

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/364 /2007-SM[BR]

Date 07/02/2008

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

To :
M/S KANPUR SECURITY SERVICES
4 BLOCK-A, SHYAM NAGAR, KANPUR

M/S KANPUR SECURITY SERVICES

Appellant

C.C.E. KANPUR

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.283/2008-SM[BR] dated 4.2.2008 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. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
—
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
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.**

Service Tax Appeal No.364 of 2007(SM)

[Arising out of Order-in-Appeal No.61-CE/APPL/KNP/07 dt.27.2.07
passed by the Commissioner(Appeals), Kanpur)

For approval and signature:

Hon'ble Mr. A.K.SRIVASTAVA, 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:

M/s. Kanpur Security Services

Appellant

Versus

CCE, Kanpur

Respondent

Appearance

Capt. B.Mishra, Prop. For Appellant

Ms. Archana Pandey Authorised Representative(JCDR)For Respondent

Coram: Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

Date of decision: 4.2.08

Final Order No. 283/08-SM(BR)

Per A.K.Srivastava:

Heard both sides and perused the records.

2. The appellants are registered with Department as Security Agency for service tax purposes. They billed M/s. BHEL, Jhansi for the gross amount of Rs.5,59,043/- for the services rendered by them as Security Agency during the period Oct'98 to March'99, on which service tax works out to Rs.27,953/-. The contention of the appellants is that they have received a sum of Rs.2,40,922/- from M/s. BHEL, on which the service tax of Rs.12,046/- has been paid by them. Although the amount of Rs.2,40,922/- reimbursed by M/s. BHEL does not include the service tax, yet they have paid the service tax of Rs.12,046/- from their own pocket on this amount. The balance amount, although billed, by them, has not yet been paid by M/s. BHEL, Jhansi. The appellants have filed a CM Writ Petition No.44498 of 1999 before the Allahabad High Court for the balance amount and have undertaken to pay the service tax on the balance amount in case they succeed before the Allahabad High Court and the amount is paid to them by M/s. BHEL, Jhansi. They have contended that the service tax is not payable on the amount, the payment of which has not been received by them from the client and relied upon the decision of the Tribunal in the case of BPL Ltd. vs Commissioner of Service tax, Bangalore reported in 2006(4)STR.307(Tri.-Bang.) and Tempast Advertising(P) Ltd. vs CCE, Hyderabad-II reported in 2006(4)STR.463(Tri.-Bang.)

3. I have gone through the above case laws. I find that in terms of the above case laws, service tax is leviable only on the amount received by the service provider and not on the amount still due from the parties. Following the ratio of the above case laws, I hold that the service tax on the balance amount which works out to Rs.15,907/- is not payable by the appellants. I order accordingly. Keeping in view the facts and circumstances of case, the imposition of penalty on the appellants is not justified. The same is set aside. The appellants are, however, liable to pay interest on Rs.12,046/- as per the rate applicable under Section 75 of the Finance Act,1944 for the delayed period (i.e. from the due date of payment and upto the date on which it was paid). I order accordingly. The appeal filed by the appellants is disposed of in the above terms.

Order dictated in the open Court.

(A.K.Srivastava)
Member Technical

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