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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/310 /2007 – SM[BR]

Date 08/04/2010

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

To :
RAJDEEP LIME & CHEMICALS
I-A , POLICE LINES, UDAIPUR (RAJ)

RAJDEEP LIME & CHEMICALS Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 389 / 2010-SM[BR] dated 31.3.2010 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Service Tax Appeal No.ST/310/2007
(Arising out of Order-in-Appeal No.137(HKS).ST/JPR-II/2007 dated 28.2.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur)

Date of Hearing: 24.02.2010
Date of Decision: 24.02.2010

M/s.Rajdeep Lime & Chemicals — Appellant

Vs.

CCE, Jaipur — Respondent

Present for the Appellant: Shri Hemant Bajaj, Advocate
Present for the Respondent: Shri I.Baig, SDR

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Final **ORDER NO.** 389/2010 SM (BR)

PER: D.N.PANDA

Appellant's grievance is that it was at the early stage of implementation of law, there was default to make payment of service tax of Rs.81,408/- relating to period from April, 2000 to March, 2005. For such minor deviation, equal amount of penalty should not be imposed when the appellant has complied with law as early as in April, 2000 till September, 2004. There is no doubt that short payment of service tax was made. But that was made good subsequently. Assessee complied with law, responding to the show cause notice and also filed return. When there was preventable reason for non compliance to law appeal of the Appellant should not have been dismissed by ld. Commissioner (Appeals). The appellant therefore challenges entire penalty of Rs.81,408/- levied under Section 78 penalty levied under Section 76 as well as under Section 77 of Finance Act, 1994

2. Revenue's pleading is that not only there was non cooperation by way of no response to summons there was wilful breach of law made by Appellant even after getting payment from the service recipient. That has been detailed out in the chart which was forming part of show cause notice. Further, when appellant sought registration from 1999, it was quite aware of its legal obligation. Nothing comes out from the record to appreciate preventable reasons if any for waiver of penalty.

3. Heard both sides and perused the records.

4. Although penalty quantum is Rs.81,408/- imposed under Section 78 and similar such penalty levied under Section 76 as well as penalty under Section 77 of Finance Act, 1994, this matter needs to be tested on the material facts available on records.

5. So far as imposition of penalty under Section 76 of Finance Act, 1994 is concerned that shall be imposable if there is failure to pay service tax liability. But such liability is fastened with the period of default. Section 77 is a penalty against contravention of provisions of law for which no penalty is separately provided under the law. Section 78 has two limbs. One is whether there are essential ingredients, like fraud, collusion, wilful mis-statement, suppression of facts or contravention of provisions of law exist. Existence of such elements call for imposition of penalty which shall not be less than the tax liability subject to double the amount of service tax not paid or short paid. Second limb is concessional penalty subject to satisfaction of the ingredients of provisions of Section 78 of Finance Act, 1994.

6. Charge made against the appellant is apparent from page 20-23 of the appeal folder demonstrating different nature of defaults like

short payment of service tax and no payment of service tax as well as full payment of service tax during different periods. Neither show cause notice nor the order of authority below have taken care to find out which are the respective periods calling for testing of different penalties imposed under different sections 76, 77, 78 of Finance Act, 1994. Once a proper testing is made, applicability of provisions of Section 80 of Finance Act, 1994 can be looked into.

7. It may be stated that ld.SDR has pointed out that there was a total default for filing return for the month of September by the assessee which is coming out from para 5 of show cause notice. When all these nature of contravention/breach of law alleged is apparent from the annexure to the show cause notice bringing out different types of deviation of law that need testing because penalty proceedings are quasi criminal in nature. When the show cause notice does not provide clear nature of default for levying penalty under respective provisions of law, the appellant deserves fair trial in view of decision of Apex Court in the case of Rajasthan Spinning Mills case where presence of element of imposition of penalty is *sine quo non*.

8. In the absence of categorical finding by the Authority below there cannot be imposition of penalty. Accordingly provisions of law prescribing penalty for default period, quantum of liability, conduct of assessee and manner of non compliance to law, are relevant considerations which can not be ignored. Therefore, this matter has to go back to ld. Commissioner (Appeals) for his categorical finding on the quantum of penalty that shall be levied under different provisions of law if the show cause notice provides foundation. It is needless to mention that ld. Commissioner shall give an opportunity of hearing to

appellant and consider appellant's prayer within para meter of Section 80 of Finance Act,

9. In the result, the matter is remanded to the learned Appellate Authority.

(D.N.PANDA)
JUDICIAL MEMBER

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