./2009 dated 2.1.2009

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant is a limited company and they started activities from 1st August, 2005; they have not taken

registration; they have not filed service tax returns for the half year ending September 2005 within the stipulated time. There was delay in payment of service tax as detailed below:-

| Months ending | Amount of service tax (Rs.) | Due date of payment | Date of deposit of service tax |
|---|---|---|---|
| September 2005 | 244356 | 5.10.2005 | 17.2.2006 |
| October 2005 | 204648 | 5.11.2005 | 08.3.2006 |
| November 2005 | 91939 | 5.12.2005 | 25.3.2006 |
| December 2005 | 200006 | 5.01.2006 | 25.3.2006 |
| January 2006 | 303863 | 5.02.2006 | 28.3.2006 |
| February 2006 | 175952 | 5.03.2006 | 31.3.2006 |
| March 2006 | 21661 | 31.3.2006 | 25.4.2006 |

Show cause notice was issued and the original authority imposed a penalty of Rs.1000/- under Section 77 (erroneously mentioned as Section 70) and the original authority refrained from imposing any penalty under section 76. Such a conclusion not to impose penalty under Section 76 was arrived at by the original authority on the ground that "the party" was earlier doing business as a proprietary concern and "the party" did not have any mala fide intention of evading tax and voluntarily deposited the service tax along with interest for the late payment before issue of show cause notice by the Department. In other words, he extended the benefit of Section 80 of the Finance Act. The Commissioner issued show cause notice under Section 84 and imposed a penalty of Rs.100 per day upto 17.4.2006 and Rs.200 per day from 18.4.2006 for the delayed payment of service tax subject to maximum ceiling of amount of service tax payable/paid. As a result, the penalty imposed as per the order of the Commissioner is Rs.1,29,700/-.

4. Learned Advocate for the appellants submits that the Director of the Limited Company was earlier running the same business as a proprietor and as a proprietary concern, the was required to pay the service tax due on a quarterly basis and to file the return on half yearly basis. Since the business of the proprietary concern was taken over by the Limited Company with the proprietor as one of the Directors, there was confusion about the periodicity by which service tax shall be payable. Further, he submits that in a situation where the service tax involved stands paid along with interest, the show

cause notice itself could not have been issued to them as held by the decisions of the Tribunal in the following cases:-

a) ***Alstom Projects (I) Ltd. vs. C.S.T., Delhi – 2009 (15) STR 63 (Tri-Del.)***

b) ***Bhoruka Aluminium Ltd. v. C.C.E., Mysore – 2008 (11) STR 163 (Tri-Bang.)***

c) ***U.B.. Engineering Ltd. vs. C.C.E., Rajkot – 2009 (16) STR 457 (Tri-Ahmd.)***

d) ***Santi Casting Works vs. C.C.E., Coimbatore – 2009 (15) STR 219 (Tri-Chennai).***

He also relies on the Trade Notice No.448/2008 (Madurai C.Ex. T.N.) dated 03-Oct-2008 issued by the Madurai Central Excise Commissionerate in this regard.

5. Learned SDR submits that it is not as if, in every case of payment of service tax and interest prior to the issue of show cause notice , Section 73(3) is attracted. It is governed by the exception enumerated under Section 73(4) of the Finance Act. In the present case, the claim of the appellants that they were under confusion is not genuine ground. Even proprietary concern is required to file return half yearly and the appellants have not done the same. Even proprietary concern is required to pay the tax on quarterly basis and there is clearly delay even if the service tax was held payable on quarterly basis and therefore, the decision of the original authority was on erroneous ground. He seeks upholding of the order of the Commissioner.

6. I have carefully considered the submissions from both sides. Merely because a person who was having a proprietary concern becomes a Director in the Limited Company, no link can be established between proprietary concern and the Limited Company. The obligations of the limited company cannot be confused as obligations of a proprietary concern of one of the Directors. The basis on which the original authority gave relief under Section 80 of the Finance Act holding that the appellant had reasonable cause in not paying the tax by the due dates is not a sound basis. Undisputedly, the appellants have not taken registration in time and also failed in filing half

yearly return. Commissioner has recorded the detailed finding about the delay in payment of service tax which is reproduced below:-

> " ***On the contrary, getting themselves converted as a limited company, they did not pay the service tax and did not even submit the half yearly return for the half year ending September 2005. Their plea of genuine mistake and confusion is further hold no good in view fo the fact that they deposited the service tax for the month of September 2005 on 17.2.2006 i.e. not on the 5th of the next month following the quarter i.e. by 5th Oct. 2005. Liskewise had the confusion been genuine, the service tax for the month of Oct., Nov. & Dec. should have been deposited upto 5th January 2006, whereas the same was deposited on 8.3.2006 & 25.3.2006. Similarly, service tax for the month of Jan., Feb., & March 2006 should have been deposited by 31.3.06 for all assessees irrespective of proprietary or Ltd. Company whereas it was deposited on 28.3.06, 31.3.06 and 25.4.2006 . As regards the failure of not filing the half yearly ST-3 return, it was required to be filed by the 25th of Oct. 2005 and 25th of April 2006 irrespective of the nature of the assessee, which was not filed by the assessee accordingly. Therefore, the plea of confusion of the nature of the company appears to be concocted and not a genuine cause to be qualified under the benefits of Section 80."***

The above factual details as recorded by the Commissioner have not been refuted. The decisions of the Tribunal relied upon by the learned Advocate are based on finding that Section 73(3) is attracted in those cases and in the present case, it cannot be held that their case falls under Section 73(3).

7. In view of the above, I do not find any valid grounds to interfere with the order in revision passed by the Commissioner.

8. The appeal is rejected.

(M. Veeraiyan)
Member (Technical)

scd/