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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/438 /2006 - CU[DB]

Date **05/07/2011**

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

To :
C.C.E. CHANDIGARH.
PLOT NO 19,SECTOR 17-C,CHANDIGARH.

C.C.E. CHANDIGARH. Appellant

Vs

M/S A.C. SERVICE PLAZE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/262/ 2011 CU[DB]** dated 29.06.11 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 A.C. SERVICE PLAZE
PLOT NO 89,INDL AREA,PH-II,CHANDIGARH.

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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. II

Date of Hearing : 7.6.2011

Service Tax Appeal No. 438 of 2006

[Arising out of Order-in-Appeal No. 548/CE/CHD/06 dated 20.6.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

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

1.	Whether Press Reporter 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 Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

CCE, Chandigarh — Appellant

Vs.

M/s A.C. Service Plaza — Respondent

Appearance:

Appeared for Appellant : Shri B.L. Soni, DR
Appeared for Respondent : None

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

Final Order No. ST/262/11 dated 29.6.11

Per **D.N. Panda :**

The Respondent is not appearing although the matter is rolling on the board from the year 2009. On last three occasions i.e. on 15.3.2011, 16.3.2011 and 28th April 2011, the Respondent did not appear. Notice had gone but that has been returned back.

2. Revenue is in Appeal praying for levy of the Service Tax demand of Rs.55,257/- on the expenses reimbursed to the Respondent towards the office expenses, communication, travel ~~transferring~~ and transportation, etc. The Respondent is absent to explain whether these expenses are anyway unrelated to the service provided. In absence of the Respondent, we have gone through the Adjudication order to find out facts of the case what that was recorded in para-2 of the order. Ld. Adjudicating Authority in para-2 (iii) has noticed that the expenses of the aforesaid nature were received ~~back~~ by the Appellant over and above the consideration for the service provided and those are related to the service provided only. He has come to the conclusion in para-5 of the order that these are plus compensation remuneration received by the Appellant. He has not made any finding about disintegration of the expenses to take away those expenses from the sweep of the measure of levy of tax.

3. Ld. DR brings out the adjudication finding to submit that the appeal order is erroneous which has excluded aforesaid expenses of Rs.55,277/- from the gross value of service. Revenue relies on the decision of the Tribunal in the case of **CCE, Chandigarh Vs. M/s Team S&S** reported in 2011-TIOL-33-CESTAT-DEL.

4. Ld. DR also submits that the penalty was annulled by the ld. Appellate Authority. The Appellant faced penalty of Rs. 2,14,196/- under Section 76 and 78 of the Finance Act 1994. The Appellate order says that since the Service Tax amount was deposited before issuance of Show Cause Notice no penalty was imposable. That reasoning is not possible to be accepted because the reason for imposition of penalty is to be looked into. The Appellate Authority has not shown any reason other than the circumstance of payment of tax.

5. Upon hearing Revenue and also going through the Adjudication order we are unable to approve the Appellate Authority's action annulling the Service Tax demand of Rs.55,257/- arising on the count of exclusion of reimbursable expenses from gross value of taxable service, for the reasons advanced by the ld. DR.

6. We may say that payment of tax is a statutory obligation and payment shall not exonerate from penal consequence of contravention of law when committed ~~commitment~~. We uphold penalty for contravention of law. But considering the facts and circumstances of the case, we direct that there shall be penalty limited to the extent of 25% of the tax leviable, in terms of second proviso to Section 78 of the Finance Act, 1994. The original authority has to

issue notice to the Respondent to comply with concessional penalty provision subject to verification of discharge of tax liability within the period of 30 days of the intimation following the ratio laid down by the Hon'ble High Court of the Delhi in the case of **K.P. Pouches Vs. UOI** reported in 2008 (228) ELT 31.

7. Consequently Revenue Appeal is allowed.

(Dictated & pronounced in open Court)

(D.N. Panda)
Member (Judicial)

(Mathew John)
Member (Technical)

RM