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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/694 /2009 – SM[BR] Date 10/03/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S CATER TO CATER ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 298 / 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

   M/S CATER TO CATER ENTERPRISES

   H.NO 1258, SECTOR 8-C, CHANDIGARH.
2. Adv. / Consult

   NONE;---------------------

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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/694/09-SM

[Arising out of Order-in-Appeal No.237/CE/CHD/2009 dt.30.6.09 passed by Commissioner(Appeals), Chandigarh)

For approval and signature

Hon'ble Mr. 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 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: :

CCE, Chandigarh — Appellant

Versus

M/s. Cater to Cater Enterprise — Respondent

Appearance

Sh. S.K.Bhaskar, DR for Appellant

None For Respondent

Final Date of decision: 4.3.2010
Order No. 298/2010 SM (Br)

Per Rakesh Kumar:

This is an appeal filed by the Revenue against order-in-appeal No.237/CE/CHD/09 dt.30.6.09 passed by Commissioner(Appeals), Chandigarh.

2. None appeared for the Respondent though notice for hearing had been issued to them and had been received by them. Accordingly, in accordance with the provisions of Rule 21 of the CESTAT(Procedure) Rules,1982, the appeal is being taken up for hearing ex-parte in respect of the Respondent.

2.1 Heard learned DR who pleaded that the only issue involved in this case is as to whether penalty under Section 76 and Section 78 can be imposed simultaneously, that the Commissioner(Appeals) while upholding the impugned order, has wrongly set aside the penalty under Section 76 on the ground that imposition of penalty under Sections 76 and 78 is mutually exclusive and if penalty is imposed under Section 78, penalty under Section 76 cannot be imposed and that this view is incorrect in view of the judgment of Hon'ble High Court of Kerala at Ernakulam in the case of Asstt. Commissioner of Central Excise vs Krishna Poduval reported in 2006(1)STR.185(Ker.) and also the judgment of the Tribunal in the case of Bajaj Travels Ltd. vs Commissioner of Central Excise, Chandigarh reported in 2009(16)STR.183(Tri.-Del.).

3. I have carefully considered the submissions of learned DR and perused the records. Since the issue involved in this case stands settled in favour of the Revenue by the judgment of Hon'ble Kerala High Court in the case of Asstt. Commissioner of Central Excise vs Krishna Poduval(supra) and the judgement of the Tribunal in the case of Bajaj Travels Ltd. vs CCE,

Chandigarh(supra), the impugned order setting aside the penalty on the respondent under Section 76 of the Finance Act,1994 is not correct. The same is set aside and the Asstt. Commissioner's order on this point is restored. The Revenue's appeal is accordingly allowed.

Order dictated in the open Court.

(Rakesh Kumar)
Member(Technical)

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