IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/579/2011-ST[SM]
[Arising out of Order-In-Appeal No257 (CB) ST/JPR-II/2010 dated 13.01.2011 passed by Commissioner (Appeals), Central Excise, Jaipur-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Shri. Arihant Stonex ...Appellant(s)

Vs.

C.C.E. Jaipur I ...Respondent(s)

Appearance:
Ms. Rinki Arora Adv, for the Appellant
Mr. Dharam Singh (AR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 09.12.2016

Final Order No. 56386 /2016

Per S. K. Mohanty:

Imposition of Penalty under section 77 (1)(c)of the Finance Act, 1994 is the subject matter of present dispute. The reason for imposition of penalty is that the appellant did not submit the desired information called for by the Range Superintendent vide his letter dated 24.07.2008, 25.02.2009 and 17.06.2009.

2. Heard both sides and perused the record. I find that in the affidavit executed by the appellant, it has been specifically

mentioned that Shri. Hari Ram was not working in the appellant's firm and that the letters dated 24.07.2008, 25.02.2009 and 17.06.2009 were never received by the appellant. On perusal of the impugned order, I find that the letters dated 25.02.2009 and 17.06.2009 were sent through courier in the address of the appellant and the other letter dated 24.07.2008 was delivered to one Shri Hariram. Since the appellant has specifically denied that Shri. Hariram was not its employee, it can safely be concluded that the letter dated 24.07.2008 has not been delivered in the address of appellant. Further, sending of letter/notice through courier is not the prescribed mode of service as provided under Section 37(C) of the Central Excise Act, 1944. Thus, in absence of any statutory provisions, the Department's claim that the appellant has received the letter dated 25.02.2009 and 17.06.2009 through courier cannot be accepted in view of the fact that the appellant has specifically denied receipt of those letters.

3. In view of above, I do not find any merits in the impugned order in conforming the penalty imposed on the appellant. Therefore, the same is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Sakshi