

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/10 /2007-SM[BR]

Date 18/02/2008

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

To :
PINK CITY COMMUNICATIONS
PINK CITY COMMUNICATIONS BALIMAL NAWAL
KISHORE MARKET, PANIPAT HARYANA

PINK CITY COMMUNICATIONS

Appellant

C.ST. DELHI-III GURGAON

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.297/2008-SM[BR] dated 18.1.2008 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.ST. DELHI-III GURGAON
VINIYA NIKUNJ UDHYOG VIHAR, PHASE-V,
GURGAON HARYANA
2. Adv. / Consult
MR.GIRISH ANEJA C.A.
796/13, 4.E, KARNAL, 132001
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/Appeal No.10 /2007-SM

(Arising out of order in appeal No.232/NS/RTK/06 dated 4.8.06 passed by the Commissioner of Central Excise (Appeals), Gurgaon)

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?

yes

M/s Pink City Communications

Appellant
(Rep. by Shri Girish Aneja, C.A)

Vs

CST, Delhi-III, Gurgaon

Respondent
(Rep. by Shri S.L. Meena, DR)

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

Date of Hearing: 18.1.2008

Final Order No. 297/2008-SM(BR)

Per P.K. Das:

The appellants filed this appeal against imposition of penalty under Sections 75-A, 76, 77 and 78 of Finance Act, 1944.

2. The appellants were providing service to M/s Airtel by way of selling sim cards, mobile connections and recharge coupons. They were earning commission against the sales of sim cards, mobile connection and recharge coupon. The appellant got registration on 6.12.2004. They paid tax in the month of March, 2005 for the period July, 2003 to March, 2005. The learned Counsel submits that the appellant deposited the tax before issue of show cause notice. He further submits that the appellant applied for availing the Amenity Scheme valid upto 30th November, 2004 by their application dated 1.11.04. However, there was dispute on levy of tax on the service of the appellant and therefore, there is a delay in deposit of the tax. In support of his contention, he placed the relevant portion of the Chartered Accountant Journal for the month of 2004 as well as their letter dated 14.2.2005. He submits that there is no suppression of fact with intent to evade payment of tax and therefore, section 78 cannot be invoked. That delay in paying tax is due to confusion therefore, Sections 75, 76 and 77 cannot be invoked.

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellants were registered in the month of December, 2004. He further submits that the appellant failed to avail the amnesty scheme upto November, 2004 and therefore, they are liable to pay penalty under the Finance Act, 1994. He submits that the department detected the short levy of tax and it is a case of suppression of fact.

4. After hearing both the sides and on perusal of record, I find that the appellants deposited the tax before issue of show cause notice. The Superintendent by his letter dated 2nd November, 2004 informed them to avail the amenity scheme valid upto 30.11.04 to avoid penal provision. It is

seen that the appellant obtained the registration on 6.12.2004. I find that the appellant paid the tax and filed the return in the month of March, 2005. It is seen that the appellants themselves got registration and there was confusion of levy of tax and therefore, there is no material for suppression of fact with intent to evade payment of tax and section 78 of the Act cannot be invoked. However, the appellants got registration in the month of December, 2004. They failed to avail the amensty scheme valid upto 30.11.04 in order to avoid penal provision. There is a delay in filing the return and payment of tax and penalty under Sections 75A, 76 and 77 are justified. Accordingly, penalty imposed under Section 78 of the Finance Act is set aside and otherwise the impugned order is upheld. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)