

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/226 /2007-SM[BR]

Date 07/02/2008

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

To :
M/S TYCOON EVENTS & PROMOTIONS PVT. LTD.
1063, URBAN ESTATE, PHASE-I, JALLANDHAR

M/S TYCOON EVENTS & PROMOTIONS PVT. LTD.

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.277/ 2008-SM[BR] dated 7.1.2008
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. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.
2. Adv. / Consult SHRI. R. KRISHNAN ADV.
297-EPOCKET-IIPHASE-I,MAYUR VIHAR DELHI-91
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 & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No. 226 of 2007-SM(BR)

(Arising out of Revision Order No. 1/CE/JAL/2007 dated 7.2.2007 passed by the Commissioner of Central Excise, Chandigarh)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 Departmental authorities.	

M/s Tycoon Events & Promotions (P) Ltd.

Appellant

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri R. Krishnan, Advocate

- For appellant

Shri S.L. Meena, SDR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 7.1.08

Final Order No. 277/08-SM(BR) dated 7.1.08

Per S.S. Kang

Heard both sides.

2. The appellant filed this appeal against the order in revision passed by Commissioner of Central Excise whereby the penalties

- imposed under Section 76 of Finance Act was enhanced to @ Rs.100/- per day for delay in payment of Service Tax.

3. The contention of the appellant is that the amount of Service Tax along with interest was paid even prior to issuance of show-cause notice. A show-cause notice was issued on 5.3.04 for imposition of penalties under Section 75, 75A, 76 and 77 of the Finance Act. The adjudicating authority after considering the explanation given by the appellant for non-deposit of tax with due dates imposed penalty of Rs.500/- under Section 75A of Act and penalty of Rs.100/- was imposed under Section 76 of the Finance Act and penalty of Rs.200/- imposed under Section 77 of the Finance Act.

4. The Commissioner of Central Excise issued a show-cause notice under Section 84(2) of the Finance Act to show cause why the penalty of Service Tax should not be enhanced. As per the provisions of Section 76 of the Finance Act after affording an opportunity of hearing to the appellant, the Commissioner of Central Excise enhanced the penalty @ Rs. 100/- per day.

● 5. The contention of the appellant is that the Commissioner of Central Excise has no power to enhance the penalty in case there is no demand in the show-cause notice. The appellant relied upon the decision of the Tribunal in the case of **Markfed Instruments Pvt. Ltd. Vs. CCE** reported in 2006 (3) STR 70. The appellant submitted that this decision has been followed in the various decisions of the Tribunal.

6. The contention of the appellant is also that as per Section 80 of the Finance Act that no penalty is imposable if the assessee proves that there was a reason for the said failure. The contention is that appellant are Event Manager and mostly the events are being managed outside Punjab, therefore, during the period in dispute the Director remained out of Punjab, therefore, the Service Tax could not be paid at the due dates. The appellant submitted that in the year 2004 a Tax Friendly Scheme was launched by the Finance Department. In that scheme, it was provided that if the Service Tax defaulter paid Service Tax liability on or 30.10.04 they are not liable for any penal action. The appellant submitted that in the case of **M/s Centrum Travels Pvt. Ltd. Vs. CCE, New Delhi** vide Final Order No. 222/07-SM(BR) dated 5.10.06 the

- Tribunal set aside the penalty after taking into consideration the Tax Friendly Scheme. The contention is that in the present case as the assessee has shown reasonable cause for failure to deposit the tax of payment, therefore, is not liable for penalty.

7. The contention of the Revenue is that the provisions of Section 76 of the Finance Act are mandatory and the assessee is liable to pay Rs. 100/- per day during which the default continues. In the present case, the appellants got themselves registered but had not filed returns as well as tax on the due dates. In rebuttal, the contention of the appellant is that the levy on Event Management service was levied in the year 2002, therefore, being a new levy the appellant was not failure with the provisions of Service Tax, therefore, lenient view be taken in respect of the imposition of penalties.

8. I find no merit in the contention of the appellant that Commissioner of Central Excise has no power to enhance the penalty under the provisions of Section 84 of the Finance Act. The facts in the **Markfed Instruments Ltd.** (supra) are different. In that case, there was no demand and interest in the show-cause notice and the Commissioner of Central excise while exercising

- the power under Section 84 demanded interest in respect of Service Tax. The Tribunal held that in the initial show-cause notice there was no demand of interest, therefore, Commissioner of Central Excise has no power to demand interest under provisions of Section 84 of the Finance Act. In the present case, there was proposal for imposition of penalty in the show-cause notice, therefore, the ratio of the above decision is not applicable on the facts of the present case.

9. I find merit in the contention of the appellant that in the year 2004 there was a Tax Friendly Scheme and as per the scheme the assessee who are liable to pay Service Tax and as already default if they discharged Service Tax liability till 30.10.04 they are not liable for any penal liability. In the present case, the appellant paid the Service Tax prior to 2004 that too, with interest. I find that Section 80 of the Finance Act also provides that no penalty is imposable under Section 76 in case he proves that there was no reasonable cause for the said failure. In the present case, as the new levy was introduced in the year 2002 and the default was for the period 2002 to 2003, therefore, the appellant deserves a lenient view. Further, I find that the Tribunal in the case of M/s Centrum

- Travels Pvt. Ltd. (supra) after taking into consideration the Tax Friendly Scheme set aside the penalty. In view of the above decision and in view of the fact that the appellant paid the Service Tax along with interest prior to 2004, therefore, the enhancement of penalty are not sustainable hence set aside. The appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM