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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

Date 22/07/2010

Appeal No. ST/260 /2010 – SM[BR]

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

To :
M/S NET CUSTOMER INDIA PVT. LTD. — Appellant
B-34/2, SECTOR-59, NOIDA.
Vs
M/S NET CUSTOMER INDIA PVT. LTD. — Respondent

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No.** 771 / 2010 –SM[BR] dated 13.7.2010 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult SHRI VINEET SHARMA CONSUTANT.
   M/S APPELLANT;-----------------------------

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:13.07.2010

Service Tax Appeal No.ST/260/10-SM

[Arising out of Order-in-Appeal No.309-CE/APPL/NOIDA/2009 dated 30.10.2009 passed by the Commissioner (Appeals), Noida].

M/s.Net Customer India (P) Ltd. ...Appellant

Vs.

CCE, Noida ... Respondent

Present for the Appellant :Shri.Vineet Sharma, Consultant
Present for the Respondent:Shri.R.K. Gupta, DR

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

Final **ORDER NO.** 771/2010 SM (BR) **DATED:13.07.2010**

PER: D.N.PANDA

The case has been made out by the Revenue noticing that proper records were not maintained by the assessee to record input services separately for the exempted and taxable services during the period April, 2007 to September, 2007, but Cenvat Credit was utilised. When this fact was pointed out by the Revenue, the assessee agreed to utilise Cenvat Credit to a limited extent of 20% as prescribed by Rules. Excess credit taken was paid back to revenue on 10th Jan., 2008 alongwith interest. On such background, when the revenue proceeded with levy of penalty against the assessee, the assessee prays for waiver there of for no contumacious conduct.

2. Shri Vineet Sharma, ld. Chartered Accountant appearing on behalf of the assessee submits that there was no malafide act on the part of the assessee to incur liability. Except the impugned period they are immune from taxation being a 100%EOU. Therefore, lenient consideration under section 80 of the Finance Act 1994 may be made to ~~get~~ grant relief to the assessee.

3. Ld. DR supports the order of the authority below and reiterates the finding of the ld. Commissioner (Appeals). According to the ld. DR, if there is a short fall in payment of Service Tax, such a case calls for penalty under section 76 of Finance Act 1994.

4. Heard both sides and perused the records.

5. The conduct of the assessee is appreciable from the adjudication finding itself. Ld. Adjudicating Authority in the discussion and finding portion has recorded the consent of the assessee itself to ~~submit~~ avail the concessional advantage of Cenvat Credit instead of total advantage. When the fact was also brought to the notice of the assessee, the assessee made good of ~~laws~~ loss of Revenue forthwith. Not only such behaviour is apparent from record but also the law abiding nature of the assessee is appreciable from payment of interest. Once entire conduct of the assessee appears to be unquestionable except a failure as aforesaid as found by Revenue, the assessee does not deserve to be deterrently penalise~~d~~ for Rs.1,36,015 in view of no malafide act found from the assessee. Accordingly, the

penalty is waived and the appellate order set aside which had confirmed the penalty.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita