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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/787 – 788 / 2008 -SM[BR] Date 09/11/2010

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

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Appellant

Vs

M/S L.I.C. OF INDIA , Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1174 -1175 / 2010-SM[BR] dated 12.10.2010 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
   M/S L.I.C. OF INDIA ,
   G.T.ROAD, PHAGWARA, PUNJAB.
2. Adv. / Consult SHRI MAHENDER SINGH ADV.
   M/S RESPONDENT:---------------------

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)

8. M/S L.I.C. OF INDIA ,
G.T.ROAD, PHILLAUR, DISTT. JALANDHAR, PUNJAB.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:12.10.2010

Service Tax Appeal No. ST/787-788/08-SM

[Arising out of Order-in-Appeal No.402-403/CE/APPL/JAL/2008 No. dated 26.08.2008 passed by the Commissioner (Appeals), Jalandhar]

For approval and signature:

HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)

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

The Commissioner, Central Excise ...Appellant

Vs.

M/s. LIC of India ... Respondent

Present for the Appellant :Shri.R.K.Gupta, SDR
Present for the Respondent:Shri.Mahender Singh, Advocate

Coram: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Final **ORDER NO.** 1174-1175/2010 SM (Br) **DATED:12.10.2010**

PER: ASHOK JINDAL

This appeal filed by Revenue is against the waiver of penalty under section 76, 77 & 78 of the Finance Act, 1994 by the lower appellate authority. The facts of the case are that the respondents are the service provider under the category of Life Insurance and auxiliary services. During the course of audit, it was pointed out that the respondent has not paid the differential service tax for the period 08/02th Jan., 2004 on commission paid after 16.8.2002 to their agents for renewal of insurance policies issued prior to 16.8.2002. The respondent paid the service tax on the renewal of such insurance policy in March, 2004 and interest in September, 2004. Later on a show cause notice was issued in 2007 imposing a penalty under section 76,77 & 78 of the Finance Act. The adjudicating authority imposed the penalty, but the lower appellate authority dropped the penalty against the respondents. Against the said order the Revenue is in appeal.

2. The ld. DR submitted that the respondents have not paid the service tax in time on commission paid to the agents for renewal of policies after 16.8.2002. Hence, they are liable to pay penalty. On the other hand, the ld. Advocate for the respondent submitted that the respondents are under a doubt that whether the service tax is payable on such commission paid to the agent on renewal of the policies which were issued prior to 16.8.08 or not and sought clarification from the CBEC and after obtaining the clarification, they have paid the service tax and in September, 2004 they paid the interest also. Hence, no penalty is leviable on the respondents as rightly held by the lower appellate authority.

3. Heard.

4. Considered the submissions made by both the sides. In this case the respondent has sought the clarification from the CBEC, whether they are liable to pay service tax on the commission paid to their agents on policy renewal of policies which were issued prior to 16.8.2002 or not. This fact is not disputed by both the sides. The Board has clarified to the respondents at their Mumbai Head Office. There after they paid the service tax after obtaining the clearance from the Mumbai Head Office. In these circumstances, respondents were under bonafide belief that whether the service tax is leviable or not on the respondents. Further in the appellants own case of Jaipur Unit, this Tribunal taken into consideration that the respondents have not paid the service tax in time on account of confusion whether they are liable to pay service tax or not on such commission and the benefit of section 80 of the Finance Act 1994 was given to the respondents and penalties were dropped. In this case also lower appellate authority considered the submissions of the respondent that they were under bonafide belief that whether they are liable to pay service tax or not has rightly given the benefit under section 80 of the Finance Act 1994 by waiving the penalties and the same is the correct view. Accordingly, I do not find any reason to interfere

with the impugned order, same is upheld. Appeals filed by the revenue ~~respondents~~ are rejected.

[Dictated & Pronounced in the open Court].

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Anita