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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/649 /2009 AND ST / 693 / 2009 -SM[BR] Date 06/07/2010

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

To :
SHRI R.K.CHHABRA,
HOUSE NO. 439,
SECTOR-61, CHANDIGARH.

[2] M/S R.K. CHHABRA,
HOUSE NO . 439, SECTOR-61, CHANDIGARH

SHRI R.K.CHHABRA, Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 698 – 699 / 2010 -SM[BR] dated 25.6.2010 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:15.06.2010

Serviced Tax Appeal No.ST/649/09-SM

[Arising out of Order-in-Appeal No.241/CE/Chd-I/2009 dated 06.07.09 passed by the Commissioner (Appeals)].

Shri R.K. Chhabra ...Appellant

Vs.

Commissioner of Central Excise, Chandigarh ... Respondent

Service Tax Appeal No.ST/693/09-SM

[Arising out of Order-in-Appeal No.241/CE/Chd-I/2009 dated 06.07.09 passed by the Commissioner (Appeals)].

Commissioner of Central Excise, Chandigarh ...Appellant

Vs.

Shri R.K. Chhabra ... Respondent

Present for the Appellant :Shri.Sudhir Malhotra, Advocate
Present for the Respondent:Shri.R.K. Gupta, DR

Coram: HON'BLE MR.DN.PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 698-699/2010 SM (Br) **DATED:15.06.2010**

PER: D.N.PANDA

Ld. Counsel submits that this appellant has already deposited the service tax element alongwith interest before issuance of show cause notice. His prayer is that there shall not be liability on the appellant for non-determination of such liability by a speaking and reasoned order.

2. Ld. DR supports the order of authorities below.

3. Heard both sides and perused the records. Reading of first paragraph of the appellate order indicates that the case emanated from the audit observation. It appears that the income tax return and service tax return was examined by audit party. Consequent upon the observation of that party, the demand in question arose, holding that the appellant has provided scientific and technical consultancy service.

4. None of the Authorities below found out what was the reason for variation of the facts and figures in two returns. Nor the authority ... appreciated the object of two different statutes. Simply the cryptic order has been passed without coming to a conclusion about the particular amount whether attributable to taxable services. When such a case comes out from the impugned order, justice is ordnanes that there cannot be perpetuated irregularities committed by a non-speaking order. It may be mentioned that Hon'ble Supreme Court has framed guidelines in the case of Jt. Commissioner of Income-tax, Surat vs. Saheli Leasing and Industries Ltd reported in 2010 (253) ELT 705 (S.C.) holding how to deliver justice by a speaking and reasoned order. Paragraph 6, 7 and 8 of the said judgement is reproduced below for convenience of reading of the ld. Adjudicating authority:-

"6. *We, therefore, before proceeding to decide the matter on merits, once again would like to reiterate* *few guidelines for the Courts, while writing orders and judgments to follow the same.*

7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgement/ order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgements should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) *After arguments are concluded, an endeavour should be made to pronounce and judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.*

(g) *It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.*

8. Aforesaid are some of the guidelines which are required to be kept in mind while writing judgments. In fact, we are only reiterating what has already been said in several judgments of the Court."

5. In view of the guidelines indicated for delivery of justice in the manner desired by elementary principles of law, the orders of the authorities below suffering from the infirmity of lack of reason and being non-speaking order required to be remanded. That is ordered accordingly. However, to deliver justice to this small assessee, the matter is remanded to the ld. Adjudicating authority to examine other material fact and also the evidence on record and taking the Apex Court guidelines reproduced above, pass a speaking order granting fair opportunity of hearing. If such an exercise is done, justice shall be not only be done that shall be seemed to have been done. Consequently, the appeal is remanded to the extent indicated above.

6. At the fag end ld. Counsel submits that the appellant having deposited the tax element and interest, if at all there shall

be liability upon hearing and deciding the matter as directed by the Tribunal aforesaid, appropriate concession in penalty, if permissible under law, should not be denied, since the taxes have been deposited before issuance of show cause notice. His further submission is that penalty under section 76 and 78 should not be simultaneously levied.

7. In view of the above submissions for appropriate application of law there is no second opinion that the authority shall certainly look into the aspect of cumulative penalty and also taking into consideration the aspect of the taxes paid before issuance of show cause notice ~~for~~ grant of concession under the provisions of section 78 and 80 may not be overlooked. So also ld. Adjudicating authority shall not fail to examine applicability of ratio laid down in the judgement of High Court of Delhi in the case of K.P. Pouches (P) Ltd. vs. Union of India reported in 2008 (228) ELT 31 (Del.) and also the Hon'ble High Court of Punjab & Haryana in the case of CCE vs. Nachiketa Paper Ltd. reported in 2008 (86) RLT 225 (P & H).

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita