14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/606 /2008 - CU[DB] Date **19/01/2012**

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

To : M/S HERITAGE RESORTS PVT LTD
AMANBAGH, VILLAGE- AJABGARH
DISTT- ALWAR.

M/S HERITAGE RESORTS PVT LTD Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/A/39/ **2012 CU[DB]** dated 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.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ,
NEW DELHI 110 070.

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-3
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 10.01.2012

Service Tax Appeal No. 606 of 2008

(Arising out of order in appeal No. 68(RKS)/CE/JPR-I/2008 dt. 28.4.2008 passed by the Commissioner (Appeals) Central Excise, Jaipur).

M/s Heritage Resorts Pvt. Ltd. — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance: Rep. by Ms. Sukriti Das, Advocate for the appellants.
Rep. by Sh. B,L, Soni, DR for the respondent.

Coram: **Hon'ble Sh. D.N. Panda, Judicial Member**
Hon'ble Sh. Rakesh Kumar, Technical Member

Final ORDER NO. ST/A/39/12-Cus

Per: Shri D. N. Panda:

Preliminarily, ld. Counsel submits that appeal is against penalty of Rs. 2,68,477/- under Section 76 of the Finance Act, 1994. She says that the Chartered Accountant who was in service when left service, the appellant could not properly appreciate the law for which penalty has been levied holding that illegal credit was availed by the appellant. She also says that existence of reasonable cause was argued before the authority below under Section 80 of the Finance Act, 1994. But that was not properly dealt.

2. Ld. DR for the Revenue submits that the order itself clearly speaks that there was wrong availment of cenvat credit for which there was violation of Rule 15 of the Cenvat Credit Rules, 2004. Section 76 provides

assistance to Rule 15 to find out the delay in deposit of tax, if any. Therefore, penalty is imposable under Rule 15 read with Section 76 of the Finance Act, 1994.

3. Heard both sides and perused the record.

4. We do appreciate that there was violation of Rule 15 for the fact that there was wrong avialment of cenvat credit. Subsequent deposit of the tax demonstrates conduct of appellant not questionable and nothing was observation in this regard by lower authorities, while testing provision of Section 76. Considering such aspect as mitigating factor, there shall be penalty of Rs.20,000/- in the present appeal and the impugned order gets modified to this extent only. Appeal is partly allowed with the above direction confirming tax and interest.

(Dictated and pronounced in the open Court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Pant