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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/690 /2009 – SM[BR] E/ CO/ 62/2010-SM[BR] Date 16/11/2010

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S AJAY POLY PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1248 / 2010-SM[BR] dated 4.11.2010 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 AJAY POLY PVT. LTD.

   E-180, INDL. AREA, PHASE-VII, SAS NAGAR, MOHALI.

2. Adv. / Consult SHRI V.SWAMINATHAN ADV.
   G-50,IIND FLOOR –SIDE ENTRANCE LAJPAT NAGAR-III
   NEW DELHI-24.

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-110 066

SERVICE TAX APPEAL NO. 690 OF 2010-SM & C.O. NO. 62 OF 2010

[Arising out of Order-in-Appeal No. 257/Chd-I/CE/2009 dated 27.7.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

CCE, Chandigarh-I — Appellant

Versus

M/s. Ajay Poly (P) Ltd., — Respondent

Appearance:
Shri S.K. Bhaskar, D.R. for the Revenue/appellant;
Shri V. Swaminathan, Advocate for the respondent

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

Date of hearing/decision: 4th November, 2010

FINAL ORDER NO. 1248/2010 SM (BR) **dated** ____

Per D.N. Panda:

Although stay application has been listed today in the cause list, ~~but~~ record shows that there was an order passed on 23rd October, 2009 rejecting Revenue's stay application. Consequently, disposal of appeal arises.

2. The proceeding was initiated against the respondent on the conception that from the period 10-9-2004 to 12-12.2004 the respondent did not pay service tax on the job charges of Rs. 9,40,035/- received. When the audit pointed out that service tax was payable on such gross receipt, the respondent discharged his

tax liability of Rs. 94,035/-, Education Cess of Rs. 1881/- and interest of Rs. 9,665/-, aggregating Rs. 1,05,581/- vide TR-6 challan dated 4.10.2006. The authority intended the respondent to pay service tax under the category of Business Auxiliary Service provider. Section 65(19) of the Finance Act, 1994 brought production or processing of goods for and on behalf of client in terms of clause (v) of the said section for levy of service tax under the category of "Business Auxiliary Service". This was effective from 16.6.2005 being introduced to Section 88 of the Finance Act, 2005. It is surprising, how the authorities taxed the respondent when there was no law in force for the material period. But learned D.R. today supports the adjudication order.

3. Learned Counsel appearing on behalf of the respondent submits that the appellant was very cooperative to deposit the tax and interest immediately when the audit pointed out and that is coming out from the adjudication order itself. For some time past the taxability of particular receipt was under confusion for which the appellant was made to suffer. Considering such mitigating factor learned Commissioner (Appeals) waived the penalties imposed on the respondent under different provisions of the law. He ha snot found any mala fide on the part of the respondent. Under such circumstances levy of penalty is uncalled for.

4. Heard both sides and perused the record.

5. Legal Provisions has been stated in the preceding paragraphs at the beginning of this order. Both on the ground of mitigating factor

and on the point of non-leviability, the appeal of Revenue should fail. Accordingly, the same is failed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK