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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/114 /2008 & ST / 173 / 2007 -SM[BR] Date 18/11/2010

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

To :
M/S U.P.CO-OPERATIVE SUGAR FACTORIES
FEDERATION LTD.
(DISTILLERY UNIT)ANOOPSHAHAR,DISTT.
BULANDSHAHR
M/S U.P.CO-OPERATIVE SUGAR FACTORIES
FEDERATION LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1278-1279 /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
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307

2. C.C.E. Jaipur-I.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

[2] SHRI G.K. SARKAR ADV.
A-5, BASMENT, LAJPAT NAGAR-III NEW 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)

[2] M/S MAN STRUCTURALS LTD.
NEAR LOCO, RLY. STATION, JAIPUR [RAJ.]

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram,
NEW DELHI-110 066

SERVICE TAX APPEAL NO. 114 OF 2008-SM

[Arising out of Order-in-Revision No. 41/Commissioner/Noida/2007 dated 31.10.2007 passed by the Commissioner of Central Excise, Noida]

M/s. U.P. State Coop. Sugar Factory, Appellants

Versus

CCE, Noida Respondent

SERVICE TAX APPEAL NO. 173 OF 2007-SM

[Arising out of Order-in-Appeal No. 116 (GRM)ST/JPR-I/2006 dated 8.1.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

M/s. Man Structurals Ltd. Appellants

Versus

CCE, Jaipur-I Respondent

Appearance:

Shri Bipin Garg, Advocate for appellant No. 1 &
Shri G.K. Sarkar Advocate for appellant No. 2;
Shri S.K. Bhaskar, D.R. for the respondents

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

Date of hearing/decision: 4th November, 2010

FINAL ORDER NO. 1278 - 1279/2010 SM (Br) **dated** ________

Per D.N. Panda:

Learned Counsels are fair enough to state that the appeals were filed when the law was under confusion. When the Larger Bench decided the issue there exists no further cause for prosecution of the appeal. But they pleaded that when the law was at the infant stage the proceedings were initiated. Confusion of law only brought the appellants to the fold of penalty. Therefore, levy of penalty on the assessee shall cause undue hardship which may be mitigated by waiver of penalty.

2. Learned Counsel Shri Garg submits that the very confusion is patent from the approach of the authorities by revision order to bring the appellants to the fold of law. While the adjudicating authority held levy was appropriate exercise of suo moto revision power is testimony of confusion of the law. Accordingly, he prays for waiver of penalty.

3. Learned Counsel Shri G.K. Sarkar in appeal No. ST/173/07 pleads for waiver of penalty on the ground that the appellants have suffered adjudication at the stage of inception of the law. Learned Commissioner (Appeals) has not made any finding as to how penalty shall sustain. He just mechanically upheld the order of the adjudicating authority saying that the impugned order is fair and sustainable in law. According to Shri Sarkar an order can be confirmed only stating the reason which is heartbeat of Justice. Non-reasoned order does not sustain in the absence of contumacious conduct of the appellant, without ~~and also~~ deliberate defiance ~~defence~~ of the law, imposition of penalty shall be undue hardship and shall defeat the purpose of law.

4. Learned D.R. supports the order of the authorities below.

5. Heard both sides and perused the record and both appeals are disposed commonly for common cause involved.

6. So far as appeal NO. ST/114/08 is concerned the completed re-adjudication was re-opened by suo moto revision. So far as appeal No. ST/173/07 is concerned that was regular proceeding traveling through two forums. In both the cases the authorities have failed to show the reason as to why penalty should be levied. There is nothing on record to show that breach of law was deliberate. Only, the order shows a willful attempt of evasion of tax. It may be stated that penal proceedings are quasi-criminal in nature and Revenue should come out with full proof of evasion. Nothing being apparent from the record, the appellants should not suffer penal consequences of law. It may also be noted that the appellate authorities have also simply confirmed the order without stating the reason, why there should be penalty. Both, on account of reason being not stated and intention to evade being absent, confirming the tax element to be payable by the appellants the penalties imposed are waived. Consequently, both the appeals are allowed partly.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK