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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/490 /2010 – SM[BR] Date 19/07/2010

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 SINGLA FINANCE SERVICE, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 761 / 2010-SM[BR] dated 17.6.2010 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
   M/S SINGLA FINANCE SERVICE,
   BUDHA DAL COMPLEX, PATIALA.
2. Adv. / Consult SHRI SANDEEP SINGH REP.
   M/S RESPONDENT;----------------

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 (Harvana)
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.
Single Member Bench

Service Tax Appeal No.490 of 2010

(Arising out of Order-in-Appeal No.3/ST/Stay/CHD-II/2010 dated 25.1.2010 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

Date of Hearing/Decision: 17.06.2010

For approval and signature:

Hon'ble Mr.Rakesh Kumar, Member (Technical)

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?	

CCE, Chandigarh — Appellant

Vs.

M/s.Singla Finance Services — Respondent

Present for the Appellant : Shri R.K.Gupta, DR
Present for the Respondent: Shri Sandeep Singh, Representative

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORDER No.** 761 /2010 SM (Br)

PER: RAKESH KUMAR

This is an appeal filed by the Department. The brief facts of the case are that the respondents are functioning as Direct Marketing Agents of HDFC Bank and their activities were covered by the definition of "Business Auxiliary services", which became taxable with effect from 1.7.2003. However, while the respondents were providing this taxable service, they neither took service tax registration nor paid service tax till the non payment was detected by the department in July, 2007. However, on being asked by the department in July, 2007, they took service tax registration and deposited the entire service tax and interest on 12.08.2005 for the period of dispute i.e. from 01.07.2003 to 31.3.2005. Subsequently, the department issued show cause notice dated 24.01.2008 to the respondents for payment of service tax alongwith interest and imposing penalty under Sections 76, 77 and 78 of the Finance Act, 1994. The Show cause notice was adjudicated by the Assistant Commissioner vide Order-in-Original dated 27.2.2009 by which the service tax demand was confirmed alongwith interest and the amount deposited by the respondents towards service tax and interest vide TR-6 challan dated 12.08.2005 was appropriated. The Assistant Commissioner also imposed penalties under Sections, 76, 77 and 78 of the Finance Act, 1994 on the assessee. On appeal, The Commissioner(Appeals) vide Order-in-Appeal No.3/ST/Stay/CHD-II/2010 dated 25.1.2010 while confirming the Assistant Commissioner's order, reduced the penalty under Section 78 of the Act to 25% of the service tax amount and penalty under Section 77 was upheld for non filing of ST-3 returns. The Penalty under Section 76 was set aside by invoking Section 80 of the Act. It is against this order of the Commissioner (Appeals) waiving penalty under Section 76 of the Act, the department has filed this appeal.

2. Heard both sides.

2.1 Shri R.K.Gupta, learned DR, reiterated the grounds of appeal of the department and pleaded that the service tax payable by the respondents was not paid by due date, that neither service tax registration had been taken nor ST-3 returns were being filed, that, therefore sections 76 77 and 78 are attracted ~~and~~ but the respondents have not shown any reasonable ground for their inability to discharge the service tax liability by due date. He therefore pleaded that the Commissioner (Appeals)'s order waiving penalty under Section 76 by invoking Section 80 of the Act, is not correct.

2.2. Shri Sandeep Singh, representing the respondents, pleaded that they were not aware that their activities were covered by the definition of "Business auxiliary services", which became taxable w.e.f. 1.7.2003, that as soon as they were told by the department, they took service registration and paid the entire amount of service tax alongwith interest, that the respondent had deposited the entire amount of service tax and interest vide TR-6 challan dated 12.08.2005 for the period 01.07.2003 to 31.3.2005 before issuance of show cause notice, that non payment of service tax by due date by the respondents was due to their ignorance, that there was no malafide intention on their part for non payment of service tax and not ~~for~~ taking service registration and that in view of this, the impugned order waiving penalty under Section 80 is correct.

3. I have carefully considered the submissions from both sides and perused the records.

4. I find that the respondents is very small service provider and not taking service tax registration and non payment of service tax took place during initial period when the service tax was introduced on "Business auxiliary services" with effect from 1.7.2003 and as soon as the respondents were informed by the department that their activity was covered by the definition of "Business Auxiliary services", they immediately discharged the tax liability ~~same~~ alongwith interest. Moreover,

I find that the penalty under Section 77 for non filing ST-3 returns and penalty under Section 78 equal to 25% of the penalty has already been upheld by the Commissioner (Appeals). In these circumstances, I do not find any infirmity in the order of the Commissioner (Appeals) waiving penalty under Section 76 by invoking Section 80 of the Finance Act,1994. The Revenue's appeal is therefore dismissed.

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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