TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Date 15/03/2010

Appeal No. ST/358 /2009 – SM[BR]

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD — Appellant
Vs
SHRI R.K.SRIVASTAVA, — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 302 / 2010 –SM[BR] dated 3.3.2010 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
   SHRI R.K.SRIVASTAVA,
   R/O 24/51, MADAN MOHAN MALVIYA ROAD, GEORGE TOWN, ALLAHABAD. (U.P.)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. IV

SERVICE TAX APPEAL NO. 358 OF 2009-SM

[Arising out of Order-in-Appeal No. 2-ST/ALLD/2009 dated 06.02.2009 passed by the Commissioner (Appeals), Central Excise, Allahabad]

Dated of hearing/decision: 3rd March, 2010

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 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 Departmental authorities?	

CCE, Allahabad — Appellant

Vs.

Shri R.K. Srivastava — Respondent

Appearance:

Shri S. Gautam, Authorised Representative (DR) for the Revenue;
None for the respondents

Coram:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

ORAL ORDER NO. 302/2010 SM (BR) dated

Per RAKESH KUMAR:

The respondent provides taxable service of Rent-a-Cab Scheme Operator service. The Asst. Commissioner vide Order-in-Original dated 29.4.2008 confirmed the demand of service tax of Rs. 62,826/- against the respondent under Section 73 (2) of Finance Act, 1994 along with interest on this amount as per provisions of Section 75 of the Act. Besides this, he also imposed penalty of Rs. 500/- under Section 75, Rs. 1000/- under Section 77; Rs. 62,826/- under Section 76 and of Rs. 62,826/- under Section 78 of the Finance Act, 1994. The service tax demand was confirmed and penalties were imposed on the ground that during the period October, 2000 to September, 2005, the respondent was providing the taxable service to various clients without obtaining registration and without payment of service tax and without observing other formalities. On appeal, the Commissioner (Appeals) vide impugned Order-in-Appeal dated 6.2.2009, while upholding the penalty under Section 78 set aside the penalty imposed under Section 76 on the ground that the penalties under Section 76 & 78 cannot be imposed together. He also remanded the matter for recalculation of service tax demand to the Asst. Commissioner as per direction in his order. The department has filed this appeal against the order of the Commissioner (Appeals) challenging the setting aside the penalty under Section 76.

2. None appeared for on behalf of the respondent, though notice had been issued to them which has been returned back undelivered. In view of this, there is no point for waiting any further for the respondent to appear for personal hearing.

3. Heard the learned D.R. who pleaded that the impugned order is not correct in view of Hon'ble Kerala High Court's judgment in case of Asst. Commissioner of Central Excise vs. Krishna Poduval, reported in 2006 (1) STR 185 (Ker.)

4. I have carefully considered the submissions from learned D.R. and perused the record. The only issue involved in this case is, as to whether during the period in dispute, penalties could be imposed on an assessee under Section 76 & 78 at the same time. Since this issue stands decided in favour of the Revenue by the Hon'ble Kerla High Court in the case of Krishna Poduval (supra) and the same view has been taken by the Division Bench of this Tribunal in the case of Bajaj Travels vs. CCE, Chandigarh reported in 2007 (16) STR 183 (Tri.-Del.). The impugned order setting aside the penaly under Section 76 is not sustainable. The same is set aside and on this point, the Asst. Commissioner's order is restored. Revenue's appeal is allowed.

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RK