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 05/07/2010

Appeal No. ST/916 /2009 – SM[BR]

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

To :
M/S ELECTRO WORLD,
CINEMA ROAD, NABHA, DISTT. PATIALA (PUNJAB)

M/S ELECTRO WORLD, Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 664 / 2010 –SM[BR] dated 23.6.2010 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
MR.JATINDER MOHAN, COUNSLT.
4A, STREET NO. 2, GHUMAN NAGAR, OPP. GEETA SERVICE STATION SIRHIND ROAD, PATIALA-147004
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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

West Block 2, R.K.Puram,
New Delhi-110066

COURT NO. II

Service Tax appeal No. 916 of 2009-SM

[Arising out of Order-in-Appeal No. 24/ST/CHD-II/2009 dated 7.9.2009 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

M/s. Electro World — Appellant
Reptd. by Shri Jitender Mohan, Consultant

Vs

CCE, Chandigarh — Respondent
Reptd. by Shri S.K. Bhaskar, D.R.

Date of Hearing : 16th June, 2010

Final **ORAL ORDER NO.** 664/2010 SM (BR)

Per D.N. PANDA;

Learned Consultant submits that if short fall in payment of service tax is paid mitigating factor of sub-section (3) of Section 73 takes care of that case. The present appellant having paid short fall by 24th April 2006, there should not have been issuance of show cause notice for the said short fall on 28.11.2007. The action of the learned adjudicating authority, not being in consonance with the provision contained in Section 73(3) of Finance Act, 1994, this appellant had been directed to pay penalty under Section 76 of the Finance Act, 1994. In short, preliminary argument is that when no show cause notice was to be issued the question of penalty does not arise since adjudication is not intended by under Section 73(3) of the Finance Act, 1994.

2. Learned D.R. supports the authority below.

3. There is no dispute that the case is made for realization of short fall and only default period penalty has been called for under Section 76 of Finance Act, 1994. Statutory mandate being to relieve an assessee falling under Section 73(3) of Finance Act, 1994 from litigation without issuance of show cause notice, learned counsel's averment is correct proposition of law. Therefore, he succeeds in appeal without facing any penal consequence under Section 76 of the Act. Consequently, appeal is allowed.

(D.N. PANDA)
JUDICIAL MEMBER

RK