

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

Dated: 23/01/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/50186/2014-CU[DB] dated 20/01/2014

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

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Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/Stay/56557/2013 ST/56094/2013	Patron Detective And Security Services 48, Pratap Nagar, Shastri Nagar, JAIPUR, RAJASTHAN.

	Name and Address of Respondent
2	Commissioner of Central Excise and Service Tax-Jaipur-i NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR, RAJASTHAN 302005

Copy To**3 Advocate(s) / Consultant(s):**

Bipin Garg, Adv
B-1/1289-A, Vasant Kunj,
New Delhi-110 070

4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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13 C.D.R. 14 Office Copy 15 Guard File

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Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 20.1.2014

Stay Application No.56557 of 2013 and Service Tax Appeal No.56094 of 2013

Arising out of the order in appeal No.07 (RDN) ST/JPR-I/2013 dated 17.1.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur I.

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Patron Detective & Security Services

..

Appellants

Vs.

C.C.E., Jaipur

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Respondent

Appearance:

Present Shri Bipin Garg, Advocate for the appellant
Present Shri R. Puri, A.R. for respondent

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. Rakesh Kumar, Technical Member

Final Order No. 50186/2014

Per Justice G. Raghuram:

At the stage of considering the stay application since the issue falls within a narrow compass we dispose of this substantive appeal after hearing Shri Bipin Garg, Id. Advocate for the appellant and the Id.

A.R. for the respondent-Revenue. We do so after waiving the pre-deposit requirement.

2. By the order dated 4.4.2011, the Assistant Commissioner of Central Excise, Jaipur II confirmed service tax demand of Rs.2,59,116/- apart from directing recovery of the said amount along with interest under Section 75 of the Finance Act, 1994 (the Act) and penalties under Sections 75A, 76, 77, 78 of the Act.

3. The petitioner preferred an appeal against the order which was rejected in toto by the Commissioner (Appeals), Central Excise, Jaipur I, dated 10.1.2013.

4. Security Agency was legislated to be a taxable service with effect from 16.10.98. The appellant obtained registration for providing the taxable "security agency" service with effect from 24.4.2002. On information received, a search was conducted in the office premises of the appellant on 20.12.2003. The search and analyses of the records retrieved during the search revealed that the appellant had received Rs.51,82,322/- for having providing security agency service during October, 1998 to December 2001 (excluding the amount received vide Bill No.172 to 191 of December 1999). Responding to summons issued, Shri Rajkumar Kumawat, the proprietor of company drew up the statement in his own handwriting left the office abruptly but left the office abruptly, leaving the statement unsigned.

5. Assuming that the appellant had provided security agency service during 16.10.98 to 24.3.2002, in particular upto December 2001, and had received consideration of Rs.51,82,322/- during the period but had failed to submit service tax returns nor remitted the service tax due, proceedings were initiated by a show cause notice dated 15.1.2004, proposing recovery of the stipulated tax, besides interest and penalties.

6. The appellant submitted its replies on 23.2.2004, 28.1.2008, 30.4.08 and 14.9.2010 besides appearing at the personal hearing on 14.9.2010. The defence of the appellant may be summarized. According to the appellant, during the period in issue it provided no security agency service. It had merely introduced sweepers, peons, receptionist and other workers to the service recipients; and since it was not qualified in personnel management nor possesses experience in said trade, cannot be considered to be a Manpower Recruitment Agency. Alternatively, the appellant pleaded that for the period prior to 24.4.2002, he was ignorant of the law and of any liability to service tax on "manpower recruitment agency" service. Another contention urged was the gross amount received from the customers included the component of salaries of persons supplied and PF and employees state insurance premia, paid to employees deputed to the customer, and these amounts should be excluded and the net income of the appellant alone should be considered as the gross taxable value, under Section 67 of the Act.

7. It however requires to be noticed, as concluded by the primary authority and reiterated by the Appellate authority as well, that the appellant failed to provide even a scintilla of evidence or any material in support of its contention that it had provided manpower recruitment or supply agency service and not security agency service, except the oral assertion. No material was provided by the petitioner to substantiate its claim for the alternative classification to the one suggested by Revenue. This information and the substantiating material if any, is exclusively within the province of the appellant and is therefore its burden to establish its claim as to the alternative classification of the service. The appellant failed to discharge this burden.

8. On the aforesaid analysis, the conclusion by the primary authority as confirmed by the Appellate authority, that the appellant had provided security agency service is seen to be correct. The appellant was subsequently registered for providing security agency service and had also reflected in its accounts that the consideration received was for providing security agency service during the relevant period.

9. On the above analysis, the impugned order requires no interference. Ld. Counsel would also contend that imposition of penalties is in the circumstances, harsh and arbitrary. This contention does not commend acceptance. As the petitioner's liability to service tax is unassailable and since the failure to file returns or remit service tax is clearly willful and calculated to evade tax, we find no justification for interfering with the imposition or the quantum of penalties assessed.

10. The appeal is without merits and is dismissed but without costs.


(Justice G. Raghuram)
President


(Rakesh Kumar)
Technical Member

scd/