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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/877 /2009 – SM[BR] Date 01/09/2010

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

To :
M/S KAKDA STEELS PVT. LTD.
HEAD OFFICE-15-C, INDUSTRIAL AREA,
GOVINDPURA, BHOPAL (M.P.) 462023

M/S KAKDA STEELS PVT. LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 927 / 2010 –SM[BR] dated 25.8.2010 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.PRABHAT KUMAR
   B-51(BASEMENT)SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL NEW DELHI
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, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 877 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 342/BPL/2009 dated 1.9.2009 passed by the Commissioner of Customs & Central Excise and Service Tax (Appeals), Bhopal.]

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? : 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

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The Kakda Steels Pvt. Ltd. — Appellants

Vs.

Commissioner of Service Tax
Bhopal (MP) — Respondent

Appearance: Shri Prabhat Kumar, Advocate for the Appellants
Shri K.P. Singh, SDR for the Respondent

Date of Hearing/decision : 25.08.2010

Final

ORAL ORDER NO. 927/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 342/BPL/2009 dated 1.9.2009.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants who is a manufacturer of MS ingots and runner and riser are also rendering services. During the period 2006-2007 and 2007-08, the appellants have rendered business auxiliary services and collected the service charges of Rs.65,00,000/-. They also raised bills dated 22.3.07 and 28.3.07 on their customers towards the service tax payable by them though they have not taken service tax registration for providing business auxillary services and they have not filed returns indicating the service charges received as commission agents. On this being pointed out, they paid the entire duty amount in two instalments on 31.7.08 and 19.8.08. The show cause notice dated 21.10.08 was issued and on the basis of show cause notice, the original authority confirmed the demand of service tax of Rs.7,25,561/- along with interest and also imposed penalties under section 76, 77 and 78 of the Finance Act, 1994. On appeal by the party, the Commissioner (Appeals) has set aside the penalty imposed under section 76. The party is in appeal against the penalties sustained by the Commissioner (Appeals) of Rs.7,25,561/- under section 78 of the Finance Act, 1994 and Rs.1000/- under section 77.

4.1 Learned Advocate submits that there was lot of confusion prevailing in the field regarding the scope of services of commission agent and whether such services are liable to service tax under the head "business auxiliary services". Therefore, they were under bonafide belief that no service tax was payable by them. However, they as a precaution had raised the bills for collecting the service tax in March, 2007 itself. Therefore, he submits that no penalty should be sustained under section 78. He relies on the following decisions:-

1. Final Order No. 192/2010-SM(BR) dated 1.2.2010 in ST Appeal No. /713/2009 in the case of Chintamani Jaiswal vs. CCE, Allahabad.;
2. Tidewater Shipping Pvt. Ltd. vs. CST, Bangalore [2008 (11) STR 475 (Tri-Bang.); and
3. Dixon Electronics vs. CCE, Chandigarh 2009 (15) STR 439 (Tri-Del).

4.2 Alternatively, he submits that the original authority and the Commissioner (Appeals) have not given option to the appellants about availability of concessional penalty of 25% and therefore, they should be allowed to pay the concessional penalty as provided under first proviso to section 11AC in the light of the decision of the Hon'ble High Court of Delhi in the case of K.P. Pouches Ltd. vs. Union of India reported in [2008 (228) ELT 31 (Del)].

5. Learned SDR submits that the appellant's claim of bonafide belief that they were not liable to pay Service tax as commission agent is without substance especially in the light of their raising the bills for service tax. They have also not claimed that the said bills have not been paid for. Having collected the service tax, they were bound to deposit. Therefore, the Commissioner (Appeals) has rightly sustained the penalty under sections 77

and 78 of the Finance Act. He also submits that the payment of 25% of penalty is available suo moto subject to the conditions being fulfilled and in as such as they have not paid within 30 days, now they may not be eligible.

6. I have carefully considered the submissions from both sides. There is no dispute that the appellants were liable to pay service tax as Business Auxiliary services on service charges received by them as commission agent. The claim of the appellants that they were under bonafide belief that they were not liable to pay service tax is clearly contradicted by their own act of raising bills for the service tax which apparently stands paid to them. In other words, the appellants have collected the service tax earlier but choosen to register themselves for providing the services of business auxiliary only on 12.5.08. The appellants have registered themselves as service provider under other category but have not furnished details of the service charges received by them as commission agent and service tax collected by them. Therefore, the penalty under section 78 is justified.

7. However, the submission of the learned advocate that in the absence of specific offer in the order of the original authority and in the order of the Commissioner (Appeals) regarding option to pay concessional penalty in terms of first proviso to section 11AC, the same should be extended is to be accepted in the light of decision of the Hon'ble High Court of Delhi in the case of K.P. Pouches cited supra.

In view of the above, the appeal is disposed of as follows:-

a) The penalties sustained by Commissioner (Appeals) under section 77 and section 78 are upheld.

b) The appellants is given option to pay a sum of Rs.1,81,390.25 (Rupees One lakh eighty-one thousand three hundred ninety and twenty-five paise only) within 30 days from today. If the said amount is not paid within stipulated time, the penalty shall be Rs.7,25,561/-.

(M. Veeraiyan)
Member(Technical)

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