

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/295 /2007-SM[BR]

Date 18/02/2008

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

To :
M/S ANCHOR AGENCIES (P)LTD.
PLOT NO C-18A, INDL. AREA, MANDIDEEP, RAISEN,
(M.P)

M/S ANCHOR AGENCIES (P)LTD.

Appellant

C.C.E BHOPAL

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No 303/2008-SM[BR]. dated 14.2.2008
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 BHOPAL

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

2. Adv. / Consult

MR.P.N.KALRA ADV.

WZ-27, 10, JWALA HERI MKT. F. FLOOR PACHIM VIHAR NEW DELHI-110063

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

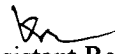
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

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
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 295 of 2007

(Arising out of Order-in-Appeal No. 103/ST/BPL/2006 dated 12.01.2007
passed by the Commissioner of Central Excise (Appeals), Bhopal).

**DATE OF HEARING : 11.02.2008
DATE OF DECISION : 1st.02.2008**

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, 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 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 Anchor Agencies (P) Ltd.

Appellants
(Rep. by Sh. P.N. Kalsa, Adv.)

VERSUS

CCE, Bhopal

Respondent
(Rep by Sh. A.K. Rastogi, DR)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT

Final ORDER NO. 303/08-SM(BR)

PER JUSTICE S.N. JHA :

This appeal by the assessee is directed against the order of Commissioner (Appeals) dated 12.01.2007 upholding the adjudication order of the Joint Commissioner dated 04.10.2006. By the said order, the Joint Commissioner held that the appellant is liable to pay Service Tax amounting to Rs. 6,39,734/- and Education Cess amounting to Rs. 5,497/- for the period April, 2002 to September, 2005. Penalties @ 100/- per day under Section 76; Rs. 1000/- under Section 77 and Rs. 6,45,231/- (the amount equal to the Service Tax and the Education Cess) under Section 78 were also imposed. The appellant was also directed to pay interest at the appropriate rate on delayed payment of Service Tax in terms of Section 75 of the Act.

2. The appellant is a clearing & forwarding agent (hereinafter referred to as 'C&F Agent') within the meaning of Clause (25) of Section 65 of the Finance Act, 1994 (hereinafter referred to as 'Act'). It is not in dispute that the services provided by a C&F Agent is a 'taxable service' within the meaning of sub-clause (j) of Clause (105) of Section 65 of the Act. The appellant, indeed, does not deny its liability to pay Service Tax. The case of the appellant is that the tax is to be paid only on receipt of payments for the taxable service provided to the

recipients, and presently it was not paid on account of non-payment of the bills in respect of the services provided to two of its clients, namely, TISCO and the Tinplate Company of India Ltd. The authorities found that the balance sheet for the relevant years showed that the appellant had received Rs. 45,80,544/- as commission and handling charges on which the service tax of Rs. 2,88,630/- was payable. Similarly for the period 01.04.2004 to 30.09.2005 the taxable value shown in the ST-3 return was Rs. 37,01,566/- on which Service Tax of Rs. 3,51,104/- was payable.

3. It was submitted on behalf of the appellant that the Company follows the mercantile system of accounting and in terms of Section 209(3)(b) of the Companies Act, 1956, where books of accounts are maintained on accrual basis, it is to be presumed that books of accounts are properly maintained with respect to matters specified in sub-sections (1) and (2) of Section 209. It was accordingly submitted that the entries in the books of accounts with respect to alleged receipt of commission and handling charges could not lead to the inference that payment had been received. The entry merely meant that the payment had accrued to the appellant from TISCO and the Tinplate Company of India Ltd. It was submitted that unless payment is actually received by the service provider, there is no

occasion for making payment of Service Tax in terms of Rule 6(1) of the Service Tax Rules, 1994.

4. Section 66 of the Act provides for levy of Service Tax on the value of 'taxable services' referred to in various sub-clauses of Clause (105) of Section 65 to be collected in such manner as may be prescribed. Section 68 deals with payment of Service Tax. Sub-section (1) thereof lays down that every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. Rule 6 of the Service Tax Rules, 1994 lays down the manner of payment of Service Tax.

5. Sub-rule (1) of Rule 6, as it originally stood, provided as under :

"6. Payment of service tax-(1) The assessee shall deposit with the bank designated by the Central Board of Excise and Customs for this purpose in Form TR-6 or in any other manner as may be prescribed by the Central Board of Excise and Customs by the 15th of the month immediately following the calendar month, the service tax collected by him on the value of taxable service."

