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

Appeal No. ST/546 /2006 Date 22/08/2008

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

To :
M/S KRISHNA SATELITE CABLE NETWORKS
8, SINDHI COLONY, GUMANPURA, KOTA.
324007

M/S KRISHNA SATELITE CABLE NETWORKS Appellant
Vs
C.C.E.JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/214/08 Customs dated 25.07.08 passed 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
   NCRB, STATUE CIRLCLE, C-SCHEME, JAIPUR.
2. Adv. / Consult
   MR.V.R.SETHI
   401,SATYA CINEMA BUILDING, RANJEET NAGAR,DELHI-110008
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. 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 Appeal No. 546 of 2006

[Arising out of the Order-in-Appeal No. 47 (GRM)/ST/JPR-I/ 2006 dated 18/07/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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? :

M/s Krishana Satellite Cable Network — Appellant
[Shri V.R. Sethi, Advocate]

Versus

CCE, Jaipur — Respondent
[Shri B.K. Singh, Auth. Rep. (DR)]

CORAM : **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 25/07/2008.

Final Order No. 57/214/08 Dated : 25/7/08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby demand of service tax was confirmed on the ground that appellants are providing cable operator service and penalties were imposed.

2. The contention of appellant is that the demand is for the period 16/08/02 to 31/03/04. The service tax in respect of cable operator was imposed w.e.f. 16/08/02. The contention is that being a new levy appellant was under the impression that they were not liable to pay service tax as appellant were receiving signals from multi-system operator and further providing the signals to their customers. The contention is that as applicant was not receiving any signals directly from the satellite, therefore, he is not providing any service as a cable operator.

3. Applicant also submitted that even in case appellants are liable to pay service tax being cable operator, the imposition of penalties are not sustainable. In view of the Provision of Section 80 of the Finance Act. As the applicant under the bonafide belief, he is not liable to pay service tax.

4. Contention of revenue is that as per the definition of cable operator under the Finance Act, any person who provides cable services through a Cable Television Network or otherwise controls or is responsible for the management and operation of a cable television networks and "cable service" includes the transmission by cable of programmes including retransmission by cables of any broadcast television networks. In view of this, the appellant are providing service as cable operator and liable for service tax. In respect of penalties the contention is that as appellant have not complied with the provision of Finance Act nor got registered as a service tax provider, therefore, liable to penalty.

5. We find that as per the definition of cable operator provided under the Finance Act, the taxable service means any service provided by cable operator in relation to cable service, is liable for tax. The appellants are cable operators and are providing taxable service which is liable for service tax. In view of this, we find no infirmity in the impugned order, whereby demand of service tax is confirmed.

6. In respect of the penalties, we find that appellants were not receiving signals directly from the satellite on they are getting the signals from multi-system operator who is receiving signals from

the satellite, therefore, we find merit in their contention that they were under the bonafide belief, that appellant are not liable for service tax. Section 80 of the Finance Act provides that notwithstanding anything contained in the provisions of section 76, [section 77 or Section 78], no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure. In view of the reasons explained by the appellant, we find the appellants are covered under the exception provided under Section 80 of the Finance Act, therefore, penalties imposed on the appellant are set aside. The appeal is disposed of as indicated above.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK