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

REGISTERED / AD
Mail : cestat08@gmail.com

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

Appeal No. : ST/696/2008-CU[DB], ST/871/2008-CU[DB]

Dated: **16/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
KISHORE INTERNATIONAL
1 ST FLOOR, DEEPAK MARKET,
INDUSTRIAL AREA B LUDHIANA

KISHORE INTERNATIONAL (Appellant)

VS

C.C.E. LUDHIANA (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/546-547/2012-CU[DB]** dated **13/08/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
C.C.E. LUDHIANA
Central Excise House, 'F' Block, rishi
Nagar, Ludhiana 141001 (Punjab)

2. Advocate(s) / Consultant(s):
SAURABH KAPOOR, ADVOCATE
11-YADVINDRA COLONY, THE
MALL, PATIALA 147001
3. C.D.R
4. Bar Association, CESTAT, New Delhi

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

6. M/s Centax Publications 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. Gaurd File
KISHORE INTERNATIONAL ,
1 ST FLOOR , DEEPAK MARKET, ADJ.
PAHWA HOSPITAL LUDHIANA

Assistant Registrar
CUSTOMS Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Service Tax Appeal No. 696 & 871 of 2008

[Both arising out of Order-in-Appeal No. 194/CE/LDH/2008 dated 25.07.2008 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh]

Date of Hearing/decision: 13th August, 2012

ST/871/2008

M/s. Kishore International — Appellant

Vs.

CCE, Ludhiana — Respondent

ST/696/2008

CCE, Ludhiana — Appellant

Vs.

M/s. Kishore International — Respondent

Present for the Assessee : Shri Saurabha Kapoor, Adv.
Present for the Respondent : Shri Amresh Jain, D.R.

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

FINAL ORDER NO. ST/A/546-547/12-Cus

Per D.N. Panda:

Shri Amresh Jain, learned D.R. contests that once there is liability under appropriate class of Business Auxiliary Service there should be penalty under Section 78 & 76 of Finance Act, 1994. Therefore, to the extent of first appellate order setting aside penalty under Section 76, calls for reversal. On the other hand, contesting appeal of the appellant in appeal case No. ST/871/08 the appellant submits that there was no liability at all because no Business Auxiliary service was provided by the assessee. When there is no liability, no penalty under any section is imposable.

2. Heard both sides and perused the record.

3. From the activities carried out by the assessee we are satisfied that appellant was instrumental for achieving the main object of contract. The assessee provided Business Auxiliary service in promoting market for its principal. Such an activity is certainly a Business Auxiliary Service which has been held by learned Commissioner (Appeals) in Para 5 of the order. We do agree with him. Therefore, service tax element is confirmed. Learned Counsel at this stage says that if the Tribunal comes to conclusion that tax liability shall be borne by the assessee, cum-tax benefit may be ordered. We do not find any material on record to deny such benefit which calls for recalculation of tax demand. Learned Adjudicating Authority shall recalculate and communicate the demand to the assessee. Interest, if any, shall follow.

4. Penalties were proposed under Section 76, 77, & 78 of the Finance Act, 1994. There is no scope to grant relief under Section 77. Therefore, that penalty is confirmed. So far as penalty under Section 76 is concerned, we agree with the learned Commissioner (Appeals) and do not disturb this order on this count. So far as penalty under Section 78 is

concerned, looking to the controversy involved we direct that penalty should be limited to 25% of service tax element ~~and~~ ~~shall be payable~~ if paid by the assessee within 30 days of receipt of communication from adjudicating authority on recomputation. In the result, Revenue's appeal is dismissed and assessee's appeal is partly allowed to the extent indicated above.

5. We have perused the order of the Tribunal in the case of Bhuvaneswari Agencies (P) Ltd. vs. CCE, Bangalore – 2007 (8) STR 167 (Tri. – Bang.). We are not inclined to agree with the submission of the learned Counsel who heavily relied on that decision, because the premises of that order has no relevance to the issue before us and also that is suffering from jurisdiction.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK