

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

Appeal No. ST/405 /2007-SM[BR]

Date 23/01/2008

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

To :  
M/S JAGDEEP SINGH SALUJA  
STATION ROAD, TIMARNI, DISTT. HARDA (M.P.)

M/S JAGDEEP SINGH SALUJA

Appellant

Vs

Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of Final order No. 105/2008-SM[BR] dated 6.12.2007 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE  
AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

MR.P.C.KASHIV

E-3/49, STOP NO 10, KAMDAR MARKET, BHOPAL

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 -1, 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  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Service Tax Appeal No. 405 of 2007 –SM (BR)**

[Arising out of order in Appeal No. 13/ST/BPL/2007 dated 25.04.2007 passed by  
the Commissioner (Appeals) Customs, Excise & Service Tax, Bhopal]

**Date of Hearing/ Decision: 06.12.2007**

**For approval and signature:  
Hon'ble Mr. P.K. Das, 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? :
- 

M.

M/s Jagdeep Singh Saluja

Appellant

[Rep. by Mr. P.C. Kashiv, Consultant for the appellant]

Vs.

CCE, Bhopal

Respondent

[Rep. by Mr. S. Gautam, Authorised Representative (DR) for the respondent]

**CORAM: Mr. P.K. Das, Member (Judicial)**

Final ORDER No. 105/08-SM(BR)

**Per P.K. Das:**

The appellant filed this appeal against imposition of penalty under Section 76, 77 and 78 of the Finance Act, 1994.

2. The relevant facts of the case in brief are that the appellant is a proprietorship concern, engaged in handling and transporting fertilizers of various fertilizer companies. The adjudicating authority confirmed the demand of tax under heading of "Cargo Handling Service" and imposed penalties for late payment of tax and non-filing of the returns. The Commissioner (Appeals) upheld the adjudication order.

3. The learned Counsel on behalf of the appellant submits that appellant is undertaking the activities of loading and unloading of cargo in his individual capacity and, therefore, they are not entitled to pay the tax as stated in Board Circular F. No.B.11/1/2002-TRU dated 1.8.2002. He further submits the appellant voluntarily paid the tax before issue of show cause notice in order to avoid the legal complicity. Therefore, imposition of penalty is not justified. He relied upon the decision of the Tribunal in the case of SRE Venkateswara Hi-Tech Machinery vs. Commissioner of Central Excise, Coimbatore reported in 2007 (6) STR 139 (Tri. Chennai). Learned DR reiterates the findings of the Commissioner (Appeals). He submits that the appellant acted as an agency and, therefore, they are covered under "Cargo Handling Operations".

4. After hearing both the sides and on perusal of the records, I find that there is dispute of applicability of tax under "Cargo Handling Services". Central Board of Excise & Customs vide Circular F. No. B.11/1/2002-TRU dated 1.8.2002 clarified as under:-

*"15. Another doubt raised in relation to cargo handling services is that whether individuals undertaking the activity of loading or unloading of cargo would be leviable to service tax. For example, if someone hires labour/ labourer for loading or unloading of goods in their individual capacity, whether he would be liable to service tax as a cargo handling agency. It is clarified that such activities will not come under the purview of service tax as a cargo handling agency".*

5. The appellant did not pay the tax as the appellant is a proprietorship firm and covered by the board circular. In any event, the appellant paid the tax before issue of the show cause notice. Thus, the delay of payment of tax and filing of return are due to interpretation of statutory provisions of law, imposition of penalties are not warranted. Accordingly, imposition of penalty under section 76, 77 and 78 of the Finance Act, 1994 are set-aside. The appeal is allowed in the above terms.

(Order dictated and pronounced in the open Court)

(P.K. Das)  
Member (Judicial)

[Pant]