

**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/511 /2007-SM [BR]

Date 11/03/2008

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

To :  
M/S PIONEER AGENCIES  
SHOP NO. 128, NEW GRAIN MARKET, JALANDHAR.

M/S PIONEER AGENCIES

Appellant

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

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 394 /2008 –SM [BR] dated 31.1.2008  
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

MR.J.S. BEDI

5/13, CENTRAL TOWN, JALANDHAR

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.511 /2007-SM

(Arising out of Revision Order No.40/CE/Jal/07 dated 31.5.07 passed by the  
Commissioner of Central Excise, Chandigarh)

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 Pioneer Agencies

Appellant  
(Rep. by Shri J.S. Bedi, Advocate)

Vs

CCE, Jalandhar

Respondent  
(Rep. by Shri Sumit Kumar, DR)

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

Date of Hearing: 31.1.2008

Final order No. 394 /2008-SM(BR)

Per P.K. Das:

The appellants filed this appeal against the revised order passed by the Commissioner of Central Excise whereby the adjudication order was revised and the penalty under Sections 76 and 78 of the Finance Act, 1994 was enhanced.

2. The relevant facts in brief are that the appellants are engaged in the business of selling of recharge coupons of mobile phones. They obtained registration on 31.10.04 under the nature of service of 'Business Auxiliary Service'. They paid tax on 20<sup>th</sup> July, 2005 and interest on 23<sup>rd</sup> August, 2005 for the period 1<sup>st</sup> July, 2003 to 31<sup>st</sup> March, 2004. The adjudicating authority took a lenient view under Section 80 of the Finance Act, 1994 and imposed penalty of Rs.100/- each under Sections 76 and 77 of the Finance Act. The Commissioner by the impugned order, revised the penalty of Rs. 98,900/- under Section 76 and Rs. 1,94,920/- under Section 78 of the said Act.

3. The learned Advocate submits that the appellant is engaged in the small business of buying and selling of recharge coupons of mobile phones. There is a dispute of levy of tax on such activities. Therefore, there is a delay in payment of tax. He relied upon the following decisions:-

- a) Steel India Vs CCE Jaipur reported in 2008 (9) STR 109.
- b) CCE, Bangalore Vs Sunitha Shetty reported in 2006 (3) STR 404
- c) Renee Telepoint Final Order No. 1833/07 dated 18.12.07
- d) South East Corporation Vs CCE 2007 (83) RLT 120

4. The learned DR reiterates the finding of the Commissioner. He relies upon the decision of Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd Vs Union of India reported in 2006 (2) STR 161. He submits that the appellants did not explain the reasons for delay in payment of tax.

5. After hearing both sides and on perusal of the record, I find that the Tribunal in the case of South East Corporation (supra) held that purchase and sale of sim cards are not amounting to business auxiliary service. Further, the Tribunal on identical issue in the case of Renee Telepoint (supra) set aside the penalty under Section 78 of the Act and penalty under Section 75-A of the Act to only Rs.500/- was imposed. The Division Bench of the Tribunal in the case of Steel India (supra) held that buying and selling <sup>are</sup> ~~is~~ separate from being a commission agent and prima facie, the demand is not sustainable and stay application was allowed.

6. Thus, it is apparent that the levy of tax on the buying and selling of sim cards is in dispute. The Hon'ble Karnataka High Court in the case of Sunitha Shetty (supra) held that Commissioner was not justified in revising the order passed by the Deputy Commissioner as he has exercised his discretion conferred on him under Section 80 of the said Act. The learned DR relied upon the decision of the Hon'ble Supreme Court in the case of BSNL Ltd (supra) which is related to imposition of sales tax on telephone communication service.

7. I find that in the present case, the appellant had not disputed the liability of tax and therefore, the decision cited by the learned DR is not relevant herein. The issue involved in this case is to decide as to whether in this situation, penalty is leviable. I find that the levy of tax is still in dispute as revealed from the various decisions of the Tribunal. In any event, the appellants have already deposited the tax. Therefore, the Adjudicating Authority has rightly exercised his power under Section 80 of the said Act. Accordingly, the impugned order of the Commissioner is set aside and the

order of the Assistant Commissioner is restored. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

MPS\*

(P.K. Das)  
Member(Judicial)