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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/705 /2010-SM[BR] &ST /STAY /1261 /2010-SM[BR] Date 06/09/2010

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

To :
M/S. BEN ENCON PRIVATE LIMITED
M-35, C R PARK, NEW DELHI
110019

M/S. BEN ENCON PRIVATE LIMITED Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 952/2010-SM[BR]&S/379/2010 dated 27.8.2010 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.S.T. DELHI
   17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
2. Adv. / Consult
   MR.V. S. MISHRA, ADVOCATE
   B-125, IIND FLOOR, NIRMAN VIHAR, DELHI-110092
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Service Tax Stay No. 1261 of 2010-SM and Service Tax Appeal No. 705 of 2010-SM

(Arising out of Order-in-Appeal No. 114/ST/DII/10 dated 19.3.2010 passed by the Commissioner (Appeals), Central Excise, Delhi-II)

Ben Encon Pvt. Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance :

Appeared for Appellant : Shri V.S. Mishra, Advocate

Appeared for Respondent : Shri K.P. Singh, DR

Date of Hearing: 10.8.2010

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 952/2010 SM (BR) & S-379/2010 SM(BR) dated............

Per D.N. Panda:

The Appellant raises its grievance submitting that their plea before the ld. Adjudicating Authority that they had a cause under Section 80 of the Finance Act, 1994 for consideration due to hardship was ignored by that Authority. Penal provisions of Section 76 of the said Act was invoked. Filing a chart today, the appellant submits that there is no doubt that there was delay in payment of the service tax but there was no deliberate intention to cause such delay. Further more, when the service was provided in the year 2003 the period under the Adjudication was only at the infancy stage. Therefore they deserve consideration under the provisions of law. Accordingly, the pre-deposit may be waived.

2. Ld. DR Shri K.P. Singh submits that there was no cause shown to the Authorities below for granting concession in penalty. When the appellant failed to produce relevant documents to show the break-up of the consideration received, the Authorities had no option but to pass an appropriate order invoking penal provision of law. Despite notice, neither reply to show cause notice was filed nor also there was appearance made by the appellant to explain its case. The Appellant although claimed that the gross receipt was Rs.29 lakhs and was inclusive of Service Tax that was failed to be substantiated. There is material to suggest that the Appellant pleaded before Authorities below that Service Tax was not paid for which they failed to deposit the same into the treasury. When there is total failure on the part of the Appellant to plead defence before the authorities below with evidence there should not be any leniency to be shown to the appellant.

3. Heard both sides and perused the record.

4. Penalty proceedings are quasi-judicial proceedings. Because there is provision of law to levy penalty, that shall not be *ipso facto* levied. There is no doubt that lapses of Appellant appear from

para-5 of the adjudication order as the ld. DR has rightly pointed out. So also there is finding coming out from first Appellate order against the Appellant. When the appellant failed to provide the break up of the consideration, mandatory penalty prescribed under law may be imposable. When the case is now pleaded to be a case under Section 80 of the Finance Act 1994, before infliction of penalty, the appellant deserves hearing. Probably when the levy was in infancy stage, the appellant could not visualise the consequence of law. Therefore to meet the end of justice that the appellant should go back to the ld. Adjudicating Authority to grant an opportunity to the Appellant to explain its case properly if they perceived they have case under 80 of the Finance Act 1994. Failure on the part of the appellant to appear and bring out entire evidence and pleadings if any before the ld. Adjudicating Authority shall render the proceeding ex.parte.

5. Keeping in view the penal consequence of law which may cause hardship to the Appellant, the matter needs remand to the ld. Adjudicating Authority to grant an opportunity to the Appellant to appear and explain its case. But ld. DR submits that the Appellant has a defiant attitude. It is accordingly directed that the Appellant should appear before the ld. Adjudicating Authority within one month of the receipt of the order and file an Application to fix date of hearing. On the date fixed, the Appellant shall cause appearance and plead its case. Although, decision has been taken to remand the matter, looking into the prejudice caused to Revenue, it is

directed that the Appellant should make deposit of Rs.50,000/- (Rupees Fifty Thousand only) before making an application before the ld. Adjudicating Authority to fix date of hearing. Along with Application, the Appellant has to produce the challan for the satisfaction of the Adjudicating Authority to fix the date of hearing. Consequently the stay application and appeal are disposed in above terms.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM