

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/524 /2007-SM[BR]

Date 31/03/2008

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

To :
M/S STEEL CRAFT (INDIA)
VILLAGE KUTBI NANGAL ROAD, OPPOSITE 132 KV
POWER HOUSE, BATALA (PB.)
M/S STEEL CRAFT (INDIA)

Appellant

Vs
Respondent

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

I am directed to transmit herewith a certified copy of Final order No. 511 /2008-SM[BR] dated 1.1.2008
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.G.S.BHANGOO

631 (FF), SECTOR 11B, CHANDIGARH

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. 524 of 2007-SM(BR)

(Arising out of Order-in-Appeal No. 270/CE/App/JAL/2007 dated 27.8.07 passed by the Commissioner (Appeals), Central Excise & Customs, Jalandhar)

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?	no
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	no
3.	Whether their Lordships wish to see the fair copy of the order?	yes
4.	Whether order is to be circulated to the Departmental authorities.	no

M/s Steel Craft (India)

Appellant

Vs.

CCE, Jalandhar

Respondent

Appearance:

Shri Vikrant Kakaria, Advocate
Shri B.S. Suhag, DR

- For appellant
- For respondent

CORAM:

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

Date of Hearing: 1.1.2008

Final Order No. 511 of 2007-SM(BR) dated 1.1.08

Per S.S. Kang :

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby demand of Service Tax of Rs.1,71,569/- was confirmed

and penalties were imposed. The appellants are not challenging the demand.

3. The appellants are only challenging the imposition of penalty under Section 76 and under Section 78 of Finance Act.

4. The contention is that the appellants are producing goods on job work basis for rail coach factory. The contention is that show-cause notice was issued on 15.6.06 demanding amount of Service Tax of Rs. 4,99,054/- on the ground that the appellants were providing business auxiliary service with effect from 1.7.2003.

5. The contention is that in reply to show-cause notice, the appellant submitted that they were producing goods on job work basis and the service of job work come in the purview of Service Tax with effect from 10.9.04 and they are ready to deposit the Service Tax in respect of service provided with effect from 10.9.04. The adjudicating authority after taking into consideration the issue raised by the appellant reduced the amount of Service Tax of

Rs.1,71,569/-. The appellant deposited this amount along with interest even before passing of the adjudication order. The contention is that that the appellants were under the bona fide belief that they are not liable to pay Service Tax as in view of the Notification No. 25/2004-ST dated 10.9.04 which provides exemption from payment of Service Tax in respect of production of goods on behalf of the client it was only with effect from 10.9.04 the job worker was made liable to pay Service Tax and appellant being a small unit was under the bona fide belief that they are still exempted under the notification. The appellant relied upon the provisions of Section 80 of the Finance Act. The contention is that as per the provisions of Section 80 of the finance Act no penalty under Section 76 or 78 is imposable for any failure if assessee proving that there was reasonable cause for said failure. The contention is that as the appellants were bona fide belief that they are exempted under the notification and it was pointed out by the Revenue that they are liable to pay the Service Tax and they were ready to pay

with effect from 10.9.04 when the service as job worker comes under the purview of Service Tax and their liability was much less than the amount of Service Tax demanded in the show-cause notice. The amount which was confirmed in the adjudication order, was paid even prior to passing of the adjudication order along with interest, therefore, they have proving that there was reasonable cause for non-deposit of Service Tax in time.

6. The contention of the Revenue is that the appellants are not challenging the impugned order on merits regarding demand. Therefore, as the appellant failed to deposit the amount of Service Tax on due dates and also failed to file returns, therefore, are liable to pay penalty under Section 76 as well as under Section 78 of Finance Act.

7. I find that in this case, the show-cause notice was issued for demand of Service Tax with effect from 1.7.03 on the ground that the appellants are providing business auxiliary service.

The appellant took a specific stand that they are providing the service of job worker and prior to 10.9.04 the same was exempted under Notification No. 25/2004, therefore, are not liable to pay Service Tax prior to 10.9.04. The service of job worker is liable for Service Tax with effect from 10.9.04 and they are willing to pay the amount of Service Tax in respect of the service provided after 10.9.04. The appellant paid the amount of Rs.1,71,569/- along with interest at their own before issuance of adjudication order. The adjudicating authority after taking into consideration the issue raised by the appellant confirmed the same amount which has already been deposited by the appellant. In these circumstances, it cannot be held that there was any willful, mis-statement or suppression of facts on the part of the appellant to evade tax. Further, I find that Section 80 of Finance Act provides notwithstanding anything contained in the provision of Section 76 or 78, no penalty shall be imposable on the assessee for any failure referred to in the said provision to the assessee proving that there was reasonable

cause for the said failure. In the present case, there was a notification No. 25/2004 which grants exemption in respect of the production of goods on behalf of the client and only with effect from 10.9.04 this service was included in the purview of Service Tax. In these circumstances, I find that the appellant proves that there was reasonable cause for not paying the Service Tax and non-filing of returns at the due dates. In these circumstances, it is not a fit case for imposition of penalty under Section 76 and under Section 78 of the act. The penalty imposed are set aside. The appeal is allowed as indicated above.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM