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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/118 /2008 - CU[DB] Date **19/04/2011**

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

To :
M/S SACHDEVA ROADLINES PVT. LTD.
223, KAMLA MARKET,NEW DELHI-110002

M/S SACHDEVA ROADLINES PVT. LTD. Appellant
Vs
C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/155/ 2011 CU[DB]** dated 08.04.11 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.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.A.K.BATRA & ASSOCIATES
A-36, FIRST FLOOR, RAJOURI GARDEN,
RING ROAD, N DELHI.

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. II

Date of Hearing : 7.4.2011

Service Tax Appeal No. 118 of 2008

[Arising out of the Order-in-Original No. 56/VKG/2007 dated 10.12.2007 passed by the Commissioner of Service Tax, New Delhi]

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Sachdeva Roadlines Pvt. Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance:

Appeared for Appellant : Shri A.K. Batra, Chartered Accountant

Appeared for Respondent : Shri Fateh Singh, DR

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

Final Order No. ST/155/11 dated 8.4.11

Per D.N. Panda :

Ld. A.R. Shri Batra submits that as against the Service Tax liability of Rs.46,58,790/-, by application of the Notification benefit granted under No. 1/2006 dated 1.3.2006, the Appellant GTA discharged the tax liability to the extent of Rs.45,48,815/-. The balance tax liability was discharged in two instalments. First instalment was Rs.29,145/- and the second was Rs.80,902/- which were discharged from CENVAT Account. This remained undisputed as recorded in para 18.3 of the impugned order.

2. According to Shri Batra, the liability as aforesaid was discharged under bonafide belief that Cenvat credit of Rs.1,09,975/- was admissible to GTA service provider Appellant. However, when the Appellant came to understand that the Notification No. 1/2006 dated 1.3.2006 does not permit such credit, the Appellant paid the amount in question i.e. Rs.1,09,975/- in terms of a detailed calculation made available to the Bench for perusal under Annexure-'A' appearing at page 9 of the paper book submitted today. He explains that not only the money has been paid but the delay that was made to discharge the liability, has also been compensated by way of interest as explained in the said Annexure.

3. The second plank of argument of Shri Batra is that the Appellant should not face the Service Tax demand of Rs.1,39,76,300/- when law permits GTA service provider to avail benefit under Notification No. 1/2006 dated 1.3.2006. Because the authority proceeded to pass an ex-parte order which is apparent from para 14.2 of the impugned order at page-6, the Appellant was prevented to satisfy the authority about its bonafide claim not calling for an arbitrary tax demand as well as penalty. Had the

authority heard the Appellant thoroughly and applied law properly, there would not have arisen an arbitrary adjudication.

4. Further submission of Shri Batra is that the Appellant was not a defaulter under law and there was no knowable breach made. Of course, the Appellant realised its mistake of law after two years of adjustment through Cenvat credit. The Appellant came forward to discharge its liability when proper interpretation of law was made by it. Its bonafide completely rules out levy of penalty under Section 78. The Appellant has reasonable cause for grant relief under Section 80 of the Finance Act, 1994. But ex-parte order did not grant opportunity of explaining reasonable cause.

5. Ld. DR appearing on behalf of the Revenue supports the order of the authorities below and submits that there was no injustice done when the authority has examined the applicability of the notification, as Issue No. 1 in the adjudication order and the Appellant having failed to appear, appropriate order was passed.

6. Heard both sides and perused the record.

7. We are satisfied that when Show Cause Notice was issued on 3.10.2007 and order-in-original was passed on 10.12.2007, the Authority had ample time to examine the record. But the authority passed the order without grant of reasonable opportunity as that is revealed from para 14.2 of the order. The Appellant had thus no opportunity to explain. It may be so possible that upon explaining

entire fact with evidence the authority may come to a proper conclusion.

8. We make it clear that once the notification benefit is permissible to the Appellant that cannot be casually examined by the Authority but should be examined in accordance with the mandate of the Notification. While doing so, entire legal pleading and factual evidence of the Appellant should not go out of his consideration. So also the gravity of the default, if any, should receive his proper consideration and also reasonable cause, if any, should be examined before levy of penalty. Concession in respect of penalty if any permissible should be examined and allowed in accordance with law.

9. With the aforesaid observations, we send the matter back to the ld. original Authority to hear the Appellant thoroughly and pass appropriate order.

(Dictated & pronounced in open Court)

(D.N. PANDA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

RM