

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

Appeal No. ST/717 /2007

Date 26/02/2008

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

To :  
M/S PNC CONSTRUCTION CO. LTD.  
D-51, KAMLA NAGAR, AGRA

M/S PNC CONSTRUCTION CO. LTD.

Appellant

C.C.E. CHANDIGARH

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. *St/33/08* Customs dated *4/2/08*  
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax  
*alongwith stay order no. St/64/08*

Assistant Registrar  
(Customs Appeal Branch)

**Copy to :**

1. Respondent

C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,  
CHANDIGARH 160017

2. Adv. / Consult

MR.V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -I, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL**

**West Block No. 2, R.K. Puram, New Delhi – 110 066.  
Principal Bench, New Delhi**

**COURT NO. II**

**Service Tax Stay Application No. 2770 of 2007 in Appeal  
No. 717 of 2007**

[Arising out of the Order-in-Appeal No. 414/CE/CHD/2007  
dated 20/09/2007 passed by The Commissioner (Appeals),  
Customs & Central Excise, Chandigarh.]

For Approval and signature :

**Hon'ble Shri S.S. Kang, Vice President**

**Hon'ble Sh. P. Karthikeyan, Member (Technical)**

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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 would 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 :  
Department Authorities?

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M/s PNC Construction Co. Ltd.

Appellant

Versus

CCE, Chandigarh

Respondent

**Appearance**

Shri Basudevan, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (SDR) – for the  
Respondent.

CORAM : Hon'ble Shri S.S. Kang, Vice President  
Hon'ble Shri P. Karthikeyan, Member (Technical)

**DATE OF HEARING : 04/02/2008.**

Final Order No. ST/33/08 Dated : 4/2/08  
Stay Order No ST/64/08

**Per. S.S. Kang :-**

Heard both sides. Applicant filed this application for pre-deposit of amount of Service Tax of Rs. 40,61,513/- (Rs. Forty Lakhs Sixty One Thousand Five Hundred and thirteen) and penalties.

2. The Commissioner (Appeals) directed the applicant to deposit Rs. 15,00,000/- (Rs. Fifteen lakhs) towards the Service Tax and Rs. 10,00,000/- (Rs. Ten lakhs) towards the penalty for hearing of the appeal. Applicant had not complied with the condition of the stay order. Hence, the appeal is dismissed.

3. The demand was confirmed on the ground that applicant is provided Business Auxiliary Service hence liable for service tax.

4. The contention is that collecting toll on behalf of the National Highway Authority of India hence the applicant is not provided any service on behalf of National Highway Authority to commuters. The applicant relied upon the definition of Business Auxiliary Service as provided under the Finance Act. The contention is that Business Auxiliary is any service in relation to Provision of service on behalf of client as no services is provided to commuters by the National Highway Authority, therefore, the applicants are not liable to pay any Service Tax as provider/Business Auxiliary Service.

5. We find that the applicants entered into a contract with the National Highway Authority for maintenance and repair of a certain portion of Highway and for this service the commuters to pay toll tax. The National Highway Authority also authorized the applicant to collect toll tax on behalf of the National Highway Authority. As, the applicants are

providing service to National Highway Authority, in respect of Toll collection ~~from~~, keeping in view, facts and circumstances, it is not a fit case for total waiver of Service tax. Applicants are directed to deposit an amount of Rs. 10,00,000/- (Rs. Ten Lakhs) within a period of eight weeks from today. On deposit of this amount the pre-deposit of remaining amount of Service Tax and Penalties is waived.

6. We find, the Commissioner (Appeals) has dismissed the appeal for non-compliance to the provision under Section 35 of Central Excise Act. Commissioner (Appeals) has not gone into merits the appeal hence the impugned order is set aside and remanded to Commissioner (Appeals) to decide the appeal on merit on showing the deposit of Rs. 10,00,000/- (Rs. Ten lakhs). The appeal is disposed of by way of remand.

(Dictated and pronounced in open court)

**(S.S. Kang)**  
**Vice President**

**(P. Karthikeyan)**  
**Member (Technical)**