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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/185 /2008 - CU[DB] Date **09/03/2011**

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

To :
C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

**C.C.E. INDORE** Appellant

Vs

**M/S S.K.INDUSTRIES LTD.** Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/82/ 2011 CU[DB]** dated 03.03.11 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
**M/S S.K.INDUSTRIES LTD.**
UNIT-II, PLOT NO. 131-
A,INDUSTRIAL
AREA,MALANPUR,DISTT. BHIND
(M.P.)
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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**
WEST BLOCK NO.II, R.K. PURAM,
NEW DELHI-110066.

COURT NO. IV

**Service Tax Appeal No. 185 of 2008**

[Arising out of Order-in-Appeal No. IND-I/23/2008 dated 06.02.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Indore].

**Date of Hearing: 15th February, 2011**

For approval and signature:

Hon'ble Shri Ashok Jindal, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

| | | |
|---|---|---|
| 1 | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | Yes |
| 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? | No |
| 4 | Whether Order is to be circulated to the Departmental authorities? | No |

CCE, Indore — Appellant

Vs.

M/s. S.K. Industries Ltd., — Respondents

Present for the Appellant :Shri Fateh Singh, SDR
Present for the Respondent :Shri Prem Ranjan, Advocate

**Coram: Hon'ble Shri Ashok Jindal, Judicial Member**
**Hon'ble Shri Mathew John, Technical Member**

**FINAL ORDER NO.** ST/22/11

**Per Ashok Jindal:**

Revenue is in appeal against dropping of penalty by the lower appellate authority against the respondents. The short issue involved in this case relates to the demand confirmed against the respondents for the reasons that they were liable to pay service tax on G.T.A. only by cash or from PLA and not from Cenvat credit account for the period from April, 2006 to September, 2006. Though the respondents contested that service tax liability relying on certain case laws but have paid the service tax demand. Therefore, holding that as no demand was payable for the period involved in this case prior to 1.3.2008 the lower appellate authority has dropped the penalty confirmed by the adjudicating authority.

2. Learned D.R. submitted that as the respondents have admitted their service tax liability and liability to pay such tax in cash or PLA they are liable to be penalised and the penalty imposed by the adjudicating authority is to be confirmed.

3. On the other hand, learned Advocate for the respondents submitted that although they were not liable to pay service tax prior to 1.3.2008 from their PLA or cash but they have paid. Therefore, in that event no penalty is leviable on the respondents.

4. Heard and considered.

5. We have gone through the submissions made by both sides and found that there was no liability to pay service tax from PLA or cash on the respondents during the relevant period. This matter has been decided in a few cases including:

(i) CCE Chandigarh vs. Nahar Industrial Enterprises Ltd reported in 2011(104) RLT Online 3 (P & H).

(ii) CCE, Bangalore vs. Shri Tubes and Sheets Pvt. Ltd. reported in 2011 TIOL – 147 – CESTAT Bangalore.

Hence, when there is no liability, penalty is not imposable. We further found that in adjudication order a penalty of Rs. 20,000/- has been imposed on the respondents, the Revenue should not contest such an issue when there is no merit in their case and amount involved is very small. Hence, appeal is rejected.

(Pronounced in the open Court)

**(ASHOK JINDAL)**
**JUDICIAL MEMBER**

**(MATHEW JOHN)**
**TECHNICAL MEMBER**

RK