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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/977 /2009 – SM[BR] AND ST / STAY / 3222 / 2009-SM[BR] Date 09/07/2010

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

To :
M/S CHANDRA SHEKHAR SIKHAR SINGH
(CONTRACTOR)
SHATABADI NAGAR, TELIBANDHA, RAIPUR (C.G.)

M/S CHANDRA SHEKHAR SIKHAR SINGH
(CONTRACTOR) Appellant

Vs

C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No.719 /2010-SM[BR]& S /277 /2010 dated 5.7.2010 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. RAIPUR

   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI A.K. MISHRA CONSLT.
   I,CSC-6, FIRST FLOOR, PARK PLAZA BEHIND SHAKTI
   APARTMENTS, SECTOR-9, ROHINI DELHI-85.

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-III

SINGLE MEMBER BENCH

Date of hearing/decision: 5.7.2010

Stay Application No.3222 of 2009 and
Service Tax Appeal No.977 of 2009-SM

Arising out of the order in appeal No.07(ST)RPR-I/2009 dated 2.4.09 passed by the Commissioner (Appeals), Central Excise, Raipur I.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Chandra Shekhar Singh (Contractor) .... Appellant/applicant

Vs.

C.C.E., Raipur .... Respondent

Appearance:

Shri A.K. Mishra, Consultant for the appellant
Shri S.K. Bhaskar, Authorised Departmental Representative (JDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 719/2010 SM(Br) & S-277/2010 SM(Br)

Per M. Veeraiyan:

Heard both sides. Stay Petition is allowed. Appeal itself is taken up for final hearing.

2. The original authority vide order dated 10.7.08 confirmed the demand of Rs.1,78,645/- along with interest and imposed an amount of penalty of Rs.1,78,645/-. The Commissioner (Appeals) vide stay order dated 7.1.2009 directed the appellant to deposit a sum of Rs.75,000/-. On failure of the same, Commissioner (Appeals) by the impugned order dated 2.4.2009 dismissed the appeal for non-compliance of the provision of Section 35F of the Central Excise Act, 1944.

3. Learned Consultant appearing for the appellant submits that the appellant has paid a sum of Rs.89,000/- on 25.1.2010 towards service tax as per the order of the original authority dated 10.7.08. In view of the above, he seeks remand of the matter to Commissioner (Appeals).

4. Learned DR has no objection.

5. I have carefully considered the submissions. The appeal was dismissed by the Commissioner (Appeals) for non-compliance of the terms of the stay order. The appellant has since deposited 50% of the amount of service tax demanded which is more than the amount of Rs.75,000/- ordered to be pre-deposited. As the Commissioner (Appeals) has not considered the appeal on merit, I deem it appropriate to set aside the order of the Commissioner (Appeals) and remand the matter to Commissioner (Appeals) for fresh consideration after granting reasonable opportunity of hearing to the appellant. Commissioner (Appeals) will hear the appeal without insisting on further pre-deposit.

6. The appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Technical Member

scd/