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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/211 /2010 – SM[BR] Date 21/05/2010

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

To :
C.C.E. PANCHKULA
SCO NO. 407 AND 408, SECTOR 8, PANCHKULA
(HARYANA) 134119.

C.C.E. PANCHKULA Appellant

Vs

M/S LEKH RAJ NARINDER KUMAR, Respondent

I am directed to transmit herewith a certified copy of **Final order No**.559 / 2010 –SM[BR] dated 14.5.2010 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 LEKH RAJ NARINDER KUMAR,

   AMBALA-JIND ROAD, KAITHAL, HARYANA.

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15 TAXINDIAONLINE.COM PVT.LTD. UNIT NO. 1, 2ND FLOOR,VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-110070.

Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, NEW DELHI**
**COURT NO.II**

ST/Appeal No.211/2010-SM(Br)

(Arising out of order in appeal No.238/CE/DLH/2009 dated 16.11.2009 passed by the Commissioner of Central Excise (Appeals), Delhi-II)

CCE Panchkula Appellant

Vs

M/s Lekh Raj Narinder Kumar Respondent

Appeared for Appellant : Shri I. Baig, SDR
Appeared for Respondent : None

Date of Hearing: 10.5.2010

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

Final Order No. 559 /2010 SM (Br)

Per D.N. Panda:

None present for the respondents.

2. Revenue being aggrieved by waiver of penalty has come in appeal challenging the findings of the learned Commissioner (Appeals) made in para 4 of the appellate order. According to the learned DR, for no good reason, section 80 of the Finance Act, 1994 is invokable in this case to waive penalties. When the learned Adjudicating Authority examined the issue, he found that there were deliberate breach of law made by the Respondent for which he levied penalty under Sections 76, 77 and 78 of the Finance Act, 1994. On each count of penalty, appellate order should have been passed without a summary disposal.

3. Heard Revenue in absence of the Respondent who was issued notice for hearing.

4. When the adjudication order brings out that the Respondent pleaded that he acted on the wrong advice, veracity of such statement was not examined by the learned Appellate Authority. He has not gone into the breach of law made by the Respondent under three different sections which are 76,77 and 78 of the Finance Act, 1994. Every count of breach calls for examination under law. The Appellate order does not disclose the cause for exonerating penalty for each breach. Section 80 of the Finance Act, 1994 has two elements to satisfy before grant of relief under that section. The first element is that there should be cause to envoke that section. Secondly the cause should be reasonable one. Unless a speaking order is passed to show that the cause stated if any, is abled by good reason, section 80 does not operate. The appeal order is crptic without bringing out the reasons for invoking that ~~reason~~ Section. If reason is not clearly brought out, that fails to meet the test of reasonableness. Unless the cause is reasonable, the Appellate order is bound to be set aside. Accordingly, the matter is remanded to the learned Appellate Authority to bring reason to record and test the same under Section 80 of the Finance Act, 1994. Unless the elements of Section 80 is satisfied and also the ratio laid down in Union of India Vs Rajasthan Spinning & Weaving Mills reported in 2009 (238) ELT 3 (SC) is looked into, the matter shall not reach to conclusion. Accordingly, the appeal is remanded to the learned appellate

authority to grant fair opportunity of hearing to the respondent and pass reasoned and speaking order on every aspect of breach of law clearly.

(Order dictated and pronounced in the open Court.)

(D.N. Panda)
Judicial Member

MPS*