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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

Date 07/02/2011

Appeal No. ST/1440/2010 - SM[BR]

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

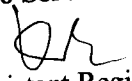
E. MEERUT II
SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II

Appellant
Vs
Respondent

M/S SUNDER CATERERS,

I am directed to transmit herewith a certified copy of Final order No. 107 / 2011 - SM[BR] 25.1.2011

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

M/S SUNDER CATERERS,
6 MAY VILLA COMPOUND,
TALLITAL OF NAINITAL
(UTTARAKHAND)

2. Adv. / Consult

NONE:-----

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications 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 -

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 (Harvana)

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
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI**

COURT No. II

Service Tax appeal No. 1440/2010-SM

[Arising out of Order-in-Appeal No. 240-241/ST/MRT-II/2010 dated 26.07.2010 passed by the Commissioner (Appeals), Central Excise, Meerut-II]

Date of hearing/decision: 25th January, 2011

CST, Meerut-II

Appellant
Reptd. By Shri S.K. Bhaskar, D.R.

Versus

M/s. Sunder Caterers

Respondent
None

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 107/2011 SM (Br)

Per D.N. Panda:

None present for the respondent. Learned D.R. submits that there was proposition in the show cause notice for imposition of penalty under Section 76 of the Finance Act, 1994. Neither the adjudication authority *nor the appellate authority did.* gave reason for such non-imposition. Therefore, order of the learned Commissioner (Appeals) is erroneous insofar as penalty under Section 76 is not imposed.

2. Heard learned D.R. and perused the record.

3. There was a proposition in the show cause notice for penalty under section 76 of the above Act, ^{Bnt} learned adjudication authority has not assigned any reason for non-imposition of penalty and the order remained silent on this aspect. Therefore, when there was no such imposition in the adjudication order, learned Commissioner (Appeals) should have been inquired into the reasons for non-imposition. That not being done, the order of the first appellate authority appears to have been decided on mere suspicion. Therefore, on the limited aspect of the proposal of show cause notice to impose penalty under Section 76, the matter is remanded for re-determination of the issue of such penalty by the learned Commissioner (Appeals) following due course of justice. Revenue's appeal is disposed of in the above manner.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK