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/731 /2010 – SM[BR] Date 16/11/2010

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

To :
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II Appellant

Vs

M/S JITENDRA SINGH TANEJA, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1249 / 2010-SM[BR] dated 19.10.2010 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 JITENDRA SINGH TANEJA,
   55A, UDYAN, PART-I, MAHANAGAR COLONY, BAREILLY.
2. Adv. / Consult
   NONE:----------------

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. III

Service Tax Appeal No. 731 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 41-ST/MRT-II/2010 dated 23.2.2010 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut II]

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? :

Commissioner of Central Excise Meerut II — Appellants

Vs.

M/s. Jitendra Singh Taneja — Respondent

Appearance:

Shri K.P. Singh, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 19.10.2010

Final **ORAL ORDER NO. 1249/2010 SM (Br)**

Per Ashok Jindal:

Revenue has filed this appeal against the dropping of penalty under section 78 of the Finance Act, 1994 and on reduction of penalty under section 77 ibid.

2. The matter was listed for final hearing for today. There was adjournment request on behalf of the respondents. But considering the issue involved is on narrow compass, the matter is taken up for final hearing today itself.

3. The learned DR submitted that in this case, the adjudicating authority has imposed penalty on the respondents for contravention of provisions of section 68 of the Finance Act, 1994 read with section 6 of the Service tax Rules, 1994 and also imposed the penalty of Rs.6,000/- under section 77 for contravention of provisions of section 70 of the Act read with Rule 7 of the Service Tax Rules, 1994. But the lower appellate authority has dropped the penalty under section 78 and reduced the penalty under section 77 from Rs.6,000/- to Rs.3,000/- which is not the correct view taken by the lower appellate authority. Infact the lower appellate authority has not to interfere with the adjudication order as the respondents has not filed the Service Tax return in time and for the violation of the same, he was liable to penalty under section 78 and 77.

4. Heard.

5. I have gone through the impugned order and the show cause notice. There is proposal of penalty under section 76 and 77 of the Finance Act, 1994. There is no proposal for imposing penalty under section 78 of the Act

and the lower appellate authority has rightly held in paragraph 6.2 of the impugned order wherein it has been held that the penalty under section 78 is beyond the scope of show cause notice and the adjudicating authority has gone beyond the scope of show cause notice while imposing the penalty under section 78 of the Finance Act. The lower appellate authority has taken the correct view. I am also in agreement with the same. Accordingly, he has rightly dropped the penalty under section 78 of the Act.

6. With regard to penalty under section 77 which is reproduced herein as under:-

> "77. Penalty for contravention of any provision for which no penalty is provided –
> Whoever contravenes any of the provisions of this Chapter or any rule made thereunder for which no penalty is separately provided in this Chapter shall be liable to a penalty which may extend to any amount not exceeding one thousand rupees."

7. On perusal of the said section, it is clear that penalty under section 77 may be extended to the amount not exceeding Rs.1,000/- thus the maximum penalty can be Rs. 1,000/- but there is no restriction for minimum penalty and the lower appellate authority has rightly reduced the penalty from Rs.6,000/- to Rs.3,000/- in the instant case. Accordingly, I do not find any reason to interfere with the impugned order same is upheld.

8. Appeal filed by the Revenue is rejected.

(Ashok Jindal)
Member(Judicial)

ss