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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

Date 11/02/2010

Appeal No. ST/713 /2009 – SM[BR] & ST/ STAY / 2787 / 2009 –SM[BR]

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

To :
M/S CHINTAMANI JAISWAL,
KOTA ROAD, TARAPUR,
VILL-PARSWAR YOGICHURA, SHAKTINAGAR,
SONEBHDRA (U.P.)
M/S CHINTAMANI JAISWAL, Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**.192 / 2010-SM[BR]&S/78 /2010 dated 1.2.2010 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 ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult SHRIPRABHAT KUMAR ADV.
   B-51[BASMENT] SARVODAYA ENCLAVE
   NEW DELHI -110017.
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. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registr
(SM Appeal Branc

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 1.2.2010

Stay Application No.2787 of 2009 and Service Tax Appeal No.713 of 2009

Arising out of the order in appeal No.33/ST/APPL/LLAD/2009 dated 27.5.2009 passed by the Commissioner (Appeals) , Central Excise & Service Tax, Allahabad.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Chintamani Jaiswal ... Appellant

Vs.

Commissioner of Central Excise & Service Tax, Allahabad ... Respondent

Appearance:

Shri S.S. Davas, Advocate for the appellant
Shri S.K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 192/2010 SM(BR) &
STAY order NO - 78/2010 SM(BR)

Per M. Veeraiyan:

After hearing both sides for a while on the stay petition, it was felt expedient to decide the appeal itself finally. Accordingly, pre-deposit of the dues as per the impugned order is waived and appeal itself is taken up for final hearing.

2. The appellant under contract with M/s Singrauli Super Thermal Power Station gave on rent vehicles for the use of officers and staff. On scrutiny of records of M/s Singrauli Super Thermal Power Station, it appeared that the appellant did not pay service on the services of rent-a-cab and accordingly, a show cause notice dated 29.4.04 proposing demand of Rs.5,916/- relating to the period 2002-2003 was issued to them and matter was adjudicated vide order dated 29th September 2004. After the receipt of the said order, the appellant voluntarily paid the duty relating to the period prior to April, 2002 as well as for the period later to March 2003. On 17.5.06, another show cause notice was issued by the Department proposing demand of Rs.19,490/- for the period from January, 2001 to 15th April 2005 [excluding the period covered by show cause notice dated 29.4.04]. In pursuance of second show cause notice, the original authority confirmed the demand of service tax of Rs.20,920/- [though the demand was only Rs.19,490/-as per the show cause notice] along with interest. He has imposed penalty of Rs.500/- under Section 75A for late registration; imposed penalty of Rs.5000/- under Section 77 for non-filing of the return. He has also imposed Rs.20,920/- as penalty under Section 76 of the Act and Rs.41,840/- under Section 78 of the said Act. Commissioner (Appeals) vide his impugned order upheld the order of the original authority in *to to.*

3. Learned Advocate for the appellant submits that they are a small time service provider; they provided service to the Singrauli Thermal Power Station. In April, 2004, they were issued with a show cause notice and it was adjudicated by the original authority on 29th September 2004. Immediately on receipt of the order of the original authority, they have voluntarily paid the duty involved for the earlier and later period. In fact, the duty demanded by the order dated 9.6.08 is more that what has been proposed in the show cause notice. However, they have already paid the duty relating to the period covered by the second show cause notice much earlier to the issue of show cause. The non-payment of service tax was due to bona fide understanding

that the tax was not liable to be paid by them. Now they are not contesting the demand of service tax and interest. The issue of show cause notice after 2 years of payment of the tax voluntarily is not justified. Further, when on the same issue for the intermediate period 2002-2003, the show cause notice was already issued subsequent ~~to the~~ show cause notice is clearly time barred.

5. Learned DR reiterates the finding of the Commissioner (Appeals).

6 I have carefully considered the submissions from both sides. The failure of the appellant in not depositing the service tax for the period in dispute appears to be due to bona fide belief that they were not required to pay the service tax. Substantial amount of Rs.28,500/- stands paid immediately on receipt of the order on the earlier show cause notice dated 29.4.2004 for period not covered by the said notice dated 29.4.2004. It is not clear why the show cause notice issued on 29.4.2004 could not have covered the period prior to April, 2002 as well. The conduct of the appellant in promptly paying the service tax even for the period not covered by the earlier show cause notice shows their bona fide. Further, in the facts and circumstances of the case invocation of extended period in the second show cause notice is not justified. I hold that this is a fit case for invoking the provision of Section 80 of the Finance Act, 1994 as canvassed by the learned Advocate.

7. In view of the above, the appeal is disposed of by upholding the demand of service tax and interest as uncontested and setting aside the penalties imposed on the appellant.

8. Stay petition is also disposed of.

(M. Veeraiyan)
Member (Technical)

scd/