The above rule was amended by Notification No. 54/1998 dated 07.10.1998 w.e.f. 16.10.1998 as under :

"Payment of service tax.-(1) The service tax on the value of taxable services received during any calendar month shall be paid to the credit of the Central Government by the 25th of the month immediately following the said calendar month."

The rule underwent another amendment vide Notification No. 7/2005 dated 01.03.2005 effective from 01.04.2005 as under :

"The service tax shall be paid to the credit of the Central Government by the 5th of the month immediately following the calendar month in which the payments are received, towards the value of taxable service.

Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 5th of the month immediately following the quarter in which the payments are received, towards the value of taxable services."

The provision was amended yet again by Notification No. 39/2007-ST dated 12.09.2007, as follows :

"Payment of service tax – (1) The service tax shall be paid to the credit of the Central Government.

- (i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and**
- (ii) by the 5th day of the month, in any other case**

immediately following the calendar month in which the payments are received, towards the value of taxable services:"

6. It may be mentioned here that the period under dispute in the present appeal is April, 2002 to September, 2005 which means that major part of the period is covered by the Rule as it stood under Notification No. 54/1998 dated 07.10.1998 (supra). As per the relevant provision, Service Tax was to be paid "on the value of taxable services received" during any calendar month by the 25th day of the following month. From 1st

April, 2005, Service Tax was to be paid by the 5th day of the month following the month in which "payments are received towards the value of taxable service".

7. The specific case of the appellant is that it has neither received the Service Tax nor any consideration for the services rendered by it to the aforementioned clients, namely, TISCO and Tinplate Company of India Ltd. In support of its case, reliance is sought to be placed on the entry in the balance sheet showing the sums of Rs. 93,81,117.71 and Rs. 76,113.00 as sundry debtors against TISCO and Tinplate Company of India Ltd. respectively. Reliance is also placed on the certificate of the Chartered Accountant to the effect that the appellant has not received "any payments till now from The Tata Iron & Steel Company Ltd., Calcutta and The Tin Plate Company of India Ltd., Jamshedpur, in respect of handling bills raised during the year 2002-03, 2003-04, 2004-05 and 2005-06." Learned Commissioner in para 7 of his order referring to Rule 6 of the Service Tax Rules observed that Service Tax has to be paid by the 5th of the following month immediately following the calendar month in which the payments are received towards the value of taxable services (an obvious reference to Notification No. 07/2005 dated 01.03.2005). He further observed that the payment of Service Tax is contingent upon the value of the taxable service rendered. In other words, the payment of

Service Tax does not depend upon the reimbursement of the Service Tax by service recipient to the service provider and mere realization of taxable value is enough to attract the service tax liability. Since the appellant has already received the value of the taxable service provided, from his customers, service tax liability gets fastened on him.

8. As seen above, the liability for the major part of the disputed period from 01.04.2002 to 31.03.2005 has to be determined with reference to the rule as it stood pursuant to the amendment under Notification No. 54/1998 dated 07.10.1998 which held the field upto 31.03.2005. It is the specific case of the appellant that the bills raised on TISCO and The Tinplate Company of India Ltd. have not been paid. The appellant relies upon the audited balance sheets – said to have been submitted to the authorities. In view of the above, I am inclined to think the matter needs scrutiny as the inference drawn by the authorities from the relevant entry in the balance sheet showing receipt of commission and handling charges – on accrual basis – may not be sufficient or justified. The learned Departmental Representative could not clarify this aspect of the case. In my opinion, if the balance sheet has been maintained, on accrual basis, in accordance with Section 209(3)(b) of the Companies Act, question may arise, as to whether the alleged receipts would fall within the ambit of rule 6(1) of the Service Tax Rules. The

proper course in the circumstances, in my opinion, is to remit the case back to the Commissioner (Appeals) for fresh consideration and decision on merits.

9. The learned counsel for the appellant also took the plea of limitation. He submitted that the copies of balance sheets had been filed along with the return, and therefore there was suppression on the part of the appellant so as to attract the extended period for the purpose of limitation. Counsel referred to the reply of the Information Officer under the Right to Information Act in this regard. The Commissioner has not gone into this aspect of the case, and it will be in the fitness of things to examine the issue of limitation too along with the merits of the case.

10. In the result, the impugned order of the Commissioner (Appeals) dated 12.01.2007 is set aside and the matter is remitted back to the said authority for fresh decision on merits in accordance with law.

11. The appeal is allowed in the above terms.

(Pronounced in the open Court on the 14th day of February, 2008)

(JUSTICE S.N. JHA)
(PRESIDENT)