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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/761 /2007 - CU[DB] Date **08/03/2011**

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

To :
C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S CITY CABLE Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/70/ 2011 CU[DB]** dated 28.02.11

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 CITY CABLE
HAZURA SINGH BUILDING,
ABOVE VISHWAKARMA
MOTORS, G.T. ROAD, BATHINDA
(PUNJAB)
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
NEW DELHI
Court No.IV

ST/Appeal No.761/2007

(Arising out of order in appeal No.342/ST/Appl/Ldh/07 dated 5.11.07 passed by the Commissioner of Central Excise (Appeals), Jalandhar)

Date of Hearing:1.2.2011

CCE, Ludhiana — Appellants

Vs

M/s City Cable — Respondent

Appeared for the Appellant: Shri Sumit Kumar, SDR
Appeared for the Respondent: Ms. Sukriti Das, Advocate

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

Final ORDER No. ST/70/11

Per D.N. Panda:

Revenue has come in appeal being aggrieved by the first Appellate order waiving various penalties imposed under Sections 75(A), 76, 77 and 78 of the Finance Act, 1994. Learned DR explains that there is no good ground in the appellate order to grant relief to the appellants who has paid the tax and interest before adjudication. The appellant failed to seek registration. Revenue had also made investigation to find out whether liability of the respondent arose. So also, there was default to pay tax for which consequence of law was applied. For suppression of fact, the respondent was to face proceeding under Section 73 of the Finance Act, 1994. That invited penal action under Sections 78 and 76. Therefore, the adjudication order is warranted to be restored reversing the appellate order which granted immunity to the respondents.

2. Learned Counsel on the other hand, submits that the respondents cooperated with the investigation and paid the taxes alongwith interest before adjudication was completed. There is no malafide on the part of the respondent nor was there suppression of any facts for which reason the respondent got relief at the First Appellate stage.

3. Heard both the sides and perused the record.

4. We notice the fact that the respondent has not come in appeal against the service tax demanded under Section 73 of the Finance Act, 1994. Short payment of tax is enough to impose penalty under Section 78 of the Finance Act, 1994 even though the respondent was cooperative to the investigation. Penalty proceeding being independent of adjudication, levy of penalty to the tune of 25% of the service tax demand, following the judgment of the Hon'ble High Court in K.P. Pouches Vs Union of India reported in 2008 (228) ELT 31 and and CCE Rohtak Vs J.R. Fabrics reported in 2009 (238) ELT 209 (P&H) of Hon'ble Punjab & Haryana High Court, would be justified. These judgments have been noticed in the recent judgment of Hon'ble High Court of Punjab & Haryana in the case of Appeal No. 177 of 2010 CCE, Chandigarh Vs Bajaj Travels decided on 21st December, 2010. We also notice that no opportunity for exercise of option to pay the demand

within stipulated period was given to the respondent following the ratio laid down in the above judgments. For benefit of reading, para 27 of the judgment in K.P. Pouches is reproduced below:-

"To obviate any similar situation from arising in future, we are of the opinion that in its adjudication order the adjudicating authority under the Act should explicitly state the options available to the assessee under Section 11AC of the Act. Once the choices are made known to the assessee and it still does not take advantage of the first proviso to Section 11AC of the Act, it will be entirely at its own peril. Therefore, it would be beneficial both from the point of view of the Revenue as well as the assessee, if the options available to the assessee are mentioned in the adjudication order itself."

5. Appreciating that ~~Revenue~~ Respondent has a case for granting option to pay concessional penalty, we direct that the respondent be given option to comply to law to avail concession in penalty restricting to 25% of the service tax demand. First appellate order is modified accordingly in respect of penalty under Section 78.

6. So far as the penalty under Section 76 is concerned, that shall be restricted from the date of default till the making of the deposit of the service tax and the first appellate order is modified on such count.

7. So far as penalty under Section 77 is concerned we do not find any merit to interfere with the adjudication finding for which we reverse the first appellate order granting immunity under that Section.

8. So far as penalty under Section 75-A is concerned there is no reason stated in the first appellate order to grant immunity. Therefore, we reverse the first appellate order on that account also.

9. In view of the order aforesaid, Revenue gets full relief in respect of penalties imposed under Sections 75A, 76 and 77 while

relief under Section 78 is restricted to the extent indicated above and adjudication order is restored only to the extent aforesaid, setting aside the first appellate order.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*