TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1136/2010 – SM[BR] ST / STAY /2329 / 2010-SM[BR] Date 11/11/2010

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

To :
M/S AKASH GANGA COURIER JAIPUR PVT. LTD.
4-A, HATHI BABU KA BAGH, KANTI NAGAR, JAIPUR.

M/S AKASH GANGA COURIER JAIPUR PVT. LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1219 /2010-SM[BR]&s/524/2010 dated 15.10.2010 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.ASHOK KUMAR JAIN AND CA PRAVEEN AGRAWAL
16/194, 2ND FLOOR, FAIZ ROAD, KAROL BAGH, N 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram,
New Delhi

COURT No. II

ST/STAY/2329/10-SM IN AND SERVICE TAX APPEAL NO. 1136/10-SM

[Arising out of Order-in-Appeal No. 197(DK)ST/JPR-i/2010 dated 29.4.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur-I, Jaipur]

M/s. Akash Ganga Courier Jaipur (P) Ltd., Appellants

Versus

CCE, Jaipur-II Respondent

Appearance:

Shri Ashok Kumar Jain, C.A. for the appellants;
Shri K.P. Singh, SDR for the Revenue

Date of Hearing/decision: 15th October, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member;

FINAL ORDER NO. 1219/2010 SM (BR) & S-524/2010 SM (BR) **DATED**

Per D.N. Panda:

Learned authorized representative submits that the appellant was under belief that Maruti Van that was purchased having suffered central excise duty for use in providing courier service entitles the appellant to avail Cenvat Credit of Central Excise duty paid on Maruti Van.

With such belief, even if the vehicle was purchased from the dealer, the appellants set off the duty element of Rs. 71,026/- as Cenvat credit against service tax paid by them. But, when the appellants came to understand that the invoice issued by Maruti dealer not exhibiting central excise duty element paid deprives the appellants from set off of Rs. 71,026/- against their service tax liability, the appellants discharged such liability in terms of a challan, copy of which is produced today for perusal of Revenue. Having bona fide belief as stated the Appellant acted accordingly. The appellant also cleaned its hands depositing the interest element of Rs. 42,221/- in terms of challan dated 15.1.10. Further, to buy peace the appellants also deposited Rs. 17,757/- towards penalty by a challan, a copy of which is produced today for perusal of Revenue.

2. In view of aforesaid compliance to the law the appellants submits that there may be total waiver of pre-deposit and penalty imposed under Rule 15(4) of Cenvat Credit Rules, 2004. Having been waived by the learned first appellate authority there should not be further

penalty of Rs. 71,026/- under Section 76 of the Finance Act, 1994.

3. Per contra, learned D.R. submits that what was required to be considered has been considered by the learned appellate authority. The appellants do not deserve any further concession in respect of penalty.

4. Heard both sides and perused the record.

5. Having gone to various aspects of the matter as has been highlighted by Appellant as aforesaid, it has become expedient to dispose of the appeal itself at the interim stage in the interest of justice without adding pendency. There appears no dispute about the cooperation of the appellants who came forward to discharge the tax demand after the adjudication order was passed and also interest and penalty deposited to the above extent. Adjudication order was passed on 21.12.2009 raising service tax demand of Rs. 71,026/-, interest under section 75 of Finance Act, 1994, and penalty of Rs. 71,026/- under Section 76 of the Finance Act, 1994, as well as penalty of Rs. 71,026/- under Rule 15(4) of Cenvat Credit Rules, 2004. Learned Commissioner (Appeals) waived the penalty under Rule 15(4) of Cenvat Credit Rules, 2004 coming to the conclusion that there was no penal provision under that

rule at the material time. It appears that Rule 15(4) of Cenvat Credit Rules, 2004 having made provision for imposition of penalty under Section 78 of Finance Act, 1994, Legislature did not prescribe further penalty under Rule 15(4) of Cenvat Credit Rules, 2004. In the present case no penalty is imposed under Section 78 of the Finance Act, 1994. Therefore, no further exercise is called for in respect of Rule 15(4) of Cenvat Credit Rules, 2004 or Section 78 of Finance Act, 1994.

6. So far as penalty under Section 76 of the Finance Act, 1994 is concerned, the liability under that Section arises for failure to pay service tax. Quantum of penalty prescribed is subject to ceiling that the same shall not exceed service tax payable. In the present case, the belief of the appellants that it was entitled to credit of excise duty paid on Maruti van has brought the appellants to the purview of penalty. But cooperative attitude of the appellants comes to record to appreciate bonafide of appellant when the appellant preferred itself to deposit Rs. 71,026/- towards service tax which arose due to disallowance of Cenvat credit, interest of Rs. 42,221/- and penalty of Rs. 17,757/- by three different challans. Of

course three challans are subject to verification by Revenue.

7. Section 76 of Finance Act is subjected to provision of Section 80 of the Finance Act, 1994. That is an overriding section to mitigate hardship caused by section 76 and 78 of Finance Act, 1994. For reasonable cause attributable to the failure under law the defaults are not looked in gravious manner. The conduct of the appellant in the present case do not pose any difficulty to understand that the appellants did not prefer litigation. Unfortunately, ignorance of law of the appellant appears to have clouded in the minds of the appellant to commit bonafide mistake. When ignorance of law comes to record, the appellant should not suffer for its mistake.

8. When the aforesaid features persist, it is not desirable to keep this appeal pending merely disposing stay application when sufficient materials came to record. Therefore, dispensing with pre-deposit and also considering that the appellant has already deposited Rs. 17,757/- towards penalty the balance demand of penalty is waived. Consequently, the appellant gets relief partly to the extent of the quantum of penalty of Rs. 53,269/-

under Section 76 of the Finance Act, 1994. Such conclusion results in modification of first appellate order. However, this order has been passed subject to verification of challans to be produced by the appellants before adjudicating Authority.

9. In the result, stay application is disposed of and appeal is partly allowed.

10. Learned D.R's apprehension in the course of hearing was that this order may affect Revenue's interest because assessees without satisfying the requirement of documentation desired by law may take similar relief in future. It is made clear that learned D.R. should not be apprehensive for the reason that this order has been passed on the governing facts and attendant circumstances of the case as aforesaid and may or may not come to the rescue of any other assessee in future unless that case comes within the four of this order.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK