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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/140 /2008 - CU[DB]   Date **24/03/2011**

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

To :
C.C.E. INDORE

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

Vs

M/S MUKESH KUMAR EKLODIA   Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/103/ 2011 CU[DB]** dated 22.03.11 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 MUKESH KUMAR EKLODIA
C-BLOCK,SHADE
NO.349,BIRLAGRAM
NAGDA,DISTT. UJJAIN (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 & [illegible] [illegible]E TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

ST/Appeal No.140/08

(Arising out of order in appeal No.IND/1/03/08 dated 7.1.08 passed by the Commissioner of Central Excise (Appeals), Indore)

Date of Hearing: 8.3.2011

For Approval and signature:

Hon'ble Mr D.N. Panda, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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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?

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?

3. Whether their lordships wish to see the fair copy of the order?

4. Whether order is to be circulated to the Department Authorities?

CCE, Indore — Appellants

Vs

M/s Mukesh Kumar Eklodia — Respondent

Appeared for the Appellant: Shri Sumit Kumar, SDR
Appeared for the Respondent: None

Coram: **Hon'ble Mr D.N. Panda, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER NO. ST/103/11

Per D.N. Panda:

None for the Respondent.

2. Revenue is in appeal being aggrieved by the first appellate order granting relief to the respondent in respect of penalty imposed under Section 76 to the tune of Rs. 1,11,299/-, penalty of Rs. 1,000/- under Section 77 of the Finance Act, 1994.

3. The learned DR Shri Sumit Kumar brings out that in this case, taxes were collected by the respondents but was not paid to government account. The appellate authority himself has noticed that from 1.5.06, the respondent was liable to pay service tax under the law that was in force for the time being. But immediately finding fault with ~~by~~ the Chartered Accountant, without any evidence on record, relief was given by the First Appellate Authority. He further says that even if there was some fault on the part of Chartered Accountant, the assessee is still liable for penalties under the Rules. Therefore, his prayer is to confirm the penalties.

4. Heard Revenue and perused the reasoning given by the adjudicating authority which reads as under:-

"Though the appellant had delayed the payment of service tax for the period beyond 1-05-06, it would appear that the delay in payment was not on account of any deliberate attempt on his part to delay the payment that as stated by him before the Adjudicating Authority the delay could have occurred at the hands of Shri Anil Jain, the Chartered Accountant whom he had employed for this purpose. Therefore, in the facts and circumstance in the case as narrated above, I am of the considered opinion that no penalty can be imposed on the appellant under Section 76 of the Act and therefore, the penalty of Rs. 1,11,299/- imposed on him is set aside. However, the penalty of

Rs. 1,000/- imposed under Section 77 is upheld as there was delay in submission of returns for the period beyond 1.5.06."

5. We find no evidence on record to appreciate that the Consultant for the respondent was wholly responsible for the alleged offence. We are unable to agree with the conclusion granting immunity to the respondent as indicated in the impugned order. When the reasoning is not supported by any evidence, order is said to be unreasoned and perverse. We are unable to confirm the Order-in-Appeal in so far as the penalty is concerned. Consequently, Revenue's appeal is allowed by restoring the Order-in-Original.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*