

**'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/320 /2007-SM[BR]

Date 06/02/2008

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

To :
M/S R.R.CONSTRUCTION, COMPANY
3-J-4, VIGYAN NAGAR, KOTA

M/S R.R.CONSTRUCTION, COMPANY

Appellant
Vs
Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of Final order No.261/ 2008 -SM[BR] dated 7.12.2007
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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

2. Adv. / Consult

MR.SANJAY GROVER

LAW OFFICES, E-500, GREATER KAILASH-II, NEW DELHI-110 048.

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.Appel Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, PRINCIPAL BENCH, NEW DELHI**

COURT NO.III.

Appeal No.320 of 2007-SM (BR)

(Arising out of the Order-in-appeal No.71(GRM)/ST/JPR-I/2007 dated 23.3.2007 passed by the Commissioner (Appeals-I), Customs and Central Excise, Jaipur.)

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/s. R.R. Construction Company

Appellant.

Versus

CCE, Jaipur-I

Respondents

Appearance

Rep. By Shri Sanjay Grover, Advocate for the appellant.

Rep. By Shri B.S. Suhag, Authorised Departmental Representative on behalf of the respondent.

CORAM: Hon'ble Mr. P.K.Das, Member(Judicial)

Date of decision:7.12.2007.

Final Order No. 261 | 08-SM(CBR)

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 appellants are engaged in providing services of 'commercial or industrial construction'. The Service Tax was introduced on 10.9.2004. The appellant entered into an agreement with M/s. Allen Career Institute, Kota dated 2nd June, 2004 for construction. The appellant received the payment during the period September, 2004 to June, 2005. Thereafter, it came to the notice the levy of service tax on commercial construction. They obtained registration under the said Act on 3rd August, 2005. The Superintendent of Service Tax by letter dated 12.8.2005 directed the appellant to pay the tax and to file the returns. The appellant deposited the tax on 28th of August, 2005. The adjudicating authority confirmed the demand of tax and appropriated the tax along with interest, which has been deposited before the issue of show cause notice. He imposed penalty under Section 76 of Rs.100/- per day from the date when the Service Tax became payable till actual date of payment and penalty of Rs.500/- under Section 76 and the penalty of equal amount of tax under

Section 78 of Finance Act, 1994. The Commissioner (Appeals) upheld the adjudication order.

3. The ld. Advocate submits that the appellants deposited the tax along with interest before the issue of the show cause notice and, therefore, the imposition of penalty is unwarranted. He relied upon the decision of the Hon'ble Rajasthan High Court in the case of Union of India Vs. T.P.L. Industries Ltd. reported in 2007 (214) ELT 506 (Rajasthan). He further submits that the appellant voluntarily obtained registration and deposited the tax along with interest before issue of the show cause notice and, therefore, there is no suppression of fact with intent to evade payment of tax and Section 78 cannot be invoked. He also submits that the findings of both the authorities below that the officers detected the non-payment of tax is without any basis.

4. The ld. DR on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that the levy was introduced in 10.9.2004. During the investigation by the officers, it was detected that the appellants was not registered with the Central Excise Authorities. He further submits that the agreement reveals the payment of tax and in spite of that the appellant did not obtain registration.

5. After hearing both the sides and on perusal of the records, I find that Section 78 of the Finance Act, 1994 provides penalty for suppressing the value of taxable services. It is seen that the appellant entered into an agreement dated 2nd June, 2004 with M/s. Allen Carrier Institute, Kota for construction. The appellant obtained registration on 3rd August, 2005 and deposited the tax with interest on 28.8.2005. There is no allegation that the appellant suppressed the value of taxable service. On the contrary, It reveals that the entire transaction was recorded in their records. Therefore, Section 78 of the said Act, cannot be invoked. However, there is a delay in payment of tax and filing of return and the imposition of penalty under Section 76 and 77 is sustainable. Accordingly, penalty under Section 78 of the Finance Act, 1994 is set aside and the penalty under Section 76 and 77 is upheld. The appeal is allowed in the above terms.

Order dictated & pronounced in open court on 7.12.2007.

(P.K. Das)
Member (Judicial)

Ckp.