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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/58 /2009 – SM[BR] Date 12/02/2010

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

To :
M/S CHARU PAPERS LTD.
8TH KM STONE, MOORADABAD ROAD, BIJNOR
(U.P.)
M/S CHARU PAPERS LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 205 / 2010 –SM[BR] dated 3.2.2010 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. MEERUT I
EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.SUNIL K GOEL,ADVOCATE
11-12, SINGHAL MARKET, ANSARI ROAD, MUZAFFARNAGAR.
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 58 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 128/CE/MRT-I/2008 dated 30.6.2008 passed by Commissioner (Appeals), Customs & Central Excise, Meerut I]

For approval and signature:

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

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1. Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
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

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M/s. Charu Papers Ltd. ... Appellants

Vs.

C.C.E., Meerut .... Respondent

Appearance:

None for the Appellants
Shri I. Baig, SDR for the Respondent

Date of Hearing/decision : 3.2.2010

Final **ORAL ORDER NO. 205/2010 SM-(BR)**

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 128/CE/MRT-I/2008 dated 30.6.2008.

2. None appears for the respondent. However, there is a request to decide the appeal on merits.

3. Heard the learned SDR for the Department and perused the records.

4. Show cause notice was issued proposing Service Tax amounting to Rs.1,06,253/- relating to the period from May, 2006 to September, 2006 and the same was confirmed by the original authority vide order dated 28.11.07 along with interest. A sum of Rs.1,06,253/- was imposed as penalty under Section 76 of the Act. However, dispute regarding credit of Service Tax was decided in favour of the appellants by the original authority. Before the original authority also, there was no dispute about the liability to pay the Service Tax as revealed from the finding of the original authority which is reproduced below:

> "First issue involved in the case is short payment of Service Tax. The party, during the course of personal hearing, admitted the liability that the said amount of Service Tax has not been paid due to financial crises. Therefore, the service tax amounting to Rs.106253/- is recoverable from the party. As regards the interest amounting to Rs.5400/- it is seen that the party late deposited service tax for October 05 to March 06 which attracts interest. Accordingly I hold that the party is liable to pay interest of Rs.5400/- under Section 75 of the Act. "

5. The appellants filed appeal before the Commissioner (Appeals) and submitted that inasmuch as they are referred to BIFR, they are not in a position to pay Service Tax and penalty. Commissioner (Appeals) taking entire facts and circumstances of the case into account, felt that penalty imposed is harsh and accordingly reduced the penalty from Rs.1,06,253/- to

Rs.25,000/-. However, she upheld the portion of the order relating to demand of Service Tax and interest. Learned SDR submits that there can be no dispute about liability to pay the Service Tax and interest as the same stands admitted before the original authority. Merely because the appellant is before the BIFR, no case has been made out for setting aside the demand of Service Tax and interest. He also submits that Commissioner (Appeals) has given substantial concession by reducing the penalty invoking the power under Section 80 of the Finance Act, 1994.

6. I have carefully considered the submissions from both sides. As seen from the record, the appellant was paying Service Tax from October, 2005 and they have defaulted in payment of Service Tax relating to 5 months in view of the financial crisis faced by them. The liability to tax and interest has been conceded before the original authority. Therefore, upholding the demand of Service Tax and interest by the Commissioner (Appeals) is in order and cannot be interfered with.

7. Considering the entire facts and circumstances of the case and considering that the Commissioner (Appeals) has thought it fit to invoke the provisions of Section 80 of the Finance Act, I deem it appropriate to give full benefit under the provision of Section 80 and accordingly set aside the penalty of Rs.25,000/- which sustained by the Commissioner (Appeals). Thus appeal is allowed to the extent of setting aside the penalty as indicted above.

(M. Veeraiyan)
Member(Technical)