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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/437 /2007 – SM & ST / 552 / 2007 –SM [BR] Date 20/11/2008

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

To :
DIXON ELECTRONICS
8-S, SANT NAGAR, DISTT. SOLAN, HP

DIXON ELECTRONICS Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1492 – 1493 / 2008- **SM[BR]** dated 5.11.2008 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1 / 1289 –A, VASANT KUNJ NEW DELHI -70.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Del
P[hi-110066.
Principal Bench, New Delhi.

ST/437/07-SM & ST/552/07

[Arising out of Order-in-Appeal No.145/CE/CHD/07 dt.10.5.07 passed by the Commissioner(Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

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. Dixon Electronics — Appellant

Versus

CCE, Chandigarh — Respondent
Vice-a-versa

Appearance
Shri Atul Gupta, CS, for appellant
Shri R.K.Saini, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 5.11.08
Final Order No. 1492-1493/08-SM(BR)

Per Rakesh Kumar:

Since both the appeals are against the same impugned order passed by the Commissioner(Appeals), same are heard together and are being disposed of by a common order. Appeal No.ST/437/07 has been filed by M/s. Dixon Electronics(hereinafter referred to as the Appellant) and the Appeal No.ST/552/07 has been filed by the respondent – CCE, Chandigarh.

2. The Appellant are the authorized repairs various electronic appliances manufactured by M/s. Samsung India Electronics Ltd.(hereinafter referred to as SIEL) Maintenance & Repair Services were brought into the service not w.e.f.1.7.03. The appellants have been paying service tax on the amount received from the customers for repair jobs. However, it was found by the Department that as per their agreement with SIEL, they were providing free repair service to the customers of SIEL within the warranty period and for which they were receiving monthly amount of Rs.35,000/- and in addition to this, they are also receiving some reimbursement on account of office expenses, communication, stationery, consumable equipments, travelling allowances, transportation etc. but they were not paying any service tax on the amount received from M/s. Samsung India Electronics Ltd. On being pointed out, by the Department, the Appellant paid the service tax amount of Rs.1,92.998/- alongwith interest for the period from 1.7.03 to 31.3.05. However, thereafter a show cause notice dt.18.2.06 was issued by the Department for confirmation of the demand of service tax (which

has already been paid by them) and also for imposition of penalty on them under Section 76 & 78 of the Finance Act). The jurisdictional Dy. Commissioner of Central Excise vide order-in-original dt.27.9.06, besides confirming the service tax demand of Rs.1,92,988/- alongwith interest also imposed penalty of Rs.100/- per day under Section 76 for the period during which failure to pay the service tax continued and also imposed penalty of Rs.1,92,998/- on the appellant under Section 78. On appeal against this order, the Commissioner(Appeals) vide the impugned order reduced a penalty under Section 78 to Rs.one lakh but maintained the penalty of Rs.100/- per day under Section 76. In appeal before the Commissioner(Appeals), the service tax has not been challenged. While the Appellant have filed the appeal against the Commissioner(Appeals)'s order maintaining the penalty of Rs.100/- under Section 76 and penalty of Rs.one lakh under Section 78, the Department has filed appeal against reduction of penalty under Section 78 to Rs.one lakh.

3. Heard both the sides.

3.1 Shri Atul Gupta, CS, the learned Counsel on behalf of the Appellant, pleaded that there was bonafide reason for non-payment of service tax as the amount of Rs.35,000/- per month + reimbursement for providing free repair service to the customers of SIEL during the warranty period was being received from SIEL and not from the customers and for this reason, the Appellants were under bonafide belief that no service tax was payable on this amount and as soon as the Department pointed out to them that the service tax was payable on this amount, they paid the same. He cited the Tribunal's judgment in the case of Meenu Man Power Associates vs CCE, Jaipur reported in 2008(84)RLT.328 and Larger Bench judgment in the case of ETA Engineering Ltd. vs CCE, Chennai reported in 2006(3)STR.429 wherein it was held that in terms of the provisions of Section 80 when the Appellant bonafidely believe that no tax was payable and paid the service tax alongwith interest immediately, on being pointed out, no penalty is imposable under Section 76 and 78.

3.2 The learned Departmental Representative pleaded that non-payment of service tax on the amount received from SIEL for providing free warranty repair service to the customers of SIEL was deliberate as there is no scope for doubt that service tax is payable on the gross amount received and that just because the service tax was paid alongwith interest prior to the issue of show cause notice, the imposition of penalty under Section 76 and 78 cannot be automatically waived. In this regard, he relied upon the Tribunal's judgment in the case of CCE, Ludhiana vs Silver Oak Gardens Resort reported in 2008(9)STR.481 wherein the Tribunal held that there is no automatic waiver of penalty even if tax was paid before issue of SCN. Ld. DR also pointed out that though the levy had been introduced w.e.f. 1.7.03, even till 2005, the service tax on the amount received from SIEL for warranting repair was not being paid.

4. I have carefully considered the submissions from both the sides. The Appellants were doing the repair job as authorized service centre of SIEL and the repair jobs were of two types – one type of repair jobs were

those where the amount for repair was being charged from the customers and on this amount, the service tax was being paid and this amount received from the customers and the service tax paid on the same was being declared on the service tax returns. The other repair jobs being carried out were the free repairs under warranty period for the customers of SIEL and for these repairs, while no amount was being charged from the customers, the Appellants were getting a fixed amount of Rs.35,000/- per month plus some reimbursement of certain other expenses from SIEL. On this amount, no service tax was being paid. The appellants pleaded that they were under bonafide belief that they were not liable to pay service tax on this amount as the same was not being received from the customers and as soon as the Department pointed out, that this amount also attracts service tax, they paid the same forthwith alongwith interest. I find merit in the appellant's contention and therefore, I find that this is a fit case for invoking Section 80 of the Finance Act which the Commissioner(Appeals) in the impugned order had not accepted. The impugned order, therefore, is set aside and the appeal filed by the Appellant is allowed. The Revenue's appeal is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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