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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/309 -317 /2008 - CU[DB] Date **27/05/2011**

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

To :
M/S BATRA SONS

116-A, NAKODAR ROAD,JALANDHAR.

M/S BATRA SONS Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/195-203 2011 CU[DB]** dated 04.05.11

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.

2. Adv. / Consult
MR.SUDHIR MALHOTRA.
13-R, HUKAM CHAND COLONY,
NEAR D.A.V COLLEGE, JALANDHAR

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

14. M/S P.G. ENTERPRISES — ST/ 310/08
126 MBD MARKET NEAR NAAZ CINEMA
JALANDHAR

15. M/S P.G. ENTERPRISES COLLECTION POINT — ST/ 311/08
126 MBD MARKET NEAR NAAZ CINEMA
JALANDHAR

16. M/S VV COMMUNICATIONS — ST/ 312/08
N.G. ROAD, OPP BOCKI INDUSTRIES
JALANDHAR

17. M/S ARUNA TELECOM — ST/ 313/08
2 NEW ADARSH NAGAR,
NEAR SING SABHA GURDWARA,
JALANDHAR

18. M/S RAGHAV ENTERPRISES — ST/314/08
SHOP NO 6, BAJWA COMPLEX BASEMENT
MODEL TOWN MARKET
JALANDHAR

19. M/S ABS COMMUNICATION — ST/315/08
SHOP NO 119, MBD MARKET
NEAR NAAZ CINEMA
JALANDHAR

20. M/S ABS SERVICE CENTRE — ST/ 316/ 08
SHOP NO 119, MBD MARKET
NEAR NAAZ CINEMA
JALANDHAR

21. M/S ACCURATE BUSINESS SYSTEMS — ST/ 317/08
SHOP NO 119, MBD MARKET
NEAR NAAZ CINEMA
JALANDHAR

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing: 08.04.2011

Service Tax Appeal No.309 of 2008

[Arising out of Revision Order No.15/CE/Jal/08 issued under C.No.V(ST) 15/58/Commr. Adj./Jal/07/8915 dated 07.03.2008.]

M/s. Batra Sons & Ors. ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/310/2008

[Arising out of Revision Order No.47/CE/Jal/08 issued under C.No.V(ST)15/42/Commr. Adj./Jal/07/1974 dated 28.03.2008]

P.G. Enterprises ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/ 311/08

[Arising out of Revision Order No.48/CE/Jal/08 issued under C.No.V(ST)15/47/Commr. Adj./Jal/07/1974 dated 28.03.2008]

P.G. Enterprises Collection Point ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/312/2008

[Arising out of Revision Order No.18/CE/Jal/08 issued under C.No.198/Jal-I/STC/07/8957 dated 11.03.2008]

V.V. Communications ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/313/2008

[Arising out of Revision Order No.19/CE/Jal/08 dated 13.03.08 issued under C.No.186/Jal-I/STC/07/9052 dated 14.03.08.

Aruna Telecom ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/314/2008

[Arising out of Revision Order No.20/CE/Jal/08 issued under C.No.188/Jal-I/STC/07/9659 dated 13.03.2008].

Raghav Enterprises ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/315/2008

[Arising out of Revision Order No.40/CE/Jal/08 issued under C.N. V(ST) 15/39/Commr. Adj./Jal/07/1930 dated 28.032008].

ABS Communication ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/316/2008

[Arising out of Revision Order No.41/CE/Jal/08 issued under C.No.V(ST) 15/48/Commr. Adj./ Jal/07 1937 dated 28.03.2008].

ABS Service Centre ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Service Tax Appeal No.ST/317/2008
[Revision Order No.42/CE/Jal/08 issued under C.No.V(ST) 15/38/Commr.Adj./Jal/07/1923 dated 28.03.2008].

Accurate Business Systems ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Present for the Appellant : Shri Sudhir Malhotra, Advocate
Present for the Respondent : Shri K.K. Jaiswal, SDR

Coram: HON'BLE MR.D.N.PANDA, JUDICIAL MEMBER
HON'BLE MR. MATHEW JOHN, TECHNICAL MEMBER

Final **ORDER NO.** ST/195-203/11 **DATED: 08.04.2011**

PER: D.N.PANDA

All these appellants are against Revisional Order Passed under section 84 of Finance Act 1994 levying penalty under section 75A, 76, 77 and 78 of the Finance Act 1994. The quantum of levy has varied in all such cases. Ld. Counsel Shri Malhotra Appearing on behalf of all the appellants submits that the Revisional order has intended to impose penalty without any rhyme or reason. All the cases require consideration under section 80 of the Finance Act 1994. His prayer is to set aside the Revisional Order in all cases, appearing in the chart filed by him indicating the respective position in all such nine cases.

2. Ld. DR on the other hand submits that when the imposition was not done by the adjudication order, Revisionary power is bound to be exercised. Therefore, the orders passed need not be intervened.

3. Heard both sides and perused the records.

4. We have nothing to question on the exercise of Revisionary power, when there is no pleading from the appellant on such exercise. But while imposing penalties under aforesaid sections, the authority has failed to apply the law properly. There is no doubt that when the authority noticed that the appellants failed to seek registration, penalty was imposable. It has been enlightened to us in the course of hearing that penalty imposable under section 75A no more remains in the statute book from 10.9.05. As a result of this, although section 75A was also within the purview of section 80 of the Finance Act 1994, it is bound to be deleted from the purview of section 80 thereafter. But at the relevant point of time when the law was in force to regulate taxable activities through the process of registration, such a mandatory requirement cannot be dispensed with. Therefore, we agree with the Revisionary authority in respect of levy of penalty under section 75 A to the extent levied in all the 9 cases.

4. So far as penalty under section 76 & 78 is concerned, we do appreciate the plea of reasonable cause tenable. We examined record in the appeal case No.309 of 2008. Record no where indicates any element of section 78 of Finance Act, 1994 to show that the appellant had made deliberate attempt to escape its liability under law. Rather, we find the authority himself has recorded that service tax registration was allotted to the appellant by which the assessee came to record for exercise of jurisdiction over them. The revisionary power is exercisable only if the act of the authorities below is prejudicial to the interest of Revenue. How the orders passed by Adjudicating Authority have caused prejudice that was not examined nor any cogent reason appears ~~on~~ in the order. Therefore, levy of penalty under section 76 and 78 of Finance Act, 1994 which are severe in nature, levy thereof on small tax payers is unwarranted without bringing mens-rea to record. Consequently, penalty levied under section 76 and 78 of Finance Act, 1994 invites consideration under section 80 of the Finance Act 1994. On an overall appreciation of the fact on record and in absence of any reason recording malafide intention of the appellants, and that too when levy of service tax was in confusion at the inception, it would not be proper to mechanically confirm penalties imposed under section 76 & 78 of the Finance Act 1994. We order accordingly.

5. So far as penalty under section 77 is concerned, there was failure to file the return. Failure to file the return has certainly caused prejudice to the interest of Revenue depriving the Revenue from the scope of scrutiny of the affairs of the appellants. However, the appellants after getting revised figures came forward to pay the taxes and revised returns were filed. The orders do not indicate the length of failure on the part of the appellants to impute their malafide in filing their revised returns. These observations we have made above was from the appeal record No.309/08. Finding that the order has not demonstrated the reasoning for imposition of penalty under section 77 of the Finance Act, 1994 it suffers from legal infirmity. Therefore, there shall be no penalty under section 77 and that is set aside.

6. In the result, all the appeals are partly allowed to the extent indicated above.

7. Aforesaid order having been passed on the peculiar facts and circumstances of the case, that shall not be cited as a precedent.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

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