14

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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/42 /2011 - CU[DB] Date **20/10/2011**
ST/S/79,11,ST/COD/8/11

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

To :
M/S ROYAL ENTERPRISES PROP.

BHANWAR SINGH CHOUDHARY, IN FRONT OF
MAHARAJA HOUSE, BHUNABAY, JAIPUR ROAD,
AJMER.

M/S ROYAL ENTERPRISES PROP. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/568/ 2011 CU[DB]** dated 4.10.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/735/11 &
Misc Order No ST/183/11

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 42 of 2011
Service Tax Stay Application No. 79 of 2011

[Arising out of Order-in-Appeal No. 278(CB)CE/JPR-II/2010 dated 12.08.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur II]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the 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

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M/s. Royal Enterprises — Appellants

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:

None for the Appellants
Shri R.K. Gupta, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Stay: order No. ST/735/11 Date of Hearing/decision : 19.09.2011

Final **ORAL ORDER NO.** ST/568/11

Per Archana Wadhwa (for the Bench):

As the entire amount of Service Tax of Rs.59,196/- stands already paid by the appellants along with interest, we dispense with the condition of pre-deposit of identical amount of penalty imposed under Section 78 of the Finance Act and penalty imposed of Rs.1000/- under Section 77 of the Finance Act.

2. Inasmuch as the appellant is not disputing the confirmation of demand of Service Tax, which stands paid by him along with interest and the only dispute is imposition of penalty of identical amount under Section 78 and penalty of Rs.1000/- under Section 77 of the Finance Act, we proceed to decide the appeal itself.

3. The appellants have rendered services falling under the category of 'Manpower Recruitment and Supply Agency' to M/s. Rajasthan Public Service Commission, Ajmer. They have collected the Service Tax for the said services. Revenue was of the view that the same was not being deposited by them to the department. However, on

being pointed out the appellants deposited the service tax along with interest. The appellants' contention is that they were under the bonafide belief that they were entitled to the initial exemption of Rs.4 lakhs in terms of the Notification No. 6/2005 ST dated 1.3.2005 and it is only after exceeding the said limit, that the duty liability would arise. According to them, the said liability to pay service tax arises in January, 2007 for which Service Tax was to be paid before 31.3.2007. They have paid Service Tax on 31.3.2007 even before issue of Show cause notice. As such, imposition of penalty upon them was not justified.

4. The said contention of the appellant stand rejected by the authorities below on the ground that Service Tax was collected by the appellants much before the period in question. Further, inasmuch as they have not opted to avail exemption under Notification No. 6/2005, the benefit of same cannot be extended to them. As such, by observing that there was malafide on the part of the appellants, penalties stand imposed.

5. We find that the appellants have strongly pleaded that they were under the bonafide impression that the benefit of notification NO. 6/2005-ST dated 1.3.2005 exempting the initial value of services upto Rs.4 lakh is exempted, that is how duty was paid by them on 31.3.2007. The fact that they did not opt for the said notification, by itself may not be a ground to reflect upon their malafide intention. As such, extending the benefit of notification under Section 80 of the Finance

Act, we set aside the penalties imposed upon them under Section 77 and 78 of the Act.

6. The appeal and the stay petition are accordingly disposed of in the above terms.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax COD Application No. 08 of 2011
Service Tax Appeal No. 42 of 2011

M/s. Royal Enterprises — Appellants

Vs.

Commissioner of Central Excise — Respondent
Jaipur I

Appearance:

None for the Appellants
Shri R.K. Gupta, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 19.09.2011

Misc **ORAL ORDER NO** ST/1873/11

Per Archana Wadhwa (for the Bench):

The impugned order was passed in the present case on 12.8.2010 and received by the appellants on 16.8.2010. It is seen that appeal against the said order was filed by the appellant well within the period of limitation. However, since there was defects in the appeal memo, the same were taken note by the Registrar and vide Misc. order No. 312/2010-CR dated 15.11.2010, the appeal was returned to the appellant along with papers as two defect memos issued by the Registry were not taken note of by the appellants and the defects were not removed. Thereafter, the present appeal stand filed by the appellant on 10.1.2011 with a condonation of delay application. The appellants have submitted that defect memos issued by the Registry were not received by them so as to enable them to remove the defects.

2. We find that inasmuch as the first appeal was filed well within the period of limitation, which was subsequently returned by the Registry vide its office order dated 15.11.2010 and the present appeal stands filed within the period of about two months thereafter, we condone the delay in filing the present appeal.

3. COD application is accordingly allowed.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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