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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/535 /2009 – SM[BR] Date 22/07/2010

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

To :
MR. L.R.JINDAL, PROP. OF CUSTOMER CARE,
166, SECTOR-31, FARIDABAD, (HARYANA)

MR. L.R.JINDAL, PROP. OF CUSTOMER CARE, Appellant
Vs
C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 772 / 2010 –SM[BR] dated 19.7.2010 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.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
2. Adv. / Consult SHRI ATUL KUMAR GUPTA. CA.
APRA&ASSOCIATES 259, AGGARWAL SHOPPING CENTER
CD-BLOVK, PITAMPURA DELHI-88.

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:14.07.2010

Serviced Tax Appeal No.ST/535/09-SM

[Arising out of Order-in-Appeal No.19/ST/DLH/2009 dated 30.03.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-I].

Lajpat Rai Jindal,
Proprietor of Customer Care ...Appellant

Vs.

C.S.T., Delhi ... Respondent

Present for the Appellant :Shri.A. Gupta, C.A.
Present for the Respondent:Shri.I.Baig, DR

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

Final **ORDER NO.** 772/2010 SM(BR) **DATED:14.07.2010**

PER: D.N.PANDA

This matter was heard yesterday. Ld. AR pleaded that the appellant is covered by Amnesty Circular No.18/04-ST dated 23.9.04 and having paid their entire tax liability with interest, there should not be levy of penalty.

2. Today the Circular aforesaid has been produced by ld. AR for consideration. The claim of Circular No.18/2004-ST dated 23.09.04 appears to be a trade notice. Even the content of that particular document, does not come to rescue of the appellant, since the appellant's case was much earlier to that

and they were under the fold of law. Therefore, the so-called Circular is of no use for the appellant. This is precisely the submission of the ld. DR.

3. Shri Baig, Ld. DR also submits that when the appellant's claim does not succeed on the basis of the document relied upon today, the appeal is liable to be dismissed.

4. As the matter stood as above, the factual scenario suggests that the appellant is a small tax payer who came forward to discharge its tax liability, as soon as that was pointed out and also conceived by the assessee. There is no dispute that the appellant has paid the tax with interest as that was due for the impugned period. But only question comes for decision is whether the appellant shall be liable to penalty, when ~~then~~ there was a delay in defaulting the payment of tax due. The case does not appear to be a case of malafide. The appellant having discharged the tax liability with interest and also pleading made today that when the liability was discharged with interest, no show cause notice should have been issued, in terms of section 73(3) of the Finance Act, 1994, as well as looking to the gravity of the show cause notice dated 14.3.05, it would be proper to waive the entire penalty levied on the appellant, when the case does not fall under section 78

of the Finance Act 1994. Consequently, the Appellate Order is set aside.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita