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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/513 /2009 – SM[BR] ST / ROA / 229 /2009-SM[BR] Date 23/02/2010

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

To :
M/S GORA MAL HARI RAM LTD.
39, RAMA ROAD,NEW DELHI.

M/S GORA MAL HARI RAM LTD. Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**.254 / 2010-SM[BR]&M/ 51/2010 dated 19.2.2010 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.S.T. DELHI
   17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
2. Adv. / Consult
   MR.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.
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
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal No.513/2009-SM(Br)

(Arising out of order in appeal No.28/ST/Ldh/09 dated 30.4.09 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s Gora Mal Hari Ram Ltd — Appellant

Vs

CST, New Delhi — Respondent

Appeared for Appellant : Shri Manjit Singh, Consultant
Appeared for Respondent : ShriS.N. Srivastava, SDR

Date of Hearing: 9.2.2010

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

Final Order No. 254 /2010 SM(Br) &

Per D.N. Panda: Misc ORDER NO - 51/2010, SM-(BR)

Shri Manjit Singh, Consultant claiming to be Manager of the appellant company, prayed for adjournment when the matter was called. He submits that the appellant is not well. When the substance of the issue is looked into, it is seen that the appellant has made abuse of law seeking appeal against a very paltry sum of service tax demand of Rs. 1081/- so also there is a smallness of demand of penalty of Rs. 12,121/-. Against the tax demand, an amount of Rs. 881/- was paid before adjudication leaving Rs.200/- for recovery towards tax. Record reveals that learned Adjudicating Authority has reasonably considered the case of the appellant and dropped tax demand of Rs.12,48,394/- proposed in Show Cause Notice under Finance Act, 1994. So also respective education cess of Rs. 24,971/- was dropped. For the default made to make payment of legitimate dues, the appellant suffered interest of Rs. 1281/- during the period from April 2005 to September, 2005 as depicted in the table under para 8 of the order in original.

2. Against the aforesaid order, when the appellant came in appeal before the Tribunal, there was an order passed on 24.8.09 against the Stay Application No. 1908/09 calling for deposit of Rs.200/-. Such deposit not being made by the appellant, when the matter was called on 26.10.09, the appeal was dismissed for non-compliance. But today learned DR submits that compliance has been made. The appellant has also made an application for restoration of the appeal on the ground that the appellant failed to be present on 26.10.09 for reporting compliance. For no objection by Revenue, the appeal is restored and taken up for disposal of appeal today to prevent further abuse of process of law.

3. Learned Authorized Representative for the appellant claiming to be Manager of Appellant company has nothing to say today except seeking an adjournment.

4. Learned DR submits that when the appellant did not come forward to pay service tax, penalty and interest are bound to follow. The appellant has not disputed the interest element. The interest of Rs. 1281 has been discharged in two installments, Rs. 881/- was deposited prior to passing of adjudication order and Rs. 200/- was paid only after direction of the Tribunal against the stay

application disposed on 24.8.09. Therefore, when such is the conduct of the appellant, the appellant does no deserve any leniency for waiver of penalty.

5. Heard Revenue and also perused the first appellate order. Learned Commissioner (Appeals) has confirmed the adjudication order brining out clearly that interest element was payable not against the service tax of Rs. 12,488,394/- and Rs. 24,971/- but there was a series of default made by appellant to discharge admitted tax liability. Penalty was also imposed for no deposit of service tax for the period January 2005 to September, 2005 as depicted in table in para 8 of the order. If the appellant does not come forward to show reasonable cause under Section 80 of the Finance Act, 1994, the case does not call for consideration of wavier of penalty. This is a fit case being found of abuse of process of law, no interference to the first appellate order is called for. Accordingly the appeal is dismissed.

6. In the result, MA is allowed and the appeal is dismissed.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